

article2

of the International Covenant on Civil and Political Rights

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special report

protecting witnesses *Or* perverting justice in Thailand

any person whose rights or freedoms are violated shall
have an effective remedy, determined by competent
judicial, administrative or legislative authorities

The meaning of article 2: Implementation of human rights

Since the adoption of the Universal Declaration of Human Rights in 1948, the human rights movement has worked hard to spread its gospel. The development of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) was a major milestone. Numerous other conventions and declarations have further improved and enhanced the body of human rights principles, and articulated them to the global community. United Nations mechanisms have provided a base for monitoring the observance of rights.

All over the world extensive programmes are now taking place to educate people on human rights. States engage in this work to varying degrees, United Nations agencies facilitate them, and academic institutions participate. The most important education work is done by human rights organisations. As a result today there exists a vast number of persons and organisations firmly committed to human rights; more than at any other time in the history of humankind. Yet human rights continue to be monstrously violated all over the world.

It is time for the global human rights movement to examine why it may not yet be achieving real improvement in the global human rights situation. One factor hindering honest examination is the belief that improvement of knowledge about human rights will by itself end human rights violations. This is a myth based on the corresponding belief that education is itself capable of improving things. In reality human rights can only be implemented through a system of justice. If this system is fundamentally flawed, no amount of knowledge—no amount of repetition of human rights concepts—will by itself correct its defects. Rather, these need to be studied and corrected by practical actions. Hence research and intimate knowledge of local issues must become an integral part of human rights education and related work.

Human rights monitoring mechanisms aim to redress individual violations. This approach is inadequate when dealing with systemic breaches. For example, a country may be condemned for acts of torture, mass murder, crimes against humanity and other violations, and a monitoring body may make some recommendations to correct these. However, monitoring bodies have neither the mandate nor capacity to engage in studies on the actual functioning of components within the justice system—the police, prosecutors and judiciary—through which such recommendations have to be achieved. Thus, even if one person or another is punished, the actual system allowing violations remains, and may even get worse.

Legislation on human rights also does not by itself result in improvements in rights. Legislation can work only through the administration of justice. If justice institutions are fundamentally flawed then legislation remains in the books and is used only to confuse monitoring bodies into believing that conditions are improving. For example, a constitution may provide for fair trial, however the criminal investigation, prosecution and judicial systems may not have reached a credible standard. Such legislation then only mocks the victims and cynically manipulates monitoring bodies and the international community.

Article 2 aims to draw global attention to article 2 of the ICCPR, and make it a key concern of all partners in the global human rights community. This integral article deals with provision of adequate remedies for human rights violations by legislative, administrative and judicial means. It reads as follows. [*Continued on back inner cover*]

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Foreword: The importance of protecting witnesses

Basil Fernando, Executive Director, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

Without witness protection there can be no fight against impunity. Without witness protection, victims of human rights abuses who complain and seek justice must face serious threats leading to physical harm and possibly death of themselves or their loved ones. This violence is brought onto them by powerful people, whose power invariably comes from the uniforms they wear.

A legal system that promotes justice but does not set in place the means to protect witnesses is a fraud. When victims of human rights abuses understand this, they do not come forward to assert their rights against the perpetrators. No attempt is even begun to make complaints and assert rights. The victims remain silent, inert and fearful.

A justice system depends upon evidence being collected and brought before the courts. If fear prevails, evidence cannot be collected. When evidence is not collected, the courts either do not take up cases or dismiss the charges against the accused, as the judge can only consider what is brought before the court. In this manner, the perpetrators of torture, extrajudicial killings and forced disappearances routinely escape justice.

Just as the outcome of a case depends upon the quality of evidence presented to the court, the quality of evidence depends upon the investigation, from its earliest stages. If a complainant is unafraid and comes forward shortly after a crime, describes in detail what happened, points to other persons and materials that substantiate this account, is supported by other witnesses and does not change the account, the case will probably be a success. By contrast, if a complainant is fearful and has low expectations of the courts, coming forward only much later—if at all—reluctantly giving details of what happened and who else may be able to substantiate the story, and under pressure changes the

account, the case is unlikely to succeed. In human rights cases especially, the determining factor between one outcome and the other is protection.

Witness protection is also about how a judge exercises authority. In a developed legal system, the judge asserts the prerogative to make decisions on how the case is handled. Respect for that authority is determined by the extent of respect for fair trial. Where fair trial is respected, judicial orders are upheld. Where fair trial is sabotaged, judicial orders are mocked. When the accused is able to get rid of prosecution witnesses or cause them to reverse earlier testimony, the court also is made into a cruel parody. Whatever formal gestures the judge may make, the authority of the court is diminished.

The authority of a court and respect for fair trial are put to the greatest test when state officers are the accused. A law enforcement officer has many more means than an ordinary person to ensure that complaints against him are never heard by a judge. Where they are heard, he has still many other means to reduce a trial to farce. In most cases against law enforcement officers in Asia, witnesses are afraid to appear in court. Where they do appear, they deny earlier testimonies or lie blatantly in a desperate attempt to escape retribution. At such times, the perpetrator is laughing loudly at the court and its judge.

So the absence of witness protection and the absence of fair trial are one and the same. When the public understands that the courts are in the hands of police and politicians, and even the best judges can be manipulated and cornered, the entire system loses credibility. Where judges are active participants in this charade, the very notion of justice will be lost to the society. Where a case is repeatedly postponed because witnesses have not appeared or alleged perpetrators are acquitted “for lack of evidence”, the judge may be acting within the law but the effect is that the court is making a mockery of itself. Under these circumstances, institutions of justice lose all credibility.

Protecting witnesses is a duty of the state. This is a fundamental and globally-established principle. Where the state declines to protect witnesses, it denies justice to society. The state must find the people, money and means to do this. A state that talks about witness protection but does not allocate funds and resources for that purpose fails in its duty. But the real problem in setting up a witness protection programme is not money; it is about the place of witness protection in state policy. Where the importance of protecting witnesses to obtain justice is understood and articulated, an authority to give effect to this policy can be quickly established and developed. There are many available resources for such work these days.

What should be expected of a proper witness protection programme? It must be easily accessible. It must be widely known and its role understood. It must respond promptly to requests. It must have a range of alternative forms of protection available to

“The absence of witness protection and the absence of fair trial are one and the same”

“Fear is the heritage of all countries with traditions of social repression; people in Thailand are struggling hard to throw off that heritage ”

witnesses, including special protection in courts. It should also be able to protect identities when required. It must respect confidentiality. A working protection scheme will win public confidence, support and cooperation, and have profound effects on the country's entire judiciary.

Thailand is among those countries in Asia that has gone through a long history of heavy military and police control. This history has created a deep and enduring fear among victims of human rights abuses there. That fear is the heritage of all countries with long traditions of social repression. But people in Thailand are now struggling hard to throw off that heritage. They have taken their country from dictatorship to formal democracy. They are now trying to move it from a merely formal democracy to a genuine one. In many respects, this is a far more difficult task than to overturn dictatorship. It involves much deeper transformations that challenge more widely-held notions about state and society.

It is at this stage that the right to complain against abuses and obtain redress begins to be understood, even among the poorest parts of society. To lift the blanket of fear off the largest numbers of people in the society in order that they may exercise this right takes a lot of effort and time. But if the thoughts and emotions of these people are not freed from ancient constraints, genuine democracy and respect for human rights cannot be expected to take hold.



It is clear that when we are talking of protecting witnesses we are in fact talking about much more. We are talking about the credibility of the courts, the quality of justice, the spread of democracy and the changing of society. But in the end, the talk about protection itself must come back to the victims and witnesses themselves. They are the ones who can voice their needs and make plain to society what must be done. They must be encouraged to talk loudly. They must make their experiences known by every means possible. They should expose the real face of law enforcement, and the real meaning of the courts. Anyone concerned by impunity, authoritarianism and state-controlled violence should work closely with them, amplifying and expanding on their voices so that through effective witness protection, respect for the courts, justice and human rights can be realised.

Introduction: Protecting witnesses or perverting justice

Editorial board, *article 2*

Protecting witnesses or perverting justice in Thailand is the first in a series of occasional studies planned by the Asian Legal Resource Centre (ALRC) aimed at examining in detail specific institutional obstacles to the protection of human rights and improvement of the rule of law in Thailand.

This first study examines Thailand's incipient witness protection programme. It looks at the problems in protecting victims and witnesses of grave rights violations there, and the consequences for those seeking to obtain redress.

Despite the establishment of a witness protection agency under the Ministry of Justice, in practice, the police control most aspects of witness protection. As the police in Thailand are the main violators of human rights, the notion that they can be responsible for protecting victims is both unreasonable and contradictory. It brings to mind the Chinese expression that there is a choice between having the bear paw or the fish: the two cannot coexist.

The new Witness Protection Office needs to be strengthened and given far greater control over management of witness protection. If it is not, its purpose will be defeated, and the prospects of justice for victims of human rights abuses in Thailand greatly diminished. It is already in danger of becoming no more than a subsidiary agency to the police force and other more powerful parts of the bureaucracy. This must not be allowed to happen.

The study concludes that:

1. The Witness Protection Act be better defined and written;
2. Criminal defendants also be entitled to protection;
3. Clear criteria be set down for offering and giving protection;
4. The Witness Protection Office be given explicit power;
5. The Witness Protection Office be given more staff and resources;
6. Witness Protection Officers be given rigorous training;
7. Legal and medical professionals also be trained on witness protection;

8. Courtrooms be modified to protect witnesses;
9. More criminal procedures be introduced to protect witnesses; and,
10. The public be far better informed about witness protection.

None of these proposals should come as a surprise to persons interested and concerned with witness protection in Thailand, or for that matter, in Asia. However, it is alarming that at present they are not being widely articulated and discussed among concerned jurists and lawyers, human rights defenders, government officials or victims.

Despite its existing severe limitations, Thailand's witness protection scheme is an extremely important initiative, and among the few of its kind in Asia. It deserves much stronger encouragement. If it gets the interest and support it deserves, it could become an outstanding example for the region. If it doesn't, it will be swallowed up by the perpetrators, not defenders, of human rights.

Both domestic and international bodies have cause for concern and interest.

The government of Thailand, and in particular the Minister of Justice, must do much more to make the Witness Protection Office an effective agency. At present it does not have even half of the staff it was promised. It is obvious that it needs more personnel and resources from the ministry before there can be any talk of it doing effective work. This is a matter of policy decisions on the part of the minister and cabinet, not a question of availability of money with which to do the job. The principle of witness protection, although written into the national constitution, is still foreign to the political leadership of Thailand. This must change.

International bodies, bilateral agencies and overseas missions should all be offering support for the office. Governments with established witness protection programmes could be providing technical and material assistance. They have much to offer. Such exchanges would be very much in their own interests, as foreign nationals in criminal cases in Thailand also suffer from miscarriages of justice caused by the lack of witness protection and attendant problems. And for international agencies, Thailand has the right qualities for a successful witness protection model which could be advertised and replicated elsewhere.

International and local human rights organisations, university departments, scientific and professional groups, members of parliament, the National Human Rights Commission and above all, the witnesses and victims themselves, should all contribute to much-needed discussion on witness protection in Thailand, and offer whatever means they have to make it a reality. Public debate is essential if outside support is to be attracted, and the deep relationship between witness protection, human rights and the rule of law is to be understood.

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Dedication

This study is dedicated to Angkhana Neelaphaijit, Chaweewan Yuthaharn, Adirake Yimwadee, Phra Kittisak Kitisophon, Ekkawat Srimanta, Anek Yingnuek, Urai Srineh, the witnesses in the Min Min case and all other persons in Thailand who deserve protection.

May all unprotected victims and witnesses in Thailand get the security that they need, for the benefit not only of themselves but also that of their entire society, its courts, laws, and notion of justice.

Other studies on Thailand by the ALRC

Extrajudicial killings of alleged drug dealers in Thailand

article 2, vol. 2, no. 3, June 2003

<http://www.article2.org/pdf/v02n03.pdf>

Institutionalised torture, extrajudicial killings and uneven application of law in Thailand

A submission to the UN Committee on Human Rights, March 2005,

http://www.alrc.net/PDF/ALRC_HRC_Thailand_2005.pdf

Supplement, July 2005

http://www.alrc.net/PDF/ALRC_HRC_Thailand_2005_Supplement.pdf

Rule of law versus rule of lords in Thailand

article 2, vol. 4, no. 2, April 2005,

<http://www.article2.org/pdf/v04n02.pdf>

Thailand: Stronger institutions needed

article 2, vol. 4, no. 3, June 2005

<http://www.article2.org/pdf/v04n03.pdf>

Protecting witnesses or perverting justice in Thailand

Asian Legal Resource Centre, Hong Kong

Witnesses are very important to any criminal justice system. A lot of weight is placed on witness testimonies, particularly in Asian jurisdictions. In many cases, conviction or non-conviction depends upon the testimony of a single witness, who is also sometimes the victim. Where that testimony is wanting, the case collapses. Where that testimony is wanting because the witness has been threatened, or even killed, the perpetrators are ridiculing the court. Where the perpetrators are state officers, the entire justice system is put at risk.

In romantic notions, the world is divided between good guys and bad guys. The underworld is responsible for crimes, and the police are responsible for fighting back. A black world of criminals is pitted against a white force of heroes. This notion of crime, found mostly in popular newspapers and films, does not exist in reality. In most parts of Asia it is the nexus between police officers and criminals that is the primary cause of crime. This nexus consists of both simple and complex exchanges. Bribes are taken to permit an illegal bar, brothel or gambling den to operate. Agreements are made so that certain crimes are not investigated, or are investigated badly. Logistics are arranged for the movement of drugs and people across borders. Criminals and police officers work together to abduct and kill people. Without this nexus, many crimes could not be committed, or if committed, they would soon be exposed. With this nexus, most crimes are readily committed, and are all but impossible to expose. Any real-world discussion on crime, human rights abuse and impunity must start with this nexus.

To talk about witness protection also is essentially to talk about this nexus. It means protection both from criminals and police. Any accused is keen to prevent witness testimonies that may lead to a conviction. Where the accused is a police officer or other official then the opportunities to identify, locate, threaten and coerce witnesses, as well as to manipulate investigation, prosecution and judicial procedures, are far more than those available to an ordinary accused. For instance, a police torture

victim must complain at a police station. Perhaps it will be the same station where the torture occurred. The police officers on duty may threaten the person against making a complaint, or record the complaint only partially, or incorrectly. After a few days, a senior officer, a group of officers, or a criminal ally may visit the victim. They may warn the victim against proceeding with the complaint. They may also offer some money. The victim will be fearful of the police and their allies, and perhaps in need of money. Without advice and support, the victim may take the money and withdraw the complaint. Without the complainant, the public prosecutor will close the case “for lack of evidence”. The accused will never even appear before a court, and criminal justice will be totally defeated. Where this pattern is followed repeatedly, the entire system is eroded.

“Witnesses and victims of human rights abuses need to be reassured that they and their families will not face reprisals before, during and after trial”

Witnesses and victims of human rights abuses need to be reassured that they and their families will not face reprisals before, during and after trial. Without this much, they will not cooperate. If they do not cooperate, a trial is made into a travesty. If large numbers of people do not cooperate, there is no administration of justice. Therefore, a sophisticated, highly-publicised and well-resourced scheme to protect witnesses and their families is a must.

A glance at some countries in Asia shows that widespread extrajudicial killings, abductions and other gross abuses of human rights are directly linked to the absence of the rule of law and corresponding lack of effective witness protection:

1. **Philippines:** Republic Act 6981 guarantees that witnesses will be given the necessary protection, security and benefits by the Department of Justice. This law is held up by some people abroad as a model for witness protection in Asia. But for people in the Philippines it is all but meaningless. Human rights defenders, peasant leaders and journalists are among those gunned down there every week. The perpetrators have no fear of getting caught: victims’ families refuse to press complaints and witnesses flee out of fear. One case after another is closed because “no witnesses have come out in the open for fear of reprisal”. Even where people are shot dead in the middle of crowded markets or before their wives and children at home, the police disingenuously claim that they have been unable to locate witnesses or secure their cooperation. And the fear of witnesses is well-founded: those who do somehow come forward are also routinely killed. Despite the scale and brutality of the killings in the Philippines, there is no evidence of any serious steps by the authorities to address them through a functioning witness protection scheme.

2. **Indonesia:** A long-awaited Witness and Victim Protection Bill is still in draft. Apart from measures to give assistance to witnesses and victims, the draft imposes serious penalties on persons who attempt to stop witnesses from appearing court, or inform others of their whereabouts and identities. However, even before the bill has been completed the chairman of the drafting

“The police department is hated and despised by all people outside of it”

—*Parliamentary Administrative Committee, 1980*

committee has proposed that the witness protection agency be under the police, rather than properly independent. Unfortunately, placing the task of witness protection in the hands of the police completely defeats its purpose, as this study discusses in detail with reference to Thailand. Meanwhile, the Indonesian security forces and paramilitary groups continue to operate with gross impunity right across the archipelago, and human rights defenders and victims face serious and systematic threats on their lives, as well as those of their colleagues and families.

3. **India:** There is no national-level scheme or guidelines for witness protection, and some states have no laws to protect witnesses and victims. The trials of persons accused of mass killings in Gujarat during 2002 descended into farce after witnesses constantly changed their testimonies due to a systemic campaign of intimidation by the state authorities and powerful nationalist groups, coupled with a lack of witness protection. In most parts of the country, witnesses brought to court in cases against rich and powerful people turn hostile, making a mockery of the law and India's pretensions to human rights and democracy. The police in many areas work together with corrupted judicial officers and criminals to intimidate and murder with impunity, through use of “crossfire” encounter killings and mob attacks on persons and property. The country's enormous bureaucracy remains largely inert and complicit, and countless judicial reform committees and commissions have paid virtually no attention to witness protection.

4. **Sri Lanka:** There is no witness protection programme of any sort. The exceptional collapse of the rule of law there, and very strong nexus between the police, politicians and criminals, together render the state incapable of protecting witnesses and victims of crime, even if it had the will to do so. Citizens' groups have instead organised their own programmes, with great difficulty, to relocate and hide victims of police torture and other abuses. Nonetheless, Sri Lankans who have dared to speak out and press complaints against state officers have lost their lives as a consequence.

Thailand is among those countries in Asia where the power of the police and other parts of the executive is very deeply entrenched, and where ordinary people fear and resent law enforcement officers who have it within their power to make life hell. The problems of modern policing in Thailand have been an open topic of discussion since the late 1970s. Government agencies have themselves long acknowledged that “the police department is hated and despised by all people outside of it” (quote attributed to the parliamentary Administrative Committee, 10 January 1980; cited in *Corruption & democracy in Thailand*, by Pasuk Phongpaichit & Sungsidh Piriyarangsarn, Silksworm Books, Chiang Mai, 1994, p. 119). However, the police force has successfully resisted attempts at reform.

The police in Thailand are associated with routine physical abuse and humiliation. Accounts of gross human rights violations are widespread, particularly in parts of the country where ordinary restrictions are relaxed. Reports by human rights defenders, the media and other concerned agencies and persons routinely link the Thai police to killings, abductions, torture, and intimidation of suspects, witnesses and other persons, or the aiding and abetting of such acts. Yet discussions about the reasons for this situation, and possible solutions, remain limited.

Most victims of police abuses in Thailand are unable to complain or obtain any sort of redress. Impunity is rooted in the country's administrative system, which despite a modern exterior continues to function on ancient principles of patronage. There are few laws to permit complaint and no effective avenues to enable these. Victims have little incentive to overcome their fear and lodge complaints as they do not believe that these will lead to any legitimate action against the perpetrators of abuse, and they lack reassurances that they will not face reprisals from the accused. Nobody seriously expects the legal system to punish a police officer for wrongdoing. Victims of abuse who do complain, or are in a position to complain, are threatened and coerced by the perpetrators or their associates. Senior officers defend subordinates accused of gross violence, including committing extrajudicial killings, abductions and torture. They also give in-principle support to such actions.

It is for these reasons that Thailand needs an effective witness protection programme working independently of the police.

Protecting witnesses: An article 2 obligation

The International Covenant on Civil and Political Rights, to which Thailand is a party, contains certain obligations that can only be realised where the state has in place an effective witness protection programme. These include the right to life (article 6), freedom from torture and cruel, inhuman or degrading treatment or punishment (article 7), right to security of person (article 9) and freedom of movement (article 12). Most importantly, article 2 requires states "to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant". In this respect, it requires each party to the treaty to ensure that

(a) Any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) Any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) The competent authorities shall enforce such remedies when granted.

“Most victims of police abuses in Thailand are unable to complain or obtain any sort of redress; they lack reassurances that they will not face reprisals ”

“ [Thailand] should actively pursue the idea of instituting an independent civilian body to investigate complaints filed against law enforcement officials ”

—*UN Human Rights Committee, 2005*

Implementation of the rights guaranteed under international law requires effective legislation and competent authorities. In terms of witness protection, that means a comprehensive law to protect witnesses and a functioning agency to ensure that the law is enforced.

In its concluding observations on Thailand's compliance with the Covenant in 2005 (CCPR/CO/84/THA, 28 July 2005), the UN Human Rights Committee identified a number of areas of particular concern that relate specifically to witness protection:

The Committee is concerned at the persistent allegations of serious human rights violations, including widespread instances of extra-judicial killings and ill-treatment by the police and members of armed forces, illustrated by incidents such as the Tak Bai incident in October 2004, the Krue Se Mosque incident on 28 April 2004 and the extraordinarily large number of killings during the “War on Drugs” which began in February 2003. Human rights defenders, community leaders, demonstrators and other members of civil society continue to be targets of such actions, and any investigations have generally failed to lead to prosecutions and sentences commensurate with the gravity of the crimes committed, creating a “culture of impunity”. The Committee further notes with concern that this situation reflects a lack of effective remedies available to victims of human rights violations, which is incompatible with article 2, paragraph 3 of the Covenant (arts. 2, 6, 7). **The State party [Thailand] should conduct full and impartial investigations into these and such other events and should, depending on the findings of the investigations, institute proceedings against the perpetrators. The State party should also ensure that victims and their families, including the relatives of missing and disappeared persons, receive adequate redress... The State party should actively pursue the idea of instituting an independent civilian body to investigate complaints filed against law enforcement officials.** [Paragraph 10]

The Committee is concerned about the persistent allegations of excessive use of force by law enforcement officials, as well as ill-treatment at the time of arrest and during police custody. The Committee is also concerned about reports on the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called “safe houses”. It is also concerned at the impunity flowing from the fact that only a few of the investigations into cases of ill-treatment have resulted in prosecution, and if any, in conviction, and that adequate compensation to victims has not been provided (arts. 2, 7, 9). **The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and the place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families.** [Paragraph 15]

While welcoming the aspiration of the State party to accept and foster a vibrant civil society, including many human rights organisations, the Committee is nevertheless concerned at the number of incidents against human rights defenders and community leaders, including intimidation and verbal and physical attacks, enforced disappearances and extra-judicial killings (arts. 19, 21 and 22). **The State party must take measures to immediately halt and protect against the harassment and attacks against human rights defenders and community leaders. The State party must systematically investigate all reported instances of intimidation, harassment and attacks and guarantee effective remedies to victims and their families.** [Paragraph 19]

“Perhaps the most serious concern arising from the existing Witness Protection Act is that it lacks detail ”

None of the above recommendations of the Human Rights Committee can be realised without an effective witness protection programme. Although the government of Thailand can point to a newly-established witness protection law and agency, both of these are falling far short of what is required in order to comply with international law, and are in no way sufficient as to ensure the protection of witnesses and victims, let alone the furtherance of justice and the rule of law.

The Witness Protection Act of Thailand

Many new laws and institutions were established after the 1997 Constitution of Thailand with the purpose of effecting rights that did not fully exist under earlier constitutions. The Witness Protection Act is among these. Under the 1997 Constitution

In a criminal case, a witness has the right to protection, proper treatment, necessary and appropriate remuneration from the State as provided by law. [Section 244]

In a criminal case, an injured person has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law.

In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by another person without the injured person participating in such commission and the injury cannot be remedied by other means, such person or his or her heir has the right to receive aid from the State, upon the conditions and in the manner provided by law. [Section 245]

After some years the Witness Protection Act BE 2546 (2003) was passed to enable the constitutional provisions. It followed the Compensation for Victims of Crime Act BE 2544 (2001).

In recent times it has become glaringly obvious that many of the new laws and bodies established under the 1997 Constitution were hastily prepared and have been ill-equipped for their stated purposes. The Witness Protection Act and corresponding office are no exception.

Perhaps the most serious concern arising from the existing Witness Protection Act is that it lacks detail. At barely eight pages, it is little more than a thumbnail sketch of the work of witness protection. It is instead beholden upon the mandated agency or agencies to introduce regulations with which to expand upon its contents. However, the business of introducing regulations may be fraught with difficulties, and under any circumstances the

“The exclusion of defendants from the definition of persons who may obtain protection runs contrary to its purposes ”

law is very limited even in comparison to other similar enabling legislation. For instance, the Witness Protection Act was introduced to prevent intimidation and threats against witnesses and victims of crimes. Yet at no point is there a definition of ‘intimidation’ or ‘threat’. Similarly, sections 21 to 23 set down relatively light penalties for revealing the identity of witnesses, intimidating them or causing harm or death, but again key terms such as ‘lose security’ or ‘harm’ are not explained.

There is, however, a definition of ‘witness’ in section 3, which is problematic for different reasons:

“Witness” means a person who commits himself/herself to be present at, or testify, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert **but not a defendant who himself/herself is a witness.** [Unofficial translation; emphasis added]

The exclusion of defendants from the definition of persons who may obtain protection runs contrary to the law’s purposes and is enormously detrimental to the protection of human rights and advancement of justice in Thailand. Victims of torture, arbitrary detention and other severe abuses in police custody in Thailand are easily subjected to criminal prosecution based upon forced confessions, doctored evidence and fraudulent record keeping. They are among the persons in greatest need of protection. However, the present law denies them this right.

Not only is this limitation deeply offensive, it is also in violation of Thailand’s obligations under the International Covenant on Civil and Political Rights. As a party to the Covenant, Thailand has committed itself to providing redress to all persons who have suffered violations of the rights it encompasses. This obligation stands without regard to other factors, such as whether or not the person is the defendant in a criminal case. It likewise runs contrary to the stipulation of the UN Human Rights Committee that appropriate arrangements be made for investigations of all cases of custodial abuse in Thailand. In fact, the effect of this provision can only be to encourage police to lodge criminal charges against persons they have abused, in order to ensure that they be denied protection.

On the management of witness protection, according to section 6 of the Witness Protection Act:

In a case where a witness loses his/her security, a competent official from criminal investigation, interrogation, prosecution or the Witness Protection Bureau as the case may be shall design for the witness protection measures as deemed appropriate. [Unofficial translation]

What criteria are used upon which witness protection measures are “deemed appropriate”? The law gives no guidance. By way of comparison, section 4 of the Hong Kong Witness Protection Ordinance 2000 sets out all the basic criteria to be used in deciding whether or not a witness should be protected:

1. Whether the witness has a criminal record, which could indicate a risk to the public if the witness were included in the witness protection programme;

2. If a psychological or psychiatric examination has been conducted to determine if the witness is suitable for the programme;

3. The seriousness of the offence;

4. The nature and importance of the evidence or statement given by the witness;

5. Whether or not there are viable alternative methods of protecting the witness;

6. The nature of the perceived danger to the witness;

7. The nature of the witness's relationship with other witnesses being assessed for inclusion in the protection programme; and,

8. Other factors that the approving authority considers relevant.

The procedures that witness protection officers in Hong Kong must adhere to are set out comprehensively in the Witness Protection Ordinance. For example, section 8 enumerates the steps taken to establish a new identity for a witness. It identifies the public officers who are authorised to issue the necessary documents to create a new identity, and how they are to proceed.

By contrast, the Witness Protection Act of Thailand fails to consider in detail any of the practical steps and problems arising from witness protection. Section 10 loosely nominates the Witness Protection Bureau—later renamed the Witness Protection Office—to take certain measures, including:

1. New accommodation;

2. Daily expenses for a witness and person under his or her care for up to one year, with further 3-month extensions not exceeding two years;

3. Coordination with relevant agencies to change the first name, family name, and information that contributes to knowledge of the personal identity of the witness;

4. Assistance for the witness to continue with a career or obtain training with which to earn a living.

5. Assisting or acting on behalf of a witness for his or her lawful rights.

6. Bodyguards for any necessary period of time; and,

7. Any other action to assist and support the witness with his or her security as appropriate.

Nowhere in the Witness Protection Act is there a step-by-step explanation of how these provisions are expected to operate, or who is in charge. There are no universal guidelines on witness protection. There is no guidance on the role of particular

“The Witness Protection Act of Thailand fails to consider in detail any of the practical steps and problems arising from witness protection ”

“The Witness Protection Office has powers of ‘coordination and arrangement to obtain results among public agencies and private organizations which would make protection measures effective’ ”

agencies. The lack of guidelines leaves the door wide open for disparities in methods of dealing with witness protection, and inter-agency conflict. All this is despite the existence of a discrete body, the Witness Protection Office, established ostensibly for the purpose of seeing the law brought into effect.

The Witness Protection Office of Thailand

Among the new agencies set up following the 1997 Constitution, a number were placed under the Ministry of Justice. They are aimed at counterbalancing the established powers of the police and traditionally powerful parts of government such as the Ministry of Interior. They include the Central Institute of Forensic Science, Department of Special Investigation and Department of Rights and Liberties Protection. Some were initially proposed as entirely independent bodies, but were later initiated under the ministry for practical reasons. These agencies have since taken on very different profiles.

Under forward-thinking and outspoken leadership, the Central Institute of Forensic Science has aggressively tackled its mandate and repeatedly challenged the findings of police forensic scientists and other powerful agencies. As a result it has been the target of incessant attacks by officials resentful of its presence and behaviour. It is frequently in the media, and widely-known and respected throughout the country. Its director is lauded for her courage, relentless pursuit of the truth, independence and integrity.

By contrast, the Department of Special Investigation has been a human rights failure. Despite trumpeting successes in dealing with organised crime, terrorism and large-scale fraud, it has not solved a single human rights case. It has not prosecuted police accused of torture. It has not brought to justice the masterminds in killings of human rights defenders and environmentalists. It has failed to take up dozens of cases brought to its attention that fall within its criteria: most where police have been the accused. The police general heading the department has been accused by victims and human rights defenders of deliberately obstructing inquiries where the police are involved and senior figures may be implicated by evidence.

The Department of Rights and Liberties Protection, which houses both the Witness Protection Office and Office for Public Compensation for Criminal Cases, has attracted relatively less attention. This is unfortunate. To be made effective all of these agencies need to be the subjects of constant scrutiny and discussion, and this department, like the others, has a critical role to play—not least of all in managing witness protection.

According to the Witness Protection Act BE 2546 (2003), the Witness Protection Office has powers of “coordination and arrangement to obtain results among public agencies and private organizations, where relevant, which would make protection measures effective” (section 13; unofficial translation).

The Witness Protection Act suggests a supervisory role for the office, in conjunction with other key agencies, such as the police. But how does this coordination work? Is there supposed to be a hierarchy of public agencies with the office at the top? The law does not make this clear. In fact, section 13 is the only one that deals with the office specifically.

“The office has very limited resources”

The lack of detail is compounded by section 5, which stipulates that

The Prime Minister, Ministers of Defence, Interior and Justice shall be in charge of enforcement of this Act and, in relation to their respective Ministries, shall have the power to appoint competent officials and issue Ministerial Regulations and notifications for the purposes of the implementation of this Act.

Again, the law gives no guidance on how these ministries are supposed to cooperate, suggesting that in the hurry to put the law into effect hard questions about which part of government should be put in charge were deliberately avoided.

Despite the lack of clarity about the precise role of the office, it is envisaged as the specialised agency for witness protection in Thailand, responsible for seeing the law implemented and further rules and regulations drafted.

At present, there are many areas of witness protection awaiting clarification by the office. For example, if a witness dies or is killed while under protection, who is liable? Is it possible to relocate witnesses outside of Thailand? Successful witness protection hinges on answers to these types of questions. If regulations are not fully developed, the office cannot call upon other government agencies to comply with procedures and implement and promote witness protection schemes.

However, the office has very limited resources and capacity. At the end of 2005, it had only 10 officers, although under existing arrangements it should have been allocated 22. The officers do not have special qualifications or training. Most have been transferred from other parts of the Ministry of Justice, without any criteria applied to assess their suitability for witness protection work. The Witness Protection Act does not offer any guidance on who should be recruited to the office. There is no formal training for officers once they are recruited. In short, the small cadre of officers also lacks professional qualifications and skills specific to the job.

Compare this arrangement to that governing the Department of Special Investigation. The Special Case Investigation Act B.E. 2547 (2004) stipulates in detail that a board is to oversee management of special cases, and of which persons it consists. It specifies its role. It also outlines in detail the qualifications of departmental personnel, who are recruited from the police, military and other relevant professional backgrounds. The department is obliged to cooperate with other government agencies, and may choose to do so with outside institutions and professionals, but it is not dependent upon them to fulfill its mandate.

“In principle, the Witness Protection Office protects witnesses; in practice, the police are in charge ”

By contrast, with 10 unqualified staff for the entire country of some 65 million, the Witness Protection Office cannot itself offer any protection at all. Instead it relies upon seven other agencies, being the

1. Royal Thai Police;
 2. Royal Thai Army;
 3. Bureau of Internal Security Affairs, Ministry of Interior;
 4. Department of Special Investigation, Ministry of Justice;
 5. Department of Corrections, Ministry of Justice;
 6. Office of the Narcotics Control Board, Ministry of Justice;
- and,
7. Department of Youth Observation and Protection, Ministry of Justice.

Like the staff of the Witness Protection Office itself, most officials from the seven agencies have little or no expertise in protecting vulnerable witnesses and victims. Most know only how to interrogate suspects and detain convicts. When approaching witnesses, many use the same methods of aggressive inquiry and forced confinement, leaving the witness or victim feeling like a suspect. Some witnesses complain of having been followed at any time of day or night by the ‘protecting’ officers, making them feel even more vulnerable and intimidated than before.

After it was established in 2004, the Witness Protection Office began by introducing the concept of witness protection to police officers from all nine police regions across Thailand. One employee from the Department of Rights and Liberties Protection was sent to each of the country’s 76 provinces to meet representatives of the seven agencies there. Among the seven, the key agency is the police. In view of the fact that the police in Thailand are the main perpetrators of human rights violations, this is the biggest flaw in the current arrangement. In fact, it completely undoes the entire notion of protection.

The police still call the shots

In principle, the Witness Protection Office protects witnesses in Thailand; in practice, the police are in charge. As the Royal Thai Police have the men and national reach, it is taken for granted that they have the capacity to protect witnesses, if they wish. At the end of 2005, out of the approximately 130 persons that had been under witness protection since the Witness Protection Act was passed, around 90 per cent had been protected by the police.

Rather than perhaps question the premise that police are suitable persons to offer protection, the Witness Protection Office has instead chosen pragmatically to concentrate on training them. Although short on experience, its officers are conducting

programmes with senior district-level police, who are then expected to train their subordinates, and so on. Subsequently, the office will concentrate on staff in the six other agencies.

The Witness Protection Office cannot order the police to protect someone. When the office refers a case to the police, they may choose to accept or reject it. The office has no power to contradict a decision by the police. It can only protest, or request another part of the police or another of the seven agencies to protect the witness. However, the remaining six agencies will only act on specific cases that are already part of their respective mandates. For instance, the Department of Special Investigation may consider giving protection to a witness in a case that it is investigating, and the Department of Corrections will only take up cases concerning prisoners. Again, these agencies act at their own discretion, not under any obligation.

Once a case is accepted by the police, they have complete control. They decide when protection is offered, how it is offered, and when it ends. The Witness Protection Office has no input, contrary to its stated role as 'coordinator' of the relevant public and private agencies involved in making the protective measures effective. Once a witness is referred to the police, the office can do little more than contact the concerned officers from time to time to request basic information about the person's wellbeing.

Thus the existing provisions for witness protection in Thailand contain a startling and enormous contradiction. The express purpose of the Witness Protection Office being established outside the police force was to bring a degree of civilian oversight over the protecting of victims and witnesses. However, the direct consequence of the existing arrangements has been to hand virtually all of the real authority for protection to the police.

According to staff of the Witness Protection Office, when responding to offers for police protection witnesses fall broadly into two categories:

1. The witness or victim in an ordinary criminal case feels that there are 'good' police and 'bad' police. They ask for protection by the 'good' police.
2. The witness or victim in a criminal case involving state agents or influential persons feels that the police as a whole are bad. They may refuse protection for this reason, and run the risk of threats and reprisals on their own. If they accept protection, they will still feel insecure and vulnerable.

In cases where the office has been asked to give protection against police from particular areas, it has sought the assistance of national-level police agencies, or those from other regions. However, this is usually only a short-term arrangement that leaves the witness feeling far from satisfied.

Contrast this arrangement with what has been established in Hong Kong. Under the Witness Protection Ordinance there, both the head of the police and the head of the Independent

“ The Witness Protection Office cannot order the police to protect someone ”

“Thailand does not yet have any independent investigative agencies upon which the Witness Protection Office can call for assistance”

Commission Against Corruption (ICAC) have the power to institute witness protection measures. Witnesses in criminal cases involving corrupt and illegal actions by state officers, having complained to the ICAC, may seek protection from its own independent Witness Protection and Firearms Section. The ICAC then takes direct responsibility for protection. It does not rely on outside agencies, and can control all aspects of protection as set out in the ordinance, independent of the police.

Thailand does not yet have any independent investigative agencies like the ICAC upon which the Witness Protection Office can call for assistance. However, there are many interim alternatives that remain untried for lack of political will. The government could, for instance, attach a discrete armed unit to the office, give it special training and make it answerable to the ministry. Whatever the case, steps need to be taken to remove control of witness protection from the police: this is by far the biggest weakness in the current arrangement, and the one that undermines the very principles upon which it was founded.

How to get protected

It is not easy to get protected. To begin with, the Witness Protection Office must receive a request for protection, from the witness or a concerned person, in order to begin its work. But the office is little known. The extent of its publicity to date, apart from some leaflets, has been in the form of ‘crawling text’ at the bottom of television screens during news broadcasts. Far more needs to be done to raise its profile, especially to ensure that it can intervene promptly in emergency cases.

A witness can also approach the police or any of the seven agencies involved in witness protection directly. Any one of them can offer protection without the involvement or knowledge of the Witness Protection Office. The only requirement is that they do so in accordance with the general provisions of the Witness Protection Act.

If the office receives a request for protection, it usually proceeds as follows.

1. A witness protection officer ascertains whether or not the situation is critical. If so, the police are contacted immediately. If not, the officer takes several days to examine the case and decide how to proceed.

2. If protection is offered, the witness or victim is asked to give written consent, by way of a form (contained in Appendix III). Four persons are entitled to have access to these documents: the witness protection officer responsible for the case, the director of the Witness Protection Office, and the Deputy Director-General and Director-General of the Department of Rights and Liberties Protection.

“Despite coherent diagrams, in practice witness protection in Thailand is arbitrary”

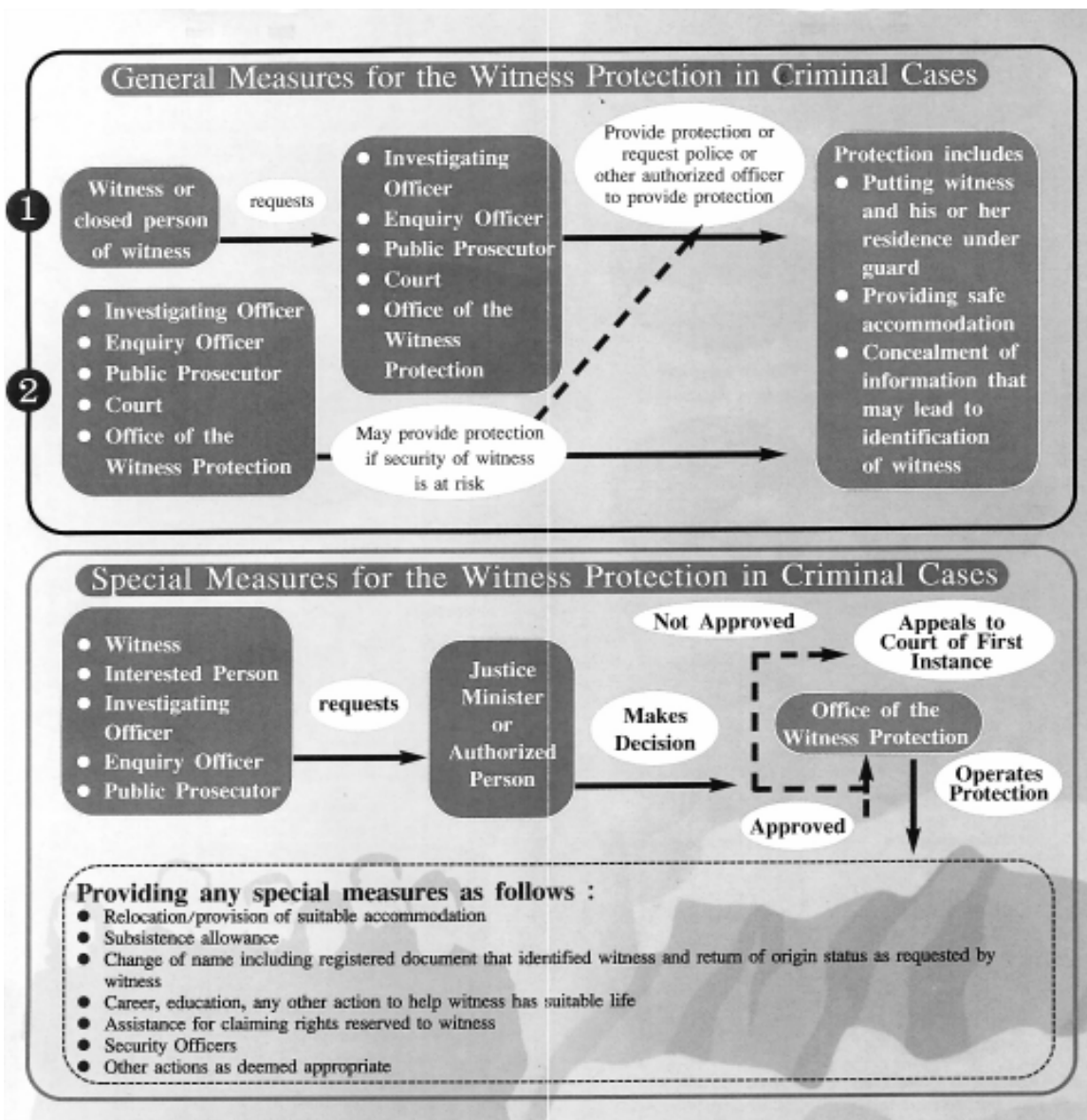
3. The witness protection officer then contacts the police, starting with the superintendent of the district where the witness is residing. He is asked to allocate a team of officers to protect the witness or victim. Under existing regulations, this arrangement can continue for up to 21 days. After this, the commissioner of the region can order up to a further 60 days protection. Beyond 81 days, it is necessary to obtain approval from the police commissioner-general, for whatever period of time he sees fit.

4. Once the police have agreed to give protection, the case is in their hands. They decide the duration and manner of the protection. Under any circumstances, they will cease giving protection when the trial in which the witness is appearing has concluded, when the threats and intimidation are perceived to have ceased, or if the witness dies.

5. The witness protection officer has a ‘hotline’ to the police officers in charge of protecting the witness. The officer can ask about the health and other circumstances of the witness, but answers depend on the willingness of the police to cooperate.

One glaring problem arising from the above is the artificial deadlines imposed by police who are giving protection. Cases may take years to pass through the courts, and the need for protection may in some instances extend well beyond the conclusion of a trial. While the Witness Protection Act envisages long-term protection of this sort, at present the police offer only short-term security, except in rare cases where the head of the police force intervenes.

A diagram (overleaf) issued by the Department of Rights and Liberties Protection represents the alternative routes to obtaining witness protection in principle. Yet despite coherent diagrams, in practice witness protection in Thailand is arbitrary. There is little evidence of uniformity in how cases are addressed and protection offered. This is especially the case where the police or their allies are among the accused.



(Source: Brochure on the Witness Protection Act by the Department of Rights & Liberties Protection)

What really happens to witnesses in Thailand?

Some cases

Protection or harassment? Angkhana Neelaphaijit

Angkhana Neelaphaijit was given two months of protection by the Metropolitan Police Bureau, organised by the Witness Protection Office

Angkhana Neelaphaijit is the wife of the prominent human rights lawyer Somchai Neelaphaijit, who was forcibly disappeared on 12 March 2004. Five police officers, four of them members of the powerful Crime Suppression Division, were charged in connection with his abduction. On 12 January 2006 one was sentenced to three years in prison. The court acknowledged that Somchai had been abducted. The prime minister and others have acknowledged that the perpetrators were police. The Department of Special Investigation is continuing inquiries, but Angkhana has doubted its sincerity, and especially that of its director, whom she has urged to step aside from the investigation.

Angkhana has advocated strongly for justice. She was also a joint plaintiff in the criminal case against the five accused, against the wishes of the public prosecutor. As a result, she has been a target for threats.

On 18 April 2005, Angkhana received a telephone call from a man whose voice she recognised as that of a government intelligence officer. He asked about her interventions in the United Nations. Shortly after, another man approached her near her house and warned her against any high-profile advocacy on her husband's case, such as going on television or making other public statements. (See appeal in Appendix IV.)

After strong interventions and publicity of the threats, the then-justice minister ordered that Angkhana be given protection. The Witness Protection Office organised for two police officers from the Metropolitan Police Bureau to protect her from the next day. Angkhana agreed to protection for an initial two months.



PHOTO: STEVE SANFORD

The two police officers, both men, came to Angkhana's house. They did not appear to have clear orders or a good understanding of what to do. They thought that they would stay in the house. Angkhana refused to allow them to stay with her. They rented accommodation nearby instead. Each day they patrolled around the house. At night they stayed at their accommodation, but called frequently to check that everything was alright. When Angkhana complained about the manner of giving protection, one of the officers apologised, saying that they hadn't been given an assignment like this before and that they lacked detailed instructions. In short, they did not understand what they were supposed to do.

Angkhana's husband had been abducted by the police, and she had sought protection from the perpetrators or their associates. Not surprisingly, she felt more insecure with the constant presence of the police than she did without them. Neighbours and friends stopped visiting the house. Her family also felt intimidated. The police wanted to know the phone numbers and movements of her five children, four of them young women. When she met the prime minister, she asked him directly if her phone was being tapped, and he did not deny it.

When the two-month period was finished, Angkhana declined to renew the witness protection, as she felt harassed and burdened by the police. She obtained the assistance of colleagues and made her own private arrangements for security.

On 21 March 2006 Angkhana was again threatened by the same man who approached her in 2005, at a time that she was working with the Central Institute of Forensic Science on possible locations of her husband's remains. The man warned her not to go out or she might have an accident or find a bomb under her car. She did not seek any protection from the government, saying that it would not do any good. Other threats also she has not reported for the same reason.

On 10 April 2006 two Members of the European Parliament submitted written questions to the European Union asking whether or not it has "communicated its concern over the security threats to Mrs. Angkhana to the Government of Thailand". The following month the European Union took up her case under a programme for woman human rights defenders. Angkhana has also received national and international awards for her work. She feels that together these actions from human rights groups and national and international agencies to support her and commemorate her husband have protected her and her family more effectively than anything offered by the government.

The dangerous courtroom: Chaweewan Yuthaharn & Adirake Yimwadee

Chaweewan Yuthaharn and Adirake Yimwadee were eyewitnesses to the abduction of human rights lawyer Somchai Neelaphaijit; neither received witness protection

Chaweewan Yuthaharn and Adirake Yimwadee were eyewitnesses in the case against the five police officers accused in connection with the disappearance of prominent human rights lawyer Somchai Neelaphaijit. Ultimately, it was on the basis of their testimonies that one of the five defendants was convicted on 12 January 2006.

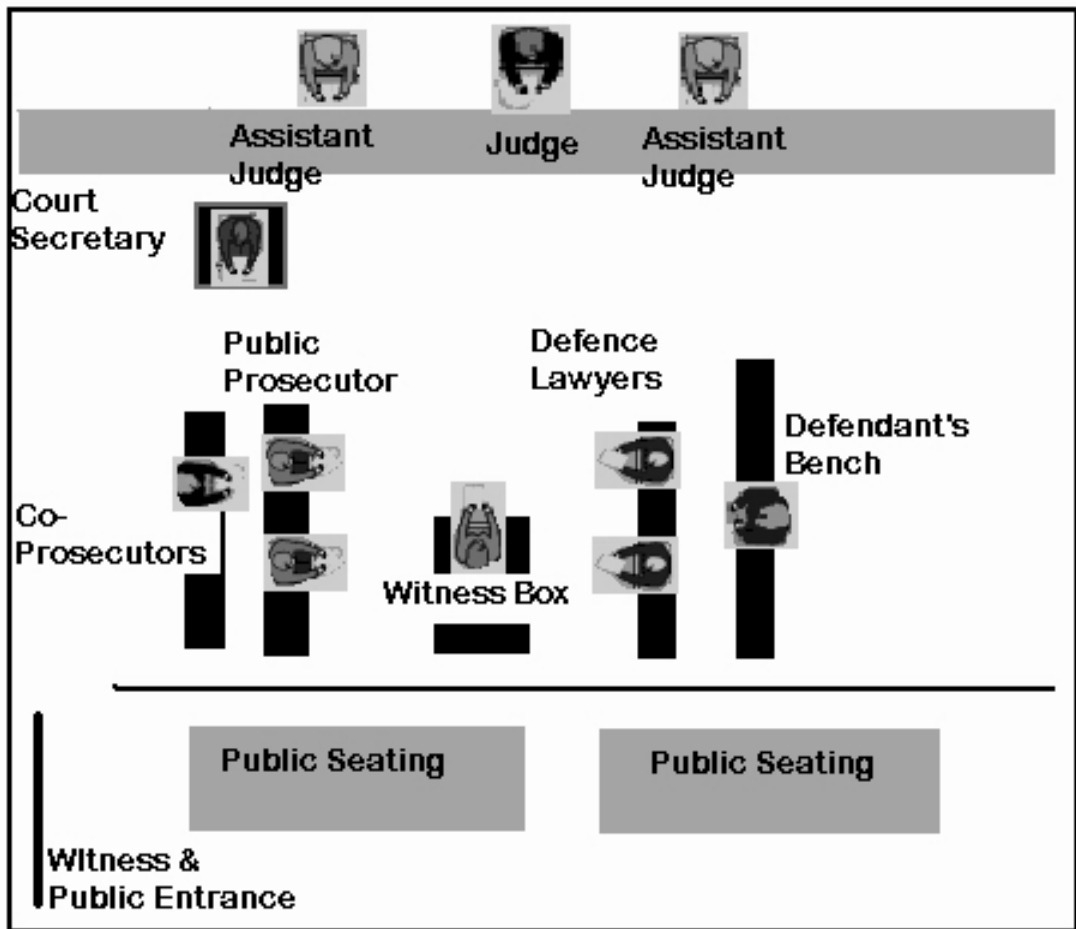
Both Chaweewan and Adirake very reluctantly approached police investigators to tell what they saw, and said that they were told that they would only have to give testimony at the police station and would then be allowed to go home. Neither of them had expected that they would have to testify in open court. Had they been aware of this, it is highly unlikely that either of them would have come forward in the first place.

Chaweewan, a young woman, initially told the investigating officers that she had clearly seen the abduction, and positively identified the one defendant who was later found guilty. But in court on 25 August 2005 she refused to identify him when he sat before her. She was visibly afraid and looked straight ahead at the bench, or downwards. When asked repeatedly to try to identify the accused, she only snatched glances at him and immediately looked downwards again.

Adirake similarly refused to respond to many questions in the court. When asked by the judge if he was aware that he could perjure himself by denying his earlier testimony, he neatly described his dilemma by saying that as the police were both investigators and defendants in the case, he was afraid of each side.

Chaweewan and Adirake felt very vulnerable when appearing in the court not only because of the persons they were testifying against but also because of the court procedure and layout.

Witnesses in Thailand sit on benches outside the court waiting to be called. There is no special waiting room or other arrangements for them. If the defendants are on bail, they can enter and leave the courtroom as and when they like, each time passing by the witnesses. Court observers also come and go. On the days that the eyewitnesses appeared in this case, there were many police present as observers. Others were milling around downstairs. The large number of police appears to have been organised to intimidate the eyewitnesses, as they were not there on other days. They also went to and fro freely. Even at lunch time, no special arrangements were made by the court for protection of the witnesses. Some human rights monitors attending the court sat with Chaweewan in the cafeteria.



Layout of a Criminal Court room in Thailand (defendants not under custody)

Once in the courtroom, the witness is sandwiched between the prosecution and defence, facing the judge. The courtrooms in Thailand are generally small, and the witness is seated within two to three metres of bailed defendants, in full profile view. There is no physical barrier separating the victim or witness and the defendants. Nor is there any special security in cases where the defendants have posted bail.

Both Chaweewan and Adirake were also asked by the prosecutor to watch video tapes that they had used to identify the defendants, which were played on a laptop computer that had been brought to the court by a police officer and set on a small table behind the witness's seat. Each had to turn around and face the assembled court observers, which included the many plain-clothed police and other supporters of the defendants, to watch the video. Chaweewan was visibly unwilling to comply, and the sequences were played over. Lawyers and defendants got up and milled around behind her. At one point, observers were also invited in to take a look. A crowd gathered around behind the witness, with people talking and moving here and there as they pleased.

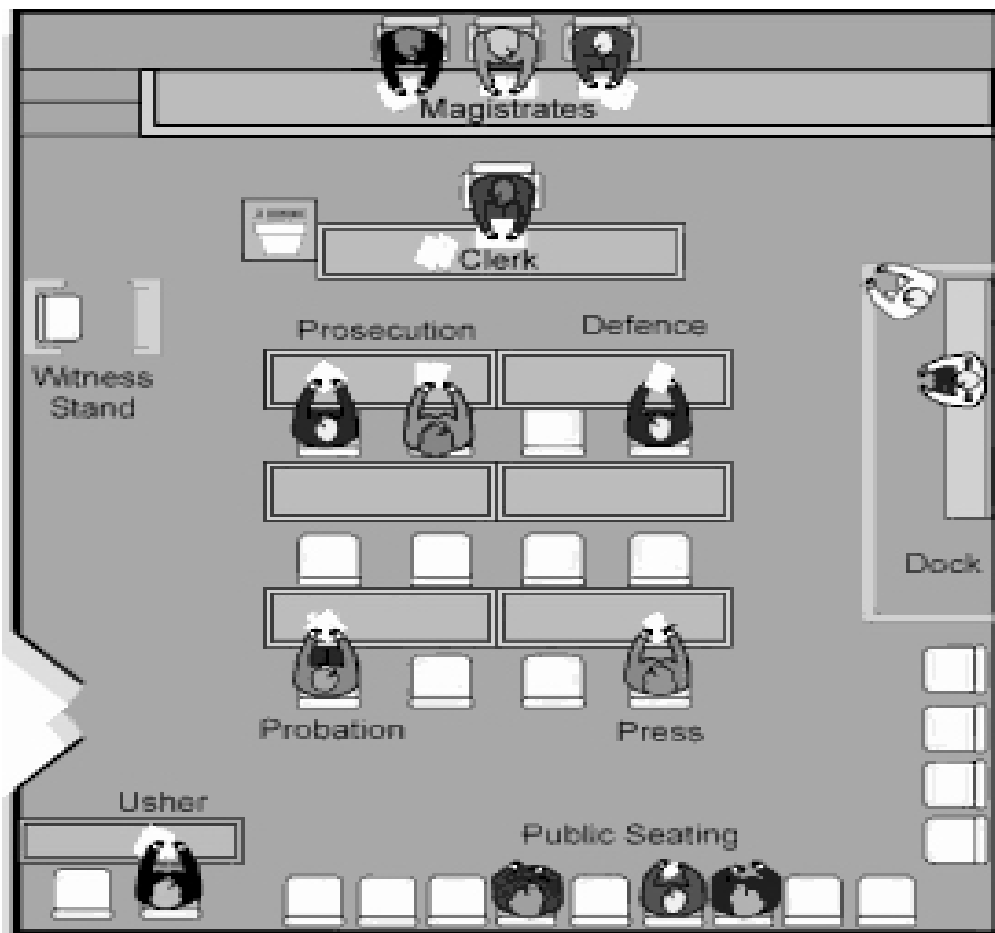


Sketch of the Criminal Court in Bangkok on 25 August 2005 (Chaweewan testifies at centre)

By contrast, in many other jurisdictions around the world, the defendants are not allowed to come and go during the hearing, and are not entitled to speak unless permitted by the judge. Also, the witness stand is kept at the furthest convenient point possible from the defendants, and the two are separated by court staff, lawyers of both parties and other persons involved in the court process. Security personnel are also assigned should the defendant or another party to the case become violent or try to leave illegally.

In some jurisdictions, screens may be placed around the witness box, or the witness may give testimony through a live video link from an adjacent room, and chief testimony can be given by pre-recorded video.

At present there is little in the judicial procedure of Thailand to protect the rights and interests of witnesses in court. The Criminal Procedure Code contains some provisions for children to give testimony through a social worker or video, but no equivalent provisions exist for adults. Under section 237 bis it allows for the prompt recording of testimony in cases where the witness “will depart from the Kingdom, has no habitual residence,



Layout of a Criminal Court room in the UK (Source: Magistrates' Association, UK)

or has residence far from the Court of trial, or there are reasonable grounds to believe that he will be tampered [with] directly or indirectly". As the prompt recording of testimony should be a basic principle in all criminal trials, this provision is not remarkable. And as the section allows for a defendant to cross-examine such a witness himself, except in offences punishable with death, it may compound the abuse that has already been caused by allowing for the possibility that a police officer can stand in front of a person whom he has humiliated, beaten, electrocuted or raped and ask intimidating questions in order to escape prosecution.

The Asian Legal Resource Centre had staff present when the eyewitnesses to the abduction of Somchai Neelaphaijit testified before the court. They were shocked at the almost complete disregard for their security, despite the fact that they were appearing in a reputed human rights case and giving information to the court that could send ranking police officers to jail. They found that Chaweewan travelled to and from the court unescorted and by bus. They immediately communicated

their concerns to the Department of Rights and Liberties Protection, and an officer from the Witness Protection Office was dispatched the following day. (See letter in Appendix IV.)

The observers also raised serious questions about the role of the judge in ensuring that each of the witnesses be adequately protected and feel comfortable in the court, in the interests of fair trial. It was apparent that like others present in the court, the presiding judge sensed the fear of the eyewitnesses, especially Chaweewan: a young woman forced to sit in front of five glowering ranking police officers in a male-dominated courtroom. Apparently in response to her discomfort, the presiding judge ensured that in addition to two female assistant judges, another senior woman judge joined the bench in the afternoon. However, this was the only notable concession made in response to the witness's obvious distress.

In reaching a verdict based on Chaweewan's testimony, the judge acknowledged that she had been afraid while in court and therefore relied upon the investigation records submitted by the prosecution rather than what she and Adirake said in the courtroom. However, this judgment opens many avenues for appeal by the one defendant found guilty and only reinforces the fact that the lack of witness protection undermines due process, threatens the integrity of the courts, and encourages impunity.

What more could the court have done? Certainly there were times when the court could have been better managed to better respect the interests of the witnesses. However, beyond that there appear to be few avenues for judges in Thailand to give orders or take action in response to a fearful witness. The generic model offered by the Witness Protection Office allows for a witness to request protection from the court and for the court to notify the relevant agencies to take the necessary steps. However, again there appear to be no specific criteria for the court in determining whether or not to accept a request, and judges in Thailand generally show little sensitivity to the security needs of witnesses coming before them.

By contrast, in other jurisdictions where the court is satisfied that the quality of evidence given by the witness is likely to be diminished for reason of fear or distress, special protection can be given. This may depend upon the importance of the witness's evidence, severity of the alleged offence, age of the witness, and behaviour towards the witness by the accused, his family or associates. Were such criteria available to courts in Thailand it seems certain that the eyewitnesses to the abduction of Somchai Neelaphajit would have been given some kind of additional protection, although under the current circumstances this would have inevitably entailed further police involvement.

The police decide: Phra Kittisak Kitisophon

Phra Kittisak Kitisophon was given five months of protection by the Crime Suppression Division, organised by the Witness Protection Office



Phra Kittisak Kitisophon has been involved with the Mettadhammarak Foundation, which aims at promoting Buddhism by supporting community activities related to education, and preserving the environment and local forestry. Phra Kittisak and Phra Supoj Suwagano were supporting villagers involved in land disputes and trying to protect community and temple forest nearby their Buddhist training and studies centre in Chiang Mai province. Members of the foundation have been threatened in the past, allegedly by local influential businessmen. In March-June 2005 there was an attempt to develop the land into rubber plantations, which the foundation fought.

On 17 June 2005, Phra Supoj was hacked to death in the forest 300 meters away from his temple accommodation. Subsequently, Phra Kittisak also began receiving death threats. The temple worker who first found Phra Supoj's body was harassed by local police nightly. After she moved away from her house to escape them, it was burned down.

Phra Kittisak sought protection three days after Phra Supoj was killed. The Witness Protection Office was given responsibility, and it contacted Phra Kittisak. Although the Department of Special Investigation was put in charge of the murder case, it did not offer protection on the ground that it did not have enough personnel. The office suggested that it organise protection by local police (Police Region 5), but Phra Kittisak refused as he believes that local police were connected with the killing. So instead he said that he wanted the Bangkok-based Crime Suppression Division to protect him.

The Crime Suppression Division provided four officers from June 25, for one month. It then withdrew the officers, saying that they were no longer needed. After the foundation requested further protection, the police were reinstated a couple of days later, until October 18.

The four officers sent were young and did not seem to know what they had to do. They had had no special training. They waited for advice from their superiors. Initially there was mistrust between the officers and the monks. The police were skeptical about whether the witnesses really needed protection. But by October they were more sympathetic.

Since October Phra Kittisak has had no protection. (See appeal in Appendix IV.) This is despite the fact that he has continued to receive threats. Both the Witness Protection Office and Department of Special Investigation have supported his requests for further protection, but the final decision is in the hands of the implementing agents, the police, who are unwilling to commit officers for a long time.

Torture celebrity lacks protection: Ekkawat Srimanta

Ekkawat Srimanta was allegedly tortured by the police and his case transferred to the Department of Special Investigation, but he received only short-term protection

Ekkawat Srimanta was arrested on 2 November 2004 by officers in Ayutthaya province, just north of Bangkok, on allegations of robbery. The officers at Phra Nakhon Si Ayutthaya Police Station took him into detention where they allegedly covered his head with a hood and beat him all over his body to force him to confess to robbery. Then they transferred him to Uthai Police Station, where officers allegedly electrocuted Ekkawat on his penis and testicles. Unusually, he was released shortly after, and rushed to hospital by friends.

Media reports and images showed Ekkawat with burns all over his testicles, penis, groin, and on his toes. He had injuries from beatings all over his body, including the marks of combat boots on his back, swollen thighs, swollen cheeks, face and throat, and blood in his eyes. He was visited at the hospital by a string of senior police and government officials. Two police officers were assigned to protect him for thirty days.

The twenty-three officers recorded on the case record were transferred to Bangkok while investigations were opened. The regional commander stated on November 9 that criminal proceedings would follow, and the case was transferred to the Department of Special Investigation on November 29. But no officer is known to have faced criminal charges, despite these commitments and the overwhelming circumstantial evidence. All the accused police have retained their posts.

Many human rights and legal groups were involved in the case. Ekkawat spoke at a seminar on torture organised by the National Human Rights Commission. He was represented by the Lawyers Council of Thailand.

Despite the case receiving enormous publicity and being classified as “special”, Ekkawat is not known to have received any long-term special protection measures. Finally, he withdrew his lawsuit against the police prior to the case opening in the Ayutthaya Provincial Court on 11 November 2005, without informing his lawyer. (See appeal in Appendix IV.) Almost a year passed between the time of the incident and the time of trial. After media and public attention moved elsewhere, the defendants had apparently coerced and threatened the victim to withdraw his case. Unprotected, Ekkawat was an easy target.



“Defendant” not “witness”: Anek Yingnuek

Anek Yingnuek and three friends were allegedly tortured by the police but had no access to witness protection as they were made criminal defendants based on forced confessions



Like Ekkawat Srimanta, Anek Yingnuek was arrested by officers of the Phra Nakhon Si Ayutthaya Police Station on 9 September 2004 on charges of robbery. At the police station, he was allegedly tortured for several hours. The police allegedly beat him with PVC pipe and suffocated him with plastic bags. They also allegedly electrocuted him through a fork stuck into ice on his penis, testicles and other body parts. Three of Anek’s friends were also allegedly tortured, and charged. At least one of the officers was later implicated in the torture of Ekkawat Srimanta. During the trial, Anek and his friends testified in court that they had been tortured; however, the judge ruled out the testimony on procedural grounds. Despite the plausibility of the allegations and severity of the said torture, no investigation is known to have been conducted.

As Anek and his friends were made criminal defendants due to forced confessions, they are disbarred from seeking witness protection under the existing law. Yet by speaking out in court they risked reprisals. As in other cases in Thailand, the court showed no sensitivity to this danger. The only path that lies open to them in the event of threats is to seek assistance from their custodian, the Department of Corrections.

The relatives of Anek, including his mother, are also isolated and unprotected, despite living in the same vicinity as the police accused of torture. Anek’s mother has been the most active among the family members in fighting for the rights of her son, and it was she who first lodged the complaint of torture, after Ekkawat’s case was reported in the media. At least one relative of another victim also complained at that time, offering a similar account of abuse and thereby strengthening the credibility of the complaints. In January 2006 the relatives were sued by one of the police officers over a small report in a newspaper about their complaints. They now are subject to criminal defamation charges and have been forced to present themselves and have the cases documented at the local police station.

Need for fast and effective intervention:

Urai Srineh

Urai Srineh was allegedly tortured by the police but received no immediate protection and was intimidated to not lodge a criminal complaint

Urai Srineh was at home with his family on 24 May 2005 when a group of men entered the house. They allegedly identified themselves as police officers and told Urai to go with them. They did not offer a warrant or give a reason for their actions. They allegedly took Urai from in front of his family, and placed him in a car blindfolded and handcuffed.

Urai was reportedly driven around for about two hours before being taken into a room, still blindfolded, and allegedly being told to confess to the killing of six people.

Urai strongly maintained his innocence, after which he was allegedly repeatedly electrocuted on his testicles and groin over some hours, and beaten. After the perpetrators brought another person to the room and he said that Urai was not involved, they took Urai home. As he was taken out, Urai allegedly saw that he was leaving the Chonburi Provincial Police Station.

After reaching his house, Urai was taken to the Klaeng District Hospital and then transferred to the Rayong Provincial Hospital due to the severity of his injuries. He was found to be suffering burn marks on his groin, swollen testicles, an injury on his left toe, and bruised wrists due to the use of handcuffs. He was unable to urinate. He was experiencing numbness in his lower body and lung and kidney problems. According to doctors who examined him, the injuries were serious and could result in lasting damage.

While Urai was at the hospital, he was visited by some government representatives and lawyers, during which time he was reportedly informed that he could obtain protection. However, no immediate steps were taken to this end, although he was obviously very vulnerable. Unlike the case of Ekkawat Srimanta, his torture did not attract media attention and therefore also did not warrant a corresponding reaction from the authorities. The lawyers visiting Urai also were harassed by persons believed to be police or government officers, who came to take photographs of them and follow their vehicle.

When Urai was alone, he was reportedly visited by some police led by the investigating officer in charge of the murder case, Pol. Maj. Manop Prasart of Klaeng District Police Station in Rayong province. He was allegedly paid money not to lodge a complaint and to cover his medical expenses. Once he was released from hospital he moved away from the district.

In November 2005 the sister organisation of the Asian Legal Resource Centre, the Asian Human Rights Commission, received a letter from the Ministry of Interior confirming that Urai Srineh had been abducted and assaulted, but “*not* by the Police”. The ministry’s conclusion was based on the inquiries of Chonburi and Rayong provincial police officers.

Two other accused in this case have also alleged that they were tortured. As they have been detained and charged, like Anek Yingnuek and his friends they are not be eligible for witness protection under the current law.



Especially vulnerable witnesses: “Min Min” case

Four witnesses to the murder of a migrant worker were reportedly kept in custody for “protection” while the accused was allowed to go free

According to staff of the Burma Lawyers Council in Mae Sot, Tak province, on 8 December 2005 the son of the Mai Kyaw Kee village chief, Par Saw Tee, beat and shot to death a migrant worker named Min Min because of a personal dispute. On December 17 the case was brought to the attention of the Mae Sot District Police Station, and on December 20 the police arrested the accused. However, instead of holding the accused in custody, they allegedly released him and kept four key Burmese witnesses in detention instead, including the father of the victim, for their “protection”.

After the Asian Human Rights Commission intervened in the case at the end of January 2006, it obtained the attention of the National Human Rights Commission and at least one government agency, whose staff visited the police station. The four persons were subsequently handed over to the Burma Lawyers Council, which was asked to make arrangements for their security until the time of the trial. The investigation has proceeded slowly. Meanwhile, most other persons connected with the case have since left Thailand.

This case speaks to the problem of giving protection to especially vulnerable witnesses. These include migrant workers—in particular, undocumented migrants—and ethnic and religious minority groups. Persons belonging to such groups frequently speak little or no Thai and are unfamiliar and afraid of the national administrative and legal system. They are unlikely to be aware that they may have rights, even if they entered the country illegally, and equally unlikely to attempt to exercise them. Under these circumstances, the police make their own rules, usually to the detriment of the weakest party to the case and contrary to the interests of human rights and the rule of law.

Recommendations on witness protection in Thailand

Asian Legal Resource Centre, Hong Kong

The government of Thailand claims to adhere to the International Covenant on Civil and Political Rights, and have in place a constitution that protects those rights. It can point to the existence of a law, and an office, for witness protection. But the law is deficient, the office is understaffed, the police continue to run the show and victims and witnesses of gross human rights abuses are not in fact protected.

Both international law and the national constitution can be made good only through effective domestic laws and institutions. The means exist to make Thailand's witness protection scheme a reality. So what can be done?

1. The Witness Protection Act must be better defined

Key words in the legislation need to be clearly defined. What is 'intimidation'? What is 'harm'? Who is a 'vulnerable witness'? For this purpose, witness protection laws in other jurisdictions, such as Hong Kong, should be studied and discussed.

2. Defendants must be entitled to protection

Among the most vulnerable and important witnesses—and perhaps some of the most common in Thailand—are criminal defendants who allege that they have been tortured or threatened into making a confession by the police. It is essential that the Witness Protection Act be amended to cover these persons, whether or not they are in custody. In this respect, Thailand must ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which will pave the way for necessary administrative and legal reforms across the board to punish torture perpetrators and protect victims, where they are defendants in criminal cases due to extracted confessions.

3. There should be criteria for offering and giving protection

Witness protection officers are forced to make arbitrary decisions and use their own initiative for want of explicit criteria on who does or doesn't deserve protection. Once protection is offered, the lack of defined procedures for giving it hampers effective intervention. The act must include details of certain key procedures. For example, how does a witness get a new identity? Which other agencies need to be involved? How can protection be given immediately, in emergency situations? Developed witness protection laws in other jurisdictions should be studied and adapted to suit conditions in Thailand. Once basic criteria are laid down in law, they can be amplified through additional regulations and guidelines.

4. The Witness Protection Office must be given explicit power

The role of the Witness Protection Office is at present captured in a single section of the Witness Protection Act. The law says nothing of how it is to be run, its functioning and responsibilities. Above all, it says nothing of the relationship of the office with other government agencies, especially the police. The act must instead specify the powers, role and functioning of the office and its staff. The office should be given managerial and administrative power over witness protection. Where the office is not able to give protection itself, it must be entitled to enforce its directives to the police and other agencies, including through legal action where there is refusal to comply. It must be entitled to be fully informed of all steps taken in compliance with its directives by other agencies.

5. The Witness Protection Office must be given more staff and resources

Thailand has over 200,000 police but at present only 10 staff assigned to witness protection, with paltry funding. Until this massive imbalance is corrected it is obvious that there will be no possibility for the office to play any kind of significant role, and it will be forced to continue to rely on the police and other outside agencies. The Minister of Justice and cabinet must take personal responsibility to increase the staff and resources assigned to the Witness Protection Office. To this end, the ministry should advocate vigorously for a greater allocation out of the national budget. In the longer term, attention should be paid to separating the office from the ministry and running it as an independent agency.

6. Witness Protection Officers must be given rigorous training

Witness protection officers are being recruited from other parts of the government bureaucracy. They must be carefully selected according to specific criteria. Once in their new jobs, they must

have rigorous specialised training. Only then will they be in a position to offer effective protection to witnesses, and extend what they have learnt to the personnel in other agencies.

7. Legal and medical professionals should also be trained on witness protection

Very often the first persons to have contact with victims and witnesses in need of protection are public prosecutors and other lawyers, or doctors and other medical staff. There should be special efforts to inform these persons on witness protection, and incorporate them into relevant procedures. A doctor treating a person who has allegedly suffered torture, or a public prosecutor who has been assigned to their case should know to contact the Witness Protection Office without delay, and make arrangements for staff from the office to visit the person immediately. Lawyers should be able to explain to a client about witness protection and advise whether or not the client should request it. Judges should be taught to identify cases of possible torture or intimidation and be given explicit powers to take additional steps to protect the rights and interests of the accused, including by ordering independent physical and psychological examinations before a defendant is released on bail or detained to await trial. Professional associations such as the Lawyers Council of Thailand can play an important role in advancing knowledge of witness protection among their members.

8. Courtrooms must be modified to protect witnesses

The witness stand in courtrooms in Thailand needs to be moved as far as possible from the defence and prosecution benches. Legislation should be introduced or amended to allow for special measures in cases where witnesses are already under protection or are otherwise deemed vulnerable. Simple low-cost measures include the placing of screens to conceal the witness from most of the courtroom, or giving of evidence via live link from a third location. Judges should also be trained to identify witnesses whose testimony is obviously damaged due to fear, and take necessary steps to intervene, including by postponing testimony and seeking intervention from the Witness Protection Office. Again, the government of Thailand can study measures taken in other jurisdictions.

9. More criminal procedures must be introduced to protect witnesses

Other legislation needs to be amended and developed to complement the Witness Protection Act, such as the Criminal Procedure Code. This must include more express provisions on the penalties for intimidating witnesses, and criminalising acts that obstruct the course of justice.

10. The public must be better informed about witness protection

The public needs to know about witness protection in general, and the Witness Protection Office in particular. As both a new concept and a new agency in Thailand, without a concerted effort at raising public awareness, the witness protection scheme will remain anonymous. Intervention at critical moments especially depends upon persons outside of the office requesting its assistance. The government of Thailand must increase the amount of resources and airtime on television and radio stations for publicity of the Witness Protection Office and the importance of witness protection for the entire criminal justice system. Attention must be paid to getting the information to particularly vulnerable groups, such as the large number of migrant workers in Thailand who are easy targets for abuse by the police. Human rights groups, such as the National Human Rights Commission, should also play a key role. Similarly, the media, academics and other concerned agencies can raise discussion at home and abroad that may impress upon the government a greater sense of its obligation to ensure that witness protection be made a reality in Thailand.

What next?

Although Thailand has introduced a law and discrete agency on witness protection, these are yet to make witness protection a reality. Little has changed. Protection measures are arbitrary and few. The police are in control. It is perverse to expect a victim of police torture, the wife of a person abducted by state officers, or the witness of an extrajudicial killing to rely upon the police for their security. At best, the present arrangement does nothing more than create a cruel expectation that such a thing as “witness protection” exists; at worst, it expands the capacity of the police to commit abuses and damage the work of the courts by entitling them to take charge of a scheme over which they should not have responsibility.

It is likely that if the Witness Protection Office is not given the support and attention it needs, it will become nothing more than a de facto agency of the police. If that happens, it will be a failure. If, by contrast, the office is made into a strong and independent working entity, through improved legislation and ample resources, it may become a lesson for other jurisdictions in the region. There are many other countries in need of a good example. And the advancement of witness protection will also do much for the improvement of Thailand’s international reputation on human rights, which in recent years has suffered considerably.

The government of Thailand has the resources to make effective protection of victims and witnesses a reality. It has an obligation under the national constitution and international law to do the same. Whether or not it has the willpower depends largely upon the extent to which attention is paid to the

importance of effective independent witness protection by outside agencies, and discussion is raised among the public. All concerned persons and agencies in Thailand and abroad, especially human rights defenders and their organisations, should play a part in creating a public debate on witness protection, and seeing the promise of the constitution become reality.

Thailand's institutions have historically worked to protect the perpetrators of human rights abuses. To have them protect the victims instead is no simple matter of a law and an office. It will require a much more than this. But as the struggle is on in earnest for the rights of the ordinary person against the power of the influential person, the interests of the private citizen against the authority of the state agent, the principles of constitutionalism against the brutality of feudalism, the time is right. The Asian Legal Resource Centre urges all concerned persons and organisations to recognise that effective witness protection is integral to the functioning of the courts and the guarantee of justice, and so to work for the changes needed to make it reality in Thailand.

“If the Witness Protection Office is not given the support and attention it needs, it will become nothing more than a de facto agency of the police”

Appendix I: Witness Protection Act BE 2546 (2003) of Thailand

[UNOFFICIAL TRANSLATION]

Witness Protection Act, B.E. 2546

Bhumibhol Adulyadej, Rex.

Given on the 13th day of June B.E. 2546 (2003)

Being the 58th year of the Present Reign

His Majesty King Bhumibhol Adulyadej is graciously pleased to proclaim that:

Whereas it is deemed expedient to have the law governing witness protection,

Be it, therefore, enacted by His Majesty the King, by and with the advice and consent of the parliament, as follows:

Section 1 This Act shall be called the “Witness Protection Act, B.E. 2546”.

Section 2 This Act shall come into force after one hundred and eighty days from the date of its promulgation in the Government Gazette.

Section 3 In this Act:

“Witness” means a person who commits himself/herself to be present at, or testify, or give evidence to a competent official for investigation, a criminal interrogation, a court for criminal proceedings, and includes an expert but not a defendant who himself/herself is a witness.

“Security” means security in life, body, health, liberty, honour, property or any lawful rights of the witness before or at the time of or upon becoming a witness.

“Minister” means the Minister who is in charge of execution of this Act.

Section 4 Any claim or acquisition of rights or benefits under this Act shall not limit the rights or benefits of a witness under any other law.

Section 5 The Prime Minister, Ministers of Defence, Interior, and Justice shall be in charge of enforcement of this Act and, in relation to their respective Ministries, shall have the power to appoint competent officials and issue Ministerial Regulations and notifications for the purposes of the implementation of this Act.

Upon the appointment of competent officials, the scope of powers, duties and limitations thereon for the purpose of carrying out duties may also be prescribed.

Ministerial Regulations and notifications shall come into force upon their publication in the Government Gazette.

Part 1 General Provisions

Section 6 In a case where a witness loses his/her security, a competent official from criminal investigation, interrogation, prosecution or the Witness Protection Bureau as the case may be shall design for the witness protection measures as deemed appropriate or as requested by the witness or other concerned party. Where necessary the said person may request a police officer or other official for protection and this must be subject to the witness's consent.

The notification, procedures, and their termination to be adopted by the police officer or relevant official in first paragraph of this section must comply with the regulations of the Commissioner-General of Police or heads of relevant government agencies as the case may be.

Protection measures may include arrangements for a safe place for the witness; change of name/family name, domicile, identification, and information that would reveal the identity of the witness as appropriate, and the personal status of the witness and nature of the criminal case.

Section 7 In a case where a witness's husband, wife, progenitor, descendant, or person with a close relationship to the witness is affected by the person becoming a witness and would lose security, [he or she] may request the competent official to design or arrange for measures as deemed appropriate, taking into account the consent of the said person.

Part 2 Special Protection Measures

Section 8 A witness in the following [types of] cases may be eligible to the privilege of special protection measures:

(1) A case under the law on narcotic drugs, money laundering law, anti-corruption law, or customs law;

(2) A case related to national security under the Penal Code;

(3) A sexual offence under the Penal Code relating to the luring of a person for the sexual gratification of another;

(4) A criminal offence in the nature of organised crime under the Penal Code, including any crime committed by a criminal group with a well-established and complicated network;

(5) A case punishable with at least ten years of imprisonment;

(6) A case that the Witness Protection Bureau deems appropriate to arrange for protection.

Section 9 Whenever there are explicit circumstances or suspicion that a witness has lost his/her security, the witness or other concerned party, a competent investigation official, competent interrogation official or competent criminal case prosecution official shall apply to the Minister of Justice or his appointed official to arrange for special protection measures, subject to the witness's consent.

In considering an application under the previous paragraph, the Minister of Justice and his appointed officials shall act in a speedy manner. Where circumstances affect the witness's security, the arrangement of special protection measures must be completed.

The submission of an application under paragraph 1 and action under paragraph 2 must be in line with the principles, procedures, and conditions stipulated in the Ministerial Regulations.

Section 10 The Witness Protection Bureau shall arrange for one or more of the following special protection measures:

(1) A new place of accommodation;

(2) Daily living expenses for the witness or his/her dependants not exceeding 1 year, with extensions as necessary for 3 months each time, not exceeding 2 years;

(3) Coordination with the relevant agencies in order to change the first name, family name and information that may contribute to knowledge of the personal identity of the witness, including arrangements for a return to original status;

(4) Action to help the witness have his/her own career, and training, education and other means of proper living for his/her life;

(5) Assistance or action on behalf of a witness for his/her lawful rights;

(6) Arrangements for a bodyguard service for a necessary period of time;

(7) Other actions to assist and support a witness with his/her security as appropriate.

In acting under the prior paragraph, the officials of the relevant agencies must keep confidentiality; it is not lawful to disclose [this information] except with the authorisation of the Minister of Justice.

Section 11 In a case where the witness's husband, wife, progenitor, descendant or a person with a close relationship to the witness loses their security, with the witness's request, special protection measures may be arranged for him or her.

Section 12 The Minister of Justice or appointed official may order termination of the special protection measures under the following circumstances:

- (1) The witness's request;
- (2) The witness has failed to comply with the provisions of the Ministerial Regulations or Rules on special protection measures for witnesses;
- (3) The circumstances have changed and there is no more need for special protection measures;
- (4) The witness irrationally refuses to give evidence or testify;
- (5) The Court delivers a judgment against the witness to punish the witness for falsely testifying.

Part 3 Witness Protection Bureau and Prosecution

Section 13 The Witness Protection Bureau shall be established under the administration of the Ministry of Justice. The Bureau shall deal with general or specific measures and proper practices. These include coordination and arrangement to obtain results among public agencies, and private organisations, where relevant, and to make protection measures effective under this Act.

Section 14 Where necessary the Ministry of Justice may arrange for an official who also holds a law degree to be empowered to bring civil action against parties under this Act and notify the Court of the matter.

Part 4 Compensation and Payment of a Witness

Section 15 In a case where any right was impaired [in relation to the] life, body, health, liberty, honour, property, or other rights of a witness, his/her husband, wife, progenitor, descendant or a person with a close relationship to the witness caused by his becoming a witness, he/she is entitled to compensation as appropriate.

Compensation under paragraph 1 will be established under the regulations of the Ministry of Justice, with the consent of the Ministry of Finance.

In a case where a person mentioned in paragraph 1 has refused to be protected under the provisions of sections 6, 7, 9, or 11 as the case maybe, the said person is not entitled to any necessary and appropriate compensation.

Section 16 An injured person under Section 15 or his/her heir may submit to the Witness Protection Bureau a claim for [his/her] lawful rights incurred within 1 year upon the date that it is known that the unlawful act was committed.

The guiding regulations, procedure, and considerations will comply with the regulations of the Ministry of Justice.

Section 17 When the witness has already given evidence or testified to a competent official for investigation, interrogation, or at the Court, he/she is eligible for necessary and appropriate compensation. The details are laid down in the relevant Ministerial Rules established by the Minister of Justice and with the consent of the Minister of Finance, except in a case where the witness does not come or refuses to give evidence or testify.

Section 18 Expenses incurred for the protection of the witness himself/herself, his/her husband, wife, progenitor, descendant, or a person with a close relationship to the witness shall be bound by the relevant regulations designed by the Minister of Justice with consent of the Minister of Finance.

Section 19 If the facts in a case reveal that without reasonable grounds the witness failed to be present, testify or give evidence, or a judgment is delivered against a witness for false testimony or perjury, in this circumstance he/she must return the compensation received under sections 15 or 17, or the cost of witness protection under section 18 as the case may be, within 30 days from the date ordered by the Witness Protection Bureau against him or her.

The payment and return of amount payable to other agencies also follows the provision of the prior paragraph.

Part 5 Appeals

Section 20 Where a person disagrees with an order under sections 6, 7, 9, 10, 11, 12, 16, 17 or 19 which was not from the Court, he/she may submit an appeal to a Court of First Instance, but not a district court or military court, which has jurisdiction over the case within 30 days from the date he/she acknowledged or should have acknowledged the said order.

An appeal under the first paragraph of this section shall leave that party free from court fees.

An appeal under section 19 suspends prosecution of the order of the Witness Protection Bureau.

Proceedings under sections 6, 7, 9, 10, or 12 must be confidential and only parties directly related to the case may be admitted or acknowledged where the Court sees it as appropriate.

The order must be delivered by the Court within 50 days from the date of submission. Only under unavoidable circumstances can the Court extend the period, with the cause given in writing in the notification.

Part 6 Penalties

Section 21 A person who discloses information on the housing, place, name, family name, domicile, photograph, or other kinds of information to identify a witness [or his/her] husband, wife, progenitor, descendant, or a person with a close relationship to the witness where protection measures were arranged under sections 6, 7, 10 or 11 with the likelihood of losing security shall be punished with a term of imprisonment not exceeding 1 year or fine not exceeding 20,000 Baht or both.

Whoever acts under paragraph 1 thereby causing bodily or mental injury shall be punished with a term of imprisonment not exceeding 2 years or a fine not exceeding 40,000 Baht or both.

Whoever acts under paragraph 1 thereby causing death shall be punished with a term of imprisonment not exceeding 7 years or fine not exceeding 140,000 Baht or both.

Section 22 Whoever acts under section 21 with intent to cause the person under the said section to lose his or her security shall be punished 1/2 heavier than the punishment under that section.

Section 23 Whoever acts to harm a person because the said injured person has become a witness in a case and himself/herself, his/her husband, wife, progenitor, descendant, or a related person under the relevant section loses his or her security shall be punished 1/2 heavier than the punishment to under that section.

Countersigned by
Pol. Lt. Col. Thaksin Shinawatra
Prime Minister

Appendix II: Hong Kong Witness Protection Ordinance 2000

Witness Protection Ordinance 2000

To provide for the establishment of a programme for the protection of certain witnesses and persons associated with witnesses.

Enacted by the Legislative Council.

Short title and commencement

1. Short title and commencement

(1) This Ordinance may be cited as the Witness Protection Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

PART I Interpretation

Interpretation

2. Interpretation

In this Ordinance, unless the context otherwise requires—

“approving authority” means a person designated in writing by the Commissioner to be the approving authority;

“Commissioner” means each of the Commissioner of Police and the Commissioner of the Independent Commission Against Corruption;

“memorandum of understanding” means a memorandum of understanding entered into by the approving authority and a witness under section 6 setting out the basis on which the witness will be included in the witness protection programme;

“participant” means a witness who has been included in the witness protection programme;

“witness” means—

(a) a person who has given, or who has agreed to give, evidence on behalf of the Government in proceedings for an offence;

(b) a person who has given, or who has agreed to give, evidence otherwise than as mentioned in paragraph (a) in relation to the commission or possible commission of an offence;

(c) a person who has provided a statement or other assistance to a public officer in relation to an offence;

(d) a person who, for any other reason, may require protection or other assistance under the witness protection programme; or

(e) a person who, because of his relationship to or association with a person referred to in paragraphs (a) to (d), may require protection or other assistance under the witness protection programme;

“witness protection programme” means the witness protection programme established under this Ordinance.

PART II

Witness Protection Programme

3. Establishment of witness protection programme

The approving authority shall establish and maintain a programme, to be known as the witness protection programme, under which he arranges for or provides protection and other assistance for witnesses whose personal safety or well-being may be at risk as a result of being witnesses.

4. Selection for inclusion in witness protection programme

(1) Subject to a review under Part III, the approving authority has the sole responsibility of deciding whether or not to include a witness in the witness protection programme.

(2) A witness may be included in the witness protection programme only if—

(a) the approving authority has decided that the witness be included;

(b) the witness agrees to be included; and

(c) the witness signs a memorandum of understanding in accordance with section 6 or—

(i) if the witness is under 18 years, a parent or guardian of the witness signs such a memorandum; or

(ii) if the witness otherwise lacks legal capacity to sign the memorandum, a guardian or other person who is usually responsible for the care and control of the witness signs such a memorandum.

Establishment of witness protection programme

Selection for inclusion in witness protection programme

(3) The approving authority shall, in deciding whether or not to include a witness in the witness protection programme, have regard to—

(a) whether the witness has a criminal record, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if the witness is included in the witness protection programme;

(b) if a psychological or psychiatric examination or evaluation of the witness has been conducted to determine the witness's suitability for inclusion in the witness protection programme, that examination or evaluation;

(c) the seriousness of the offence to which the relevant evidence or statement relates;

(d) the nature and importance of that evidence or statement;

(e) whether or not there are viable alternative methods of protecting the witness;

(f) the nature of the perceived danger to the witness; and

(g) the nature of the witness's relationship to other witnesses being assessed for inclusion in the witness protection programme,

and may have regard to such other matters as the approving authority considers relevant.

(4) If—

(a) a parent or guardian of a witness signs a memorandum of understanding because the witness was under 18 years; and

(b) the witness is included in the witness protection programme and remains a participant until after he turns 18 years,

the approving authority may require the participant to sign another memorandum of understanding on or after reaching 18 years.

**Witness to disclose
necessary information
before being included in
witness protection
programme**

5. Witness to disclose necessary information before being included in witness protection programme

(1) The approving authority shall not include a witness in the witness protection programme unless he is satisfied that the witness has provided him with all information that the approving authority considers is necessary to decide whether or not the witness should be included.

(2) Without limiting the generality of subsection (1), the approving authority may—

(a) require a witness to undergo—

(i) medical tests or examinations; or

(ii) psychological or psychiatric examinations,

and make the results available to the approving authority; or

(b) make such other inquiries and investigations as the approving authority considers necessary, for the purposes of assessing whether or not the witness should be included in the witness protection programme.

6. Memorandum of understanding

Memorandum of understanding

(1) A memorandum of understanding shall—

(a) set out the basis on which a participant is included in the witness protection programme and details of the protection and assistance that is to be provided; and

(b) contain a provision to the effect that protection and assistance under the witness protection programme may be terminated if the participant breaches a term of the memorandum of understanding.

(2) A memorandum of understanding in relation to a participant may also contain—

(a) the terms and conditions on which protection and assistance is to be provided to the participant, which may include a condition that protection and assistance may be withdrawn if—

(i) the participant commits an offence;

(ii) the participant engages in activities of a kind specified in the memorandum of understanding;

(iii) the participant compromises the integrity of the witness protection programme;

(iv) the participant breaches a term of the memorandum of understanding;

(v) the participant notifies the approving authority in writing that he wishes to terminate his protection; or

(vi) the approving authority reasonably believes that the circumstances on which he based his decision to include the participant in the witness protection programme no longer exist or, for other reasons, it is no longer appropriate to extend protection or assistance to the participant;

(b) an agreement by or on behalf of the participant not to compromise, directly or indirectly, any aspect of the protection and assistance being provided;

(c) an agreement by or on behalf of the participant that the participant will comply with all reasonable directions of the approving authority in relation to the protection and assistance provided to the participant;

(d) an agreement by or on behalf of the participant that the participant will, if required to do so by the approving authority—

(i) undergo medical, psychological or psychiatric tests or examinations and make the results available to the approving authority; or

(ii) undergo drug or alcohol counselling or treatment;

(e) a list of—

(i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the participant; and

(ii) any other obligations of the participant,

and an agreement by or on behalf of the participant as to how those obligations are to be met;

(f) a financial support arrangement;

(g) an agreement by or on behalf of the participant that the participant will disclose to the approving authority details of any criminal charges that are made against, and any civil or bankruptcy proceedings that are made in relation to, the participant after the participant is included in the witness protection programme; and

(h) such other terms and conditions as the approving authority may consider necessary in the circumstances of a particular case.

(3) A witness becomes included in the witness protection programme when the approving authority signs the memorandum of understanding.

(4) The approving authority shall, as soon as practicable after signing a memorandum of understanding, notify the relevant participant that it has been signed.

(5) The approving authority may, by notice in writing served personally on a participant, vary the memorandum of understanding, provided that the variation does not have the effect of removing from the memorandum of understanding the provisions referred to in subsection (1).

(6) A variation takes effect on the day on which the participant receives notice of it.

Action where witness is included in witness protection programme

7. Action where witness is included in witness protection programme

If a witness is included in the witness protection programme, or is being assessed for inclusion in the witness protection programme, the approving authority shall take such action as he considers necessary and reasonable to protect the witness's safety and welfare.

8. Establishing new identity for participant in witness protection programme

(1) In this section, “public officer” means—

(a) the “Registrar” as defined in the Births and Deaths Registration Ordinance (Cap. 174);

(b) the “Commissioner” as defined in the Registration of Persons Ordinance (Cap. 177);

(c) the “Registrar” as defined in the Marriage Ordinance (Cap. 181).

(2) Subject to the recommendation of the Commissioner and the approval of the Chief Executive, the approving authority may establish a new identity for a participant.

(3) Where a decision is made to establish a new identity for a participant after he has been included in the witness protection programme, a new memorandum of understanding shall be prepared and signed by the participant before the new identity is created.

(4) Notwithstanding any other Ordinance, where approval has been given to establish a new identity for a participant—

(a) the approving authority shall notify the relevant public officer giving particulars of the new identity to be established and the documents that must be issued; and

(b) on receiving such notification, the public officer shall take such steps as are necessary to issue those documents to the approving authority.

(5) A participant for whom a new identity is being established shall, on request, attend before the public officer and sign such documents or records or take such other steps as may be necessary to facilitate the establishing of the new identity.

(6) A document issued under the authority of this section shall be deemed to have been lawfully issued by the relevant public officer in accordance with the requirements of this Ordinance under which he purported to issue it.

(7) The approving authority shall not, under his powers under subsection (4), do anything which would cause a person to believe that a participant—

(a) has qualifications that he does not, in fact, have; or

(b) is entitled to benefits that he is not, in fact, entitled to.

9. Dealing with rights and obligations of participant

(1) If a participant has outstanding legal rights or obligations or is subject to legal restrictions, the approving authority shall take such steps as are reasonably practicable to ensure that—

- (a) those rights or obligations are dealt with according to law; or
 - (b) those restrictions are complied with.
- (2) If the approving authority is satisfied that a participant who has been provided with a new identity under the witness protection programme is using the new identity to—
- (a) avoid obligations that were incurred before the new identity was established; or
 - (b) avoid complying with restrictions that were imposed on the person before the new identity was established, the approving authority shall give notice in writing, served personally on the participant, stating that he is so satisfied.
- (3) A notice under subsection (2) shall also state that, unless the participant satisfies the approving authority that the obligations will be dealt with according to law or the restrictions will be complied with, the approving authority will take such action as he considers reasonably necessary to ensure that they are dealt with according to law or complied with.
- (4) The action under subsection (3) by the approving authority may include informing a person who is seeking to enforce rights against the participant of the details of any property (whether real or personal) owned by the participant under his former identity.

Non-disclosure of former identity of participants

10. Non-disclosure of former identity of participants

- (1) Where—
 - (a) a participant who has been provided with a new identity under the witness protection programme would, apart from this section, be required by or under a law of Hong Kong to disclose his former identity for a particular purpose; and
 - (b) the approving authority has given the participant written permission not to disclose his former identity for that purpose, the participant is not required to disclose his former identity to any person for that purpose.
- (2) If a participant has been given permission under subsection (1) not to disclose his former identity for a particular purpose, it is lawful for the participant, in any proceedings or for any purpose under or in relation to the relevant law of Hong Kong, to claim that his new identity is his only identity.

Termination of protection

11. Termination of protection

- (1) Subject to a review under Part III, the approving authority may terminate the protection of a participant.
- (2) The approving authority shall, before terminating the protection, advise the participant in writing, which shall be served personally, of his intention to terminate the protection.

12. Restoration of former identity

Restoration of former identity

(1) If—

(a) a participant has been provided with a new identity under the witness protection programme; and

(b) protection and assistance under the witness protection programme to the participant is terminated, the approving authority may, with the approval of the Chief Executive or without such approval if the consent of the former participant is obtained, take such action as is necessary to restore the former participant's former identity.

(2) The approving authority shall take reasonable steps to notify the former participant of a decision under subsection (1).

(3) If the approving authority—

(a) takes action under this section to restore the former identity of a person who was a participant; and

(b) notifies the former participant in writing that he is required to return to the approving authority all documents provided to the former participant that relate to the new identity provided under the witness protection programme, the former participant shall not, without reasonable excuse, refuse or fail to return those documents to the approving authority within 7 days after receiving the notice.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine at level 2.

PART III

Review of Approving Authority's Decision

13. Request for review

Request for review

(1) A person who is aggrieved by a decision of the approving authority under this Ordinance—

(a) not to include him; or

(b) to terminate his protection as a participant, in the witness protection programme may request in writing that the approving authority's decision be reviewed by a more senior officer designated by the Commissioner for that purpose.

(2) Within 7 days after receiving the decision of the approving authority, the aggrieved person shall deliver to the approving authority a request for review stating the reasons for his request.

(3) After receiving such a request, the approving authority shall forward it and all relevant documents to the officer designated by the Commissioner under subsection (1).

(4) A request for a review under this section against a decision of the approving authority not to include a person in the witness protection programme does not suspend the approving authority's decision unless he decides otherwise.

Review of decision

14. Review of decision

(1) The officer designated by the Commissioner under section 13(1) shall, after consultation with such persons as are appointed by the Chief Executive to give such officer the benefit of their views, decide whether or not the approving authority's decision should be upheld.

(2) The approving authority and the person who requested the review shall be advised in writing of the designated officer's decision and, where the approving authority's decision is not upheld, the approving authority shall amend his decision accordingly.

PART IV Miscellaneous

Provision of information to officers and law enforcement agencies

15. Provision of information to officers and law enforcement agencies

If—

(a) a participant has been provided with a new identity or has been relocated under the witness protection programme; and

(b) an officer under the Commissioner's authority or another law enforcement agency notifies the approving authority that the participant has been arrested or is liable to arrest for an arrestable offence, the approving authority may—

(i) release to the officer or law enforcement agency the new identity or new location of the participant;

(ii) provide the officer or law enforcement agency with the criminal record of the participant and the participant's fingerprints;

(iii) release to the officer or law enforcement agency such other information relating to the witness protection programme as the approving authority considers appropriate in the circumstances; and

(iv) if the approving authority considers it appropriate to do so in the circumstances, allow officers of the law enforcement agency to interview him, or any officer working with him in the witness protection programme, in relation to the participant.

Officers protected from suit in respect of decisions under Ordinance

16. Officers protected from suit in respect of decisions under Ordinance

The approving authority, officers working with him and any other public officer or person performing functions in relation to the witness protection programme are not liable to any action, suit or proceedings (including criminal

proceedings) under a law in force in Hong Kong in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Ordinance.

17. Offences

Offences

(1) A person shall not, without lawful authority or reasonable excuse, disclose information—

(a) about the identity or location of a person who is or has been a participant or who has been considered for inclusion in the witness protection programme; or

(b) that compromises the security of such a person.

(2) A person who is or has been a participant, or a person who has undergone assessment for inclusion in the witness protection programme as a participant, shall not disclose—

(a) the fact that he is or has been a participant or has undergone assessment for inclusion in the witness protection programme;

(b) information as to the way in which the witness protection programme operates;

(c) information about any officer who is or has been involved in the witness protection programme;

(d) the fact that he has signed a memorandum of understanding; or

(e) any details of a memorandum of understanding that he has signed, unless the person has been authorized by the approving authority to make the disclosure or has a reasonable excuse for doing so.

(3) A person who supplies information to the approving authority for the purpose of assisting the approving authority in deciding whether or not to include him in the witness protection programme shall not supply information which he knows or ought reasonably to know is false.

(4) A person who contravenes—

(a) subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for 10 years;

(b) subsection (2) commits an offence and is liable on conviction on indictment to imprisonment for 5 years;

(c) subsection (3) commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 2 years.

(5) Notwithstanding anything in the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence under subsection (4)(c) may be brought at any time within 6 months after the first discovery of the offence by the approving authority.

(6) This section applies to all persons whether acting in a private or an official capacity.

Approving authority and officer not to be required to disclose information

18. Approving authority and officer not to be required to disclose information

(1) Subject to subsection (2), the approving authority, officers working with him and any other public officer or person performing functions in relation to the witness protection programme shall not be required—

(a) to produce in a court or before a tribunal, commission or official inquiry any document that has come into his or their custody or control in the course of, or because of, the performance of his or their duties in relation to the witness protection programme; or

(b) to divulge or communicate to or before such a body any matter or thing that has come to his or their notice in the performance of his or their duties in relation to the witness protection programme, except where it is necessary to do so for the purpose of carrying out the provisions of such programme.

(2) If it is essential to the determination of legal proceedings under or in relation to a law of Hong Kong that the judge or magistrate presiding over the proceedings be advised of a participant's location and circumstances, a person referred to in subsection (1) shall disclose the relevant information to the judge or magistrate in chambers, but the person shall not disclose the information unless he and the judge or magistrate are the only persons present.

(3) The judge or magistrate shall not disclose any information disclosed to him under subsection (2) otherwise than in accordance with this Ordinance.

Protection of witness giving evidence in court

19. Protection of witness giving evidence in court

(1) Where a participant is to give evidence for the Government in legal proceedings, a police officer or an officer of the Independent Commission Against Corruption may require all members of the public wishing to enter the courtroom to—

(a) identify themselves to the satisfaction of the officer; and

(b) undergo such search as the officer may require to ensure that they are not carrying into the courtroom anything which the officer considers would pose a threat to the security or well-being of the participant.

(2) Where a person refuses to comply with subsection (1) or the officer is not satisfied that he is not carrying anything referred to in subsection (1)(b), the officer may prevent him from entering the courtroom.

Regulations

20. Regulations

The Chief Executive in Council may make regulations for the better implementation of the provisions of this Ordinance.

Appendix III: Witness protection forms used in Thailand

[UNOFFICIAL TRANSLATION]

Form SorKhorPhor 2

No...../25.....

Day/month/year.....

Application for General Witness Protection Measures

• This form has 3 pages. Please tick in and fill in information

1. Name Mr/Mrs/Miss.....Surname.....

In capacity as witness interested party on behalf of another

2. Witness information Name Mr/Mrs/Miss.....Surname.....

Occupation Civil servant Private employee Student Other, specify

Marital status Single Married Divorced Widowed Number of children.....

Father's name..... Mother's name.....

Present address

.....Tel.....

Work address.....Tel.....

ID Card No. or

Government ID Card No..... Name of agency.....

Issue date..... Expiry date.....

3. Contact person.....Address.....

.....Tel.....

Work address.....Tel.....

4. Request for protection due to becoming a witness being a witness

in the criminal case of.....

by being a witness of the Investigating officer Interrogating officer

Prosecutor Court

5. Details of the insecure situation

.....

.....

.....

.....

Continued overleaf

6. Where requesting protection for a third party (Identify the name and insecure situation)

- Name Mr/Mrs/Miss.....Surname.....
- Relationship with witness.....
- Details of insecure situation.....

7. Documents attached

- Copy of ID Card / Government ID card
- Evidence of injury, such as medical report, photo, case record, etc.
- Copy of house registration
- Document to identify the witness
- Other.....

8. I acknowledge the rights of a witness when protection is being given and agree to follow the principles and procedures as well as conditions of the Witness Protection Office, as follows:

1) I acknowledge my rights in accordance with Ministry of Justice regulations on compensation and expenditure.

2) In order to receive protection based on general measures, I am requesting that the Witness Protection Office provide protection in conjunction with other relevant agencies based on the assessment of the Witness Protection Office, in accordance with the circumstances and character of the case.

3) I shall cooperate and strictly obey the instructions of the officials of the agency that provides me with protection with regards to security and other matters that may cause injury to me or concerned person(s).

4) I shall not undertake any activity that may put me or officials providing me with protection at risk.

5) If necessary, I shall consent to the officials who provide me with protection to arrange for a safe house or to conceal my information and whereabouts, depending upon my status and situation as well as the character of the criminal case.

6) While I am a witness and under protection of an assigned agency, if I commit any crime I will be prosecuted and give up protection immediately.

7) I accept that if I do not follow these above conditions, the Witness Protection Office or assigned agency has the authority to withdraw immediately.

(Signed).....Official

(Signed)..... Complainant

(.....)

(.....)

Title.....

Date..... Month.....Year.....

Date..... Month..... Year.....

Application for Special Witness Protection Measures

• This form has 3 pages. Please tick in and fill in information

1. Name Mr/Mrs/Miss.....Surname.....

would like to make a request to the Minister of Justice or authorized person to receive special witness protection measures

in capacity as witness interested party on behalf of another

2. Witness information Name Mr/Mrs/MissSurname.....

Occupation Civil servant Private employee Student Other, specify.....

Marital status Single Married Divorced Widowed Number of children.....

Father's name.....Mother's name.....

Present address

.....Tel.....

Work address.....Tel.....

ID Card No. or

Government ID Card No. Name of agency.....

Issue date Expiry date.....

3. Contact person Mr/Mrs/Miss.....Address.....

.....Tel.....

Work address.....Tel.....

4. Request for protection due to becoming a witness being a witness

in the criminal case of.....

.....

5. At present, the witness is receiving a protection from an agency

Not receiving protection Receiving protection from

6. Where receiving protection in no. 5 please identify the method of protection

Protection officials assigned Safe house assigned Identity concealed

Others, specify.....

7. Details of the insecure situation

.....
.....
.....
.....
.....

Continued overleaf

8. Where requesting special protection for a third party (identify name and details of insecure situation)

- Name Mr/Mrs/Miss.....Surname.....
 - Relationship with witness.....
 - Details of insecure situation.....
-
-
-

9. Documents attached

- | | |
|--|--|
| <input type="checkbox"/> Copy of ID Card / Government ID card | <input type="checkbox"/> Evidence of injury, such as medical report, photo, case record, etc. |
| <input type="checkbox"/> Copy of house registration | |
| <input type="checkbox"/> Document to identify the witness | <input type="checkbox"/> Other..... |

10. I acknowledge the rights of a witness when protection is being given and agree to follow the principles and procedures as well as conditions of the Witness Protection Office, as follows:

- 1) I acknowledge my rights in accordance with Ministry of Justice regulations on compensation and expenditure
- 2) In order to receive protection based on special measures, I am requesting that the Witness Protection Office provide protection under section 10 of the Witness Protection Act B.E. 2546, in accordance with the circumstances and character of the case.
- 3) I shall cooperate and strictly obey the instructions of the officials of the agency that provides me with protection with regards to security and other matters that may cause injury to me or concerned person(s).
- 4) I shall not undertake any activity that may put me or the officials providing me with protection at risk, or reveal my whereabouts.
- 5) The Witness Protection Office or other assigned agency shall provide accommodation and I shall not allow others to stay there without permission from the Witness Protection Office or other assigned agency. In addition, the officials of the Witness Protection Office or other assigned agency may examine the accommodation on any occasion.
- 6) While I am a witness and under the protection of an assigned agency, if I commit any crime I will be prosecuted and give up protection immediately.
- 7) I agree to follow section 12 of the Witness Protection Act, B.E.2546 unconditionally.
- 8) I accept that if I do not follow these above conditions, the Witness Protection Office or assigned agency has the authority to withdraw immediately.

Continued overleaf

9) Where the Minister of Justice or an assigned official has ordered special regulations according to my request before this procedure is complete, I will sign my name to express my consent for protection again.

(Signed)..... Official
(.....)
Date.....Month.....Year.....

(Signed).....Complainant
(.....)
Date.....Month.....Year.....

For Official Use

Acknowledgement

The application form is filled out correctly together with other documents according to the instructions of the Witness Protection Office under the title of 'Procedures to Apply for Special Witness Protection Measures'.

The documents attached with the application form are not sufficient or are not filled out correctly, therefore more documents are needed
before

If the complainant is not able to submit further information before the said date, it is concluded that the complainant is not willing to submit further documents and the official shall abandon the application. The complainant has acknowledged the above, and given signature:

(Signed)..... Official
(.....)
Title.....

(Signed).....Complainant
(.....)

Remarks:

.....
.....
.....
.....
.....
.....
.....
.....
.....

Compensation Form for Witness, Husband, Wife, Progenitor, Descendant or Others With a Close Relationship With the Witness in a Criminal Case

• This form has 3 pages. Please tick in and fill in information

1. Name Mr/Mrs/Miss.....Surname.....

in capacity as witness husband wife father mother child

other with close relationship to the witness request on behalf of

2. Witness information Name Mr/Mrs/Miss.....Surname.....

Occupation Civil servant Private employee Student Other, specify

Marital status Single Married Divorced Widowed Number of children.....

Father's name.....Mother's name.....

Present address

.....Tel.....

Work address.....Tel.....

ID Card No. or

Government ID Card No..... Name of agency.....

Issue date..... Expiry date.....

3. Contact person Mr/Mrs/Miss.....Address.....

.....Tel.....

Work address.....Tel.....

4. A person entitled to compensation has been injured on date.....month.....year.....

due to becoming or being a witness in the case

of.....

5. The compensation is for

Witness

Mr/Mrs/Miss.....

6. Details of the injury (specify details and extent of the injury)

Life

Body

Health

Continued overleaf

- Freedom
-
- Reputation
-
- Property
-
- Certain kinds of rights
-

7. Documents attached

- Copy of ID Card / Government ID card
- Copy of house registration
- Document to identify the witness
- Evidence of injury, such as medical report, photo, case record, etc.
- Other.....

(Signed)..... Official
(.....)

(Signed)..... Complainant
(.....)

Title.....
Date.....Month.....Year.....

Date.....Month.....Year.....

Appendix IV: Selected appeals issued by the AHRC

UP-45-2005: THAILAND: Wife of missing human rights lawyer intimidated

Update on Urgent Appeal
19 April 2005

[RE: FA-06-2004: THAILAND: A human rights lawyer Mr. Somchai Neelaphaijit missing; UA-94-2004: THAILAND: Severe torture victims still in custody while police torturers remain in posts; UP-14-2004: THAILAND: Mr. Somchai Neelaphaijit is still missing and the police may be involved in his disappearance; UP-26-2004: THAILAND: 5 suspects in the alleged abduction of missing human rights lawyer Mr. Somchai Neelaphaijit bailed out; UP-20-2005: THAILAND: Human rights lawyer still missing after nearly one year; Action needed today to have case transferred; UP-24-2005: THAILAND: Thai minister refuses to act on missing human rights lawyer case; UP-37-2005: THAILAND: Thai PM orders action on missing human rights lawyer, while court hears of torture]

UP-45-2005: THAILAND: Wife of missing human rights lawyer
intimidated

THAILAND: Disappearances; Attacks on and threats to human
rights defenders; Impunity; Government inaction; Torture

Dear friends,

Further to our last update on the case of the human rights lawyer Mr Somchai Neelaphaijit, who was abducted over one year ago (UP-37-2005), the Asian Human Rights Commission (AHRC) is deeply disturbed to report that his wife has been intimidated by suspected intelligence officers or other state agents.

According to the information we have received, yesterday morning, April 18, Ms Angkana Wongkrachain (a.k.a. Angkana Neelaphaijit) had a telephone call from a man whose voice she recognised as that of a government intelligence officer. He asked about her interventions in the United Nations on the case of her missing husband. Additionally, two weeks ago an unidentified

man came to talk to her and warn her against high-profile advocacy on her husband's case, such as going on television or making other public statements.

The AHRC is very concerned by these incidents, which are clearly directed towards intimidating Ms Angkana from continuing with her initiatives to hold the government of Thailand accountable for the disappearance of her husband. We urge you to send a letter to the Minister of Justice of Thailand calling on him to make a public commitment to the protection of Ms Angkana and her family. A sample letter follows.

...

SUGGESTED ACTION:

Please send a letter without delay to the Minister of Justice of the government of Thailand calling for guarantees of protection to be given to Ms Angkana and her family.

Sample letter:

Dear Mr Suwat

RE: Wife of missing Thai human rights lawyer Somchai Neelaphajit intimidated

I am deeply disturbed to hear that the wife of missing Thai human rights lawyer Somchai Neelaphajit has been intimidated by suspected government intelligence officers.

According to the information I have received, yesterday morning, April 18, Ms Angkana had a telephone call from a man whose voice she recognised as that of a government intelligence officer. He asked about her interventions in the United Nations on the case of her missing husband. Additionally, two weeks ago an unidentified man came to talk to her and warn her against high-profile advocacy on her husband's case, such as going on television or making other public statements.

It can only be concluded that these actions were aimed at intimidating Ms Angkana from continuing with her initiatives to hold the government of Thailand accountable for the disappearance of her husband.

Accordingly, I urge you to take all necessary steps to guarantee the safety of Ms Angkana, by giving public assurances of her safety and by assigning the Department of Rights and Liberties Protection under your ministry to protect her and her family.

Finally, I again urge you to address fully and immediately the case of her missing husband. It is now well over one year since he was abducted and despite enormous publicity given to his case the government of Thailand has completely failed in its obligations to him and his family to account for his disappearance.

Yours truly

PLEASE SEND YOUR LETTERS TO:

Mr Suwat Liptapanlop
Minister of Justice
Office of the Ministry of Justice
Ministry of Justice Building, 22nd Floor
Chaeng Wattana Road
Pakkred, Nonthaburi
Bangkok 11120
THAILAND
Fax: +662 502 6699/ 6734 / 6884
Email: ommoj@moj.go.th

PLEASE SEND COPIES TO:

1. Dr Thaksin Shinawatra
Prime Minister
Government House
Pissanulok Road, Dusit
Bangkok 10300
THAILAND
Tel: +662 280 1404/ 3000
Fax: +66 2 282 8631/ 280 1589/ 629 8213
Email: thaksin@thaigov.go.th, govspkman@mozart.inet.co.th

2. Professor Saneh Chamarik
Chairperson
The National Human Rights Commission of Thailand
422 Phya Thai Road
Pathum Wan District
Bangkok 10300
THAILAND
Fax: +66 2 219 2940
Email: commission@nhrc.or.th

3. Pol. Gen. Sombat Amonwiwat
Director-General
Department of Special Investigation
Ministry of Justice Building
Chaeng Wattana Road
Pakkred, Nonthaburi
Bangkok 11120
THAILAND
Fax: +66 2 913 7777
Email: dir.gen@sid.go.th

4. Mr. Diego Garcia-Sayan
Chairperson
UN Working Group on Enforced or Involuntary Disappearances
C/o OHCHR-UNOG, 1211 Geneva 10,
SWITZERLAND
Fax: +41 22 917 9006
E-mail: urgent-action@ohchr.org

5. Ms Hina Jilani
Special Representative of the Secretary General on human
rights defenders
Att: Ben Majekodunmi
Room 1-040
C/o OHCHR-UNOG
1211 Geneva 10
SWITZERLAND
Fax: +41 22 917 9006
E-mail: bmajekodunmi@ohchr.org

**Letter to Ministry of Justice concerning
eyewitnesses in case of Somchai Neelaphaijit**

30 August 2005

Mr Charnchao Chaiyanukij
Director-General
Department of Rights and Liberties Protection
Ministry of Justice
Ministry of Justice Building
15th Floor
Chaeng Wattana Road
Pakkred, Nonthaburi
Bangkok 11120
THAILAND

Fax: +66 2 502 8195 / 8086
Pages: 6

Dear Mr Charnchao

**Re: Case of missing lawyer Somchai Neelaphaijit and role
of the Department of Rights and Liberties Protection**

I am writing to you from the Asian Human Rights Commission (AHRC) with regards to the ongoing and as yet unresolved matter of the disappearance of human rights lawyer Somchai Neelaphaijit.

Representatives of the Asian Human Rights Commission (AHRC) have in recent days attended the court hearings against the five accused police officers in relation to the abduction of the said lawyer.

While we are unaware as to whether or not you have sent anyone to be in attendance at the said hearings, which are continuing every second week in the Criminal Court, we would expect that in view of the express importance of this case you would certainly deem it necessary to do so, and to keep abreast of all the details that come out in the course of the hearings.

We are particularly concerned that the necessary protections be provided by your department for witnesses coming before the court. In particular, the AHRC along with other independent observers have noted an atmosphere of considerable intimidation

towards eyewitnesses to the alleged abduction when they have come to testify in the court. The eyewitnesses have refused to positively identify any of the accused in court, despite earlier statements recorded by investigators. These eyewitnesses have apparently come to the court unattended and without any kind of protection whatsoever. Even during break times they are left on their own and may accidentally or otherwise suddenly find themselves mingling with the accused police officers, their lawyers or others in court sympathetic to the defence. Clearly this is a dissatisfactory situation and more needs to be done with regards to the interests and needs of these witnesses in order that they feel free to give full and complete testimony.

We look forward to seeing you in court when the hearings resume on September 7, as well as hearing of actions taken by your department to address these concerns with regards to the witnesses for the prosecution.

Please also find attached two letters on the same matter addressed to the Director-General of the Department of Special Investigation, and the Chairperson of the National Human Rights Commission.

Yours sincerely

Basil Fernando
Executive Director

UP-157-2005: THAILAND: Alleged torture victim withdraws his complaint against the police

Update on Urgent Appeal
2 December 2005

[RE: UA-153-2004: THAILAND: Two cases of extremely serious torture and cruel and inhuman treatment by Thai police officers; UP-71-2004: THAILAND: More serious allegations of police torture emerge in Thailand; UP-75-2004: THAILAND: Demand immediate criminal action against police torturers; UP-78-2004: THAILAND: Torture cases transferred to special investigators, but police still free]

UP-157-2005: THAILAND: Alleged tortured victim withdraws his complaint against the police

THAILAND: Torture; cruel and inhuman treatment; forced confession; impunity; illegal detention; denial of due process rights

Dear friends,

The Asian Human Rights Commission (AHRC) writes to inform you that an alleged victim of physical assault and attempted murder by Thai police has now withdrawn his complaint. Mr. Ekkawat Srimanta sought legal assistance from the Law Society

to bring charges of physical assault and attempted murder against 26 police officers from the Ayutthaya province. During this alleged crime, Mr. Ekkawat is said to have had electric shocks applied to his penis.

However, it has now been learned that prior to the hearing of his case on 11 November 2005, Mr. Ekkawat withdrew his lawsuit, giving no explanation as to why. The Law Society was not informed of Mr. Ekkawat's decision, and only came to know of it when Mr. Ekkawat failed to appear in court. The Law Society has subsequently suspended its legal assistance to Mr. Ekkawat, whose whereabouts are currently unknown.

The AHRC is concerned that the reason for this conclusion is that the police coerced the victim into accepting money to withdraw his case prior to him giving evidence in court, in the same manner as torture victim Mr Urai Srineh (UP-137-2005). With the prospects of being able to lay criminal charges next to none, the prospects of obtaining compensation slim and a long way off, and the prospects of getting adequate and immediate protection also dim and little known, the average victim of torture in Thailand has few choices. Inevitably, the withdrawal of cases under coercion and offers of money is a common occurrence.

Evident from this case is that there is no adequate means by which persons can make complaints of torture and other gross abuses by the police and have them investigated and the perpetrators prosecuted. The government, therefore, must take all necessary steps to remedy this serious institutional gap. One such step, and undoubtedly the most important, would be to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay.

Please write to the Minister of Justice (MoJ) to express your concerns over the lack of effective witness protection in Thailand, which is denying victims justice and allowing for impunity within the police force. Please also urge the MoJ to call for this case to be taken up by the Department of Special Investigation (DSI) under his ministry. Irrespective of Mr. Ekkawat withdrawing his case, the DSI and the National Human Rights Commission should continue in their investigations. These investigations should include inquiries as to why Mr. Ekkawat withdrew his case.

Urgent Appeals Programme
Asian Human Rights Commission

SUGGESTED ACTION:

Please write to the Minister of Justice calling for this case to be investigated by the Department of Special Investigation under his ministry, and for proper witness protection to be afforded to the victim in order that he feel able to give a true account of what allegedly happened to him.

Suggested letter:

Dear Pol. Gen. Chidchai

THAILAND: Alleged torture victim withdraws his complaint against the police

I am concerned by the recent action taken by alleged torture victim Mr. Ekkawat Srimanta to withdraw his lawsuit against 26 police officers from Ayutthaya province, who reportedly applied electric shocks to his penis.

Despite having initially sought legal assistance from the Law Society in bringing his perpetrators to justice, Mr. Ekkawat has now withdrawn his case stating that the lawsuit was based on a misunderstanding. The Law Society themselves only came to know of Mr. Ekkawat's decision when he failed to appear in court for a November 11 hearing.

I am worried that the reason for this is that Mr. Ekkawat was coerced into taking money to contradict his earlier story about what had happened to him. The horrific injuries Mr. Ekkawat sustained during his torture, which were publicly documented in Thailand, make any possible 'misunderstanding' doubtful. I am also aware that there have been other cases in Thailand, such as the one involving alleged torture victim Mr Urai Srineh, where police coercion was also assumed to have been used.

In view of the seriousness of this case and the confusion surrounding the circumstances of Mr. Ekkawat's withdrawal of the suit, I urge you to see to it that the Department of Special Investigation is assigned to investigate, if it has not done so already. I also urge you to ensure that Mr. Ekkawat's whereabouts are located and that adequate witness protection is given to him in order that he is able to tell the truth about what happened to him without fear of repercussions.

In that regard, I would also request that you move to develop the Office of Witness Protection in Thailand so that it be able to play a greater role in providing security for witnesses and victims of gross violations of human rights in Thailand.

Evident from this case is that there is no adequate means by which persons can make complaints of torture and other gross abuses by the police and have them investigated and the perpetrators prosecuted. The government, therefore, must take all necessary steps to remedy this serious institutional gap. One such step, and undoubtedly the most important, would be to ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment without delay.

Finally, I would also call upon the National Human Rights Commission to ensure that it continue to investigate this matter, irrespective of the case being dropped, including establishing as to why Mr. Ekkawat withdrew his case.

I trust that you will take immediate action in this matter.

Yours sincerely,

PLEASE SEND YOUR LETTER TO:

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**UP-028-2006: THAILAND: Protection withdrawn
from monk who continues to receive death threats**

Update on Urgent Appeal
15 February 2006

[RE: UA-112-2005: THAILAND: Murder of Thai monk following an environmental and land dispute with local influential business figures]

UP-028-2006: THAILAND: Protection withdrawn from monk who continues to receive death threats

THAILAND: Intimidation; impunity; non-investigation; denial of witness protection

Dear friends,

The Asian Human Rights Commission (AHRC) writes to inform you that protection offered to Thai Buddhist monk Phra Kitisak Kitisophon by the Crime Suppression Division (CSD) has been withdrawn even though the monk continues to receive death threats in relation to the earlier killing of monk Phra Supoj Suwagano (UA-112-2005), which has not yet been solved.

Phra Kitisak Kitisophon is a member of the Sekhiyadhamma Group of development monks which is working for the conservation of more than 280 acres of forest land in Chiang Mai province of northern Thailand. This land has been desired by a group of local influential businessmen who had previously intimidated monks living there with threats of violence and murder. This culminated in the murder of Phra Supoj, a member of Sekhiyadhamma Group, on 17 June 2005. According to the Northern Development Monks Network, the brutal killing maybe directly linked to the local businessmen and the land dispute between them and the religious centre where Phra Supoj was stabbed.

Since the murder, Phra Kitisak, a good friend of Phra Supoj who worked closely with him on environmental issues, has also feared for his life. He has received numerous threats. As a result, he requested protection from the Minister of Justice, who appointed the Witness Protection Office (WPO) to take care of the case. However, as the WPO has no facility or personnel to offer protection by itself, it requested the police to do so. Phra Kitisak then asked that the CSD protect him rather than local officers of Police Region 5 (his area) whom he suspects are in league with the local businessman allegedly connected with the murder of Phra Supoj. The CSD provided four officers to protect Phra Kitisak from June 25 to October 18. It then stopped the protection on the grounds that it had no more budget allocated for this work and believed that Phra Kitisak was no longer in danger. Phra Kitisak again requested protection on December 1, without success. He continues to receive anonymous threatening phone calls.

The AHRC is very concerned because there are still threats against Phra Kitisak's life. It is aware that although the WPO and Department of Special Investigation (DSI) under the Ministry of Justice have similar concerns, the CSD has declined to take further action on the case. As the final decision on whether or not to provide protection rests with the police, neither agency has been able to do anything further: thus pointing to a serious weakness in the existing system of witness protection in Thailand. Meanwhile, the DSI investigation into the killing of Phra Supoj appears to have come to a standstill, with no evidence that the alleged masterminds are likely to be brought to justice: the characteristic outcome of DSI inquiries in human rights cases (see further AS-084-2005).

SUGGESTED ACTION:

Please write to the Minister of Justice expressing your concern at the lack of protection given to Phra Kitisak and the failure of the DSI to satisfactorily complete its investigation into the murder of Phra Supoj. Please ask for the Minister to see that protection is reinstated to the monks of the Sekhiyadhamma Group for as long as necessary, and that the DSI finishes its investigation, leading to arrests and prosecutions of the alleged perpetrators of Phra Supoj's murder without further undue delay.

Suggested letter:

Dear Pol. Gen. Chidchai,

THAILAND: Failure to provide ongoing protection to Phra Kitisak Kitisophon and complete investigation of murder of Phra Supoj Suwagano

I am writing to voice my deep concern regarding the failure of the Government of Thailand to provide adequate protection to Phra Kitisak Kitisophon and fellow monks of the Sekhiyadhamma Group following the 17 June 2005 murder of their close colleague Phra Supoj Suwagano.

According to the information I have received, Phra Kitisak received protection from the Crime Suppression Division (CSD) from June 25 to October 18 of the same year. However, the CSD then suspended its protection, reportedly on the grounds that it had no more budget allocated for this work and believed that Phra Kitisak was no longer in danger. Although I understand that Phra Kitisak again requested protection from you on December 1, this has not been forthcoming, despite the Department of Special Investigation (DSI) and Witness Protection Office (WPO) under your Ministry also having concerns for his safety. I am informed that Phra Kitisak continues to receive anonymous threats against his life.

I fear that without protection, Phra Kitisak is in serious danger. Were he or any more of his close colleagues to suffer the same fate as Phra Supoj it would be a sad indictment on the Government of Thailand and its incipient Witness Protection

Program. I therefore urge you to take immediate action to ensure that protection is reinstated to the monks of the Sekhiyadhamma Group for as long as necessary.

I take this opportunity to express my concerns over the failure of the DSI to satisfactorily conclude its investigation into the killing of Phra Supoj. Although it was assigned to the case on 19 July 2005, there is no evidence that since this time it has made progress in identifying the alleged masterminds of the killing. I therefore also urge you to ensure that the investigation is finished properly without further undue delay.

Finally, I urge you to review the existing arrangements for the provision of witness protection in Thailand. As is evident from this case, it is dissatisfactory that the police have the final say over who should or should not receive protection. In particular, the WPO should be given the power to enforce orders to other agencies to provide protection to specific persons for specific periods of time under specific conditions. In the absence of this and other powers, its role will remain extremely limited. In this respect I would remind you of the 28 July 2005 concluding observations of the UN Human Rights Committee regarding Thailand's compliance with the International Covenant on Civil and Political Rights that the Committee was

“Concerned at the number of incidents against human rights defenders and community leaders, including intimidation and verbal and physical attacks, enforced disappearances and extra-judicial killings (arts. 19, 21 and 22). The State party [Thailand] must take measures to immediately halt and protect against the harassment and attacks against human rights defenders and community leaders. The State party must systematically investigate all reported instances of intimidation, harassment and attacks and guarantee effective remedies to victims and their families.” (CCPR/CO/84/THA, para. 19).

I trust that you will give this important recommendation due respect and consideration with regards to the cases of Phra Kitisak, Phra Supoj and all other cases to which it applies.

Yours sincerely,

PLEASE SEND YOUR LETTER TO:

Pol. Gen. Chidchai Wanasatidya

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Appendix V: Witness protection in Thailand—An ALRC submission to the UN

UNITED
NATIONS

E



**Economic and Social
Council**

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11 February 2005

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 11 (d) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 January 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

WITNESS PROTECTION AND COMPENSATION FOR VICTIMS OF RIGHTS ABUSES IN THAILAND

1. In other written statements to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) has pointed to the dismal state of witness protection and compensation for victims of rights abuse throughout Asia. However, one country that may in the future serve as an example for others in the region is Thailand, which established a witness protection programme in 2004, and has in place some limited measures for compensation of victims.

2. The Protection of Witnesses in Criminal Cases Act 2546 (2003) came into force in Thailand during 2004 when the Office of Witness Protection under the Ministry of Justice started its work. As a consequence, a number of victims of police abuses, including torture and cruel and inhuman treatment, were afforded short-term security. As one of the gravest obstacles to the prosecution of perpetrators of human rights abuses is the fear of witnesses in speaking out against the police and other state security officers, the Office is a critical step for the future protection of human rights in Thailand.

3. The ALRC is aware that operations by the Office of Witness Protection are only just beginning, and are necessarily limited. However, it urges the Commission and the international community to assess means by which material and advisory support may be provided to the Office in order that it expand and fully assume its mandate as quickly as possible. In particular, strenuous efforts need to be made to publicise the Office and its role through all available media in order that the public and legal professionals around the country are quickly and fully aware of the existence and mandate of this new agency.

4. As the management of protection for victims under this Office is setting a precedent for cases yet to come, it is necessarily cause for considerable public interest. If persons coming forward now to seek protection under the Act are nonetheless subjected to threats or harm, it will damage public confidence in the new protection regime at an early and crucial stage in its development. The ALRC expects that the Government of Thailand will make this programme a success, and will be closely monitoring its progress. It urges the Commission, and in particular its concerned special mechanisms, to do likewise.

5. Another important office established under the Ministry of Justice in Thailand during recent times is the Office of Public Compensation for Criminal Cases, established under the Compensation for Crime Victim Act 2544 (2001). While compensation in cases of human rights abuse must always be understood as supplementary to – and not a substitute for – criminal prosecutions, it is nonetheless an important element in effective redress as stipulated by article 2 of the International Covenant on Civil and Political Rights. However, the ALRC would echo its concerns stated above with regards to witness protection that much remains to be done to expand and publicise the role of this Office in order that victims obtain appropriate compensation within the shortest period of time. It would also urge the Government of Thailand, in accordance with the Act, to pay special attention to the physical and psychological needs of victims of torture and other gross abuses. Where the director-general of the Department of Rights and Liberties Protection has in the past spoken publicly of possible compensation for victims, it has been reported as meaning financial compensation. The ALRC would hasten to add that the Act also stipulates that victims are entitled to compensation for medical treatment, including physical and mental rehabilitation, and this must be taken fully into consideration particularly in cases of heinous human rights abuse.

6. One of the difficulties that has arisen in recent times over this Act is that it is necessary for victims first to obtain medical treatment for injuries suffered due to torture or other abuses, and then seek compensation through the procedure established by law. As many of the victims of torture and other police abuses are poor persons who may not be able to afford a day away from work – let alone the cost of medical bills – the Government of Thailand should consider establishing a process for immediate assistance to such victims of abuse.

7. The need for such a provision was dramatically illustrated in the publicised case of Ekkawat Srimanata, which the ALRC has described in its statement on torture committed by the police in Thailand. In that instance, the victim's friends rushed him directly from a police station to hospital with severe burns all over his penis, testicles and groin. Under the circumstances, immediate emergency treatment should have been provided by the state. However, officials of the Royal Thai Police observed that no provision exists for such an arrangement, and advised that the victim could seek compensation through the established channel, something that he is now understood to be doing. Notwithstanding, the lack of any emergency arrangements for cases such as this where there is no question that the person has suffered severe physical injuries at the hands of state officers is a gap in the current legislation in need of correction.

8. If Thailand is able to establish effective witness protection and victim compensation regimes – particularly in cases where state agents are the accused – they may stand as important examples for other countries in the region. The Commission and international community should be prepared to offer all necessary support for these initiatives by the Government of Thailand and promote them as starting points for an effective regional model to protect and compensate witnesses and victims of serious rights abuses.

[Continued from front inner cover]

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

Sadly, article 2 is much neglected. There is a dearth of relevant international jurisprudence, and hardly any mention of it in the enormous volumes of annual literature on human rights.

There is a reason for this neglect. In the 'developed world' the existence of basically functioning judicial systems is taken for granted. This does not mean that these systems are perfect; in some instances they may face serious problems. But those from countries with developed democracies and functioning legal systems may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

Other difficulties also arise. One is the fear to meddle in the 'internal affairs' of other countries too intimately. State parties especially can create many obstacles for those trying to go deep down to the roots of problems. Thus, inadequate knowledge of actual situations may follow from the nature of interactions and the monitoring system itself. A further and quite recent disturbance is the portrayal of national human rights institutions and their equivalents as surrogate agencies for dealing with article 2 related issues. Some state parties may agree to new national human rights institutions taking on this role because they know that by doing so they may avoid criticisms of a more fundamental nature.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

In this issue of *article 2*

SPECIAL REPORT: Protecting witnesses or perverting justice in Thailand

Basil Fernando, Executive Director, Asian Human Rights Commission & Asian Legal Resource Centre, Hong Kong

- The importance of protecting witnesses

Editorial board, article 2

- Protecting witnesses or perverting justice

Asian Legal Resource Centre, Hong Kong

- Protecting witnesses or perverting justice in Thailand
- Recommendations on witness protection in Thailand

And

- What really happens to witnesses in Thailand?
Some cases
- Witness Protection Act BE 2546 (2003) of Thailand
- Hong Kong Witness Protection Ordinance 2000
- Witness protection forms used in Thailand
- Selected appeals on witness protection in Thailand issued by the AHRC
- Witness protection in Thailand—An ALRC submission to the UN

article 2 is published by the Asian Legal Resource Centre (ALRC) in conjunction with *Human Rights SOLIDARITY*, published online by the Asian Human Rights Commission (AHRC).

ALRC is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. ALRC seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.

ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

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