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Report of Seminars
on
Legal Aid Services and Human Rights
in Thailand

The House of Thai Parliament
21 - 23 September 1987

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Seminar on... **Legal aid services and human rights in Thailand**

Introduction

The emergence in the past decade of private human rights organisations and related agencies in the government sector in Thailand attests to the fact that abuses have increased in intensity and complexity.

Previously confined to the political field, abuses have now spread into economic and social aspects of life. The failures of past national development plans have created a backlog of problems of diverse origins.

Human rights are among problems that have received inadequate attention from the Government. Though democracy was installed more than 50 years ago, martial Law and emergency orders after the Coup d'etat which took place quite often years ago, rights and freedoms remain limited, with law courts granted limited powers to protect these rights and limited freedom to arbitrate.

Disputes concerning land, labour run high, as does and exploitation of women and children. The beating of criminal suspects and muzzling of the Press add to the list of

unsolved problems solution of which are basic to the foundations of social justice.

A major fault lies in the lack of legal support to ensure human rights for the people, given that some laws are unjust and State officials fail to enforce the law in general.

In this situation, it is vital to pool resources from every concerned sector. Hence, The Faculty of Law, Thammasat University, The Central Institute for Legal Aid, The Committee for Coordinating Human Rights Organizations and Matichon Newspaper with the support from Terre Des Hommes, The House Representative and especially The International Commission of Jurist took the initiative to organise a seminar of people providing legal aid services, academics, lawyers and members of Parliament at the National Assembly on 21-23 September 1987 to discuss the ways and means to solve these problems. It was also a good occasion for lawmakers to learn about the different aspects of human rights problems in order to find a way of encouraging their protection by Parliament in future.

The seminar was in three parts.

Part I consisted of panel discussions among specialists on the following topics:

- 1) Problems of legal aid services;

2) Role of MPs in promoting legal aid and human rights protection.

Part II comprised workshops undertaken by four separate groups. Group I dealt with questions of extending a legal aid on land disputes, Group II with labour, Group III-Women and Children and Group IV-Political and Administrative.

Part III heard each group present reports to the plenary session where views were aired and conclusions drawn up.

It is gratifying and indeed a measure of success that the seminar reached consensus for the House of Representatives to set up a new commission - a commission on human rights.

The House commission would serve as a cornerstone for human rights in Thailand and bring more recognition to the work of private organisations in this field.

The points made by this seminar and the conclusions it reached should serve as guidelines for future efforts towards this end, in particular the good co-operation between the House of Representatives and legal aid agencies in the State and private sectors.

Seminar Opening

Xan Kaewxusai , President of The Central Institute for Legal Aid, remarked in his address that the seminar was a follow-up to previous gatherings of private human rights groups and government agencies in the past 2-3 years in Thailand and foreign countries.

Speaking as an organiser of the seminar, Mr. Xan recalled that it had been frequently stated that violations of human rights were due to inequalities in economic, social, political and administrative facts of life.

Such a state of affairs prevailed because the structure of society was such that those with economic, social, political and administrative powers could use their advantages to their own gain, by infringing on the rights of the weaker.

Ordinary people, he noted, had very little opportunity to participate in the political, administrative or legal process.

Many laws --both those properly legislated and those enforced by revolutionary party order--infringe on the rights and freedoms of the people and as such should be abolished or amended so as to create a balance in the use of power to improve the lot of those deprived of their rights.

He further observed that many law enforcement officers were lacking in conscience, which lead to arbitrary use of power in disrespect of the law.

Law education, he went on, also was not supportive of human rights work as the curriculum and teaching laid too much emphasis on state acts and too little on studies in sociology, law and development. In short, students are required to memorise the letter of the law rather than analyse the contents the purpose, the actual operation and its consequences, and the ways and means for solving these legal problems.

In the protection of human rights, private organisations enjoy no support from the government and moreover are regarded as persona non-grata with intent to challenge state power.

Given this situation in mind, he explained the aims of the seminar.

Their aims were to:

1. Exchange views on legal problems affecting the rights and freedoms of the people :
2. Exchange information and experiences on extending legal aid;

3. Find ways to co-operate with the house of representatives in extending legal aid and promoting human rights;
4. Set up a network of co-operation between private and government agencies and MPs for extending legal aid.

More than 200 people attended the seminar, among them MPs, academics, lawyers, journalists and human rights workers.

To conclude, Mr. Xan gave a vote of thanks to the house speaker, honoured guests and all participants in the three-day seminar. He made special mention of the sponsors: the International Commission of Jurists, represented by DJ. Ravindran, Novib, Terre des Hommes, the Friedrich Naumann Foundation and the Coordinating Group for Religion in Society.

House speaker Chuan Leakpai, agreed with Mr. Xan's opening remarks on the causes of human rights abuses, namely unjust laws and improper conduct by State officials.

Another cause, he added, lies in the influential people --sometimes referred to as dark powers --in local areas.

Human Rights problems stemming from unjust laws should not be difficult to solve so long as the house of

representatives retains its legislative role, he said. But violations born of improper conduct by State officials or local dark influences create enormous problems that are difficult to overcome.

The administrative structure in the provinces is not conducive to solutions and MPs play only a minor role, for though they have to be informed about local problems at village or tambon levels, they have little chance to raise them in Parliament.

The administrative system however provides for responsibilities from the house of representatives down to provincial, municipal and tambon assemblies, he pointed out. The regrettable fact is that lower level bodies do not make for efficiency and local assemblymen sometimes create the problems themselves. When provincial authorities fail to take these cases to task, it seems as if they are party to the problems.

Mr. Chuan stressed that this constituted a major task for those in the field as well as legal specialists, notably academics from the country's respected higher education institutions to put more efforts to solve the problems.

He urged these university people to commend students who undertake work important to the country's development --as district permanent secretaries or whatever --and who are honest in their duties. Teachers, In order to

improve values and social conditions in general, should refrain from praising their former students just because they have attained high positions -- such as becoming the House Speaker, Prime Minister, Permanent Secretary to a Ministry or Director general of a Department. Because such achievements would only be for their own personal benefit if they do not contribute to the betterment of society.

D.J.Ravindran, International Commission of Jurists (I.C.J.) stated : This national seminar on 'Legal Aid Services and Human Rights in Thailand' is held as part of the follow-up to the ICJ South-East Asia Seminar on 'Legal Services for the rural poor and other disadvantaged groups' held in Jakarta in January this year.

The Jakarta seminar is part of a series of third world seminars on the subject of legal services for the rural poor. The International Commission of Jurists embarked on this subject as a result of the seminars previously held in Africa, Asia and Latin America. These seminars examined the relationship between human rights and the process of development and sought to answer the question of how human rights can promote human development.

A common conclusion of these seminars was that the problems of development as well as human rights of the

rural poor are closely linked to the question of their access to law and to governmental programme in general.

The participants in these seminars repeatedly asserted that

- the poor are at a disadvantage at the levels of legislation and administration, as well as at the levels of legal process and the administration of justice, and
- that the laws and administrative regulations tend to favour the upper strata of society and less attention is paid to their effects upon the poor, in particular the rural poor.

The disadvantageous status of the poor with regard to law and justice has been well captured in the common Thai village saying that

" The poor are like fish in a water jar : easy to catch. The rich are like fish in a stream : hard to catch "

The access problems of the rural poor to the legal process are related to :

- the complex language of laws and legal procedures coupled with the ignorance and illiteracy of the people which discourage them from using law,
- the training and legal education of lawyers which contributes to the inability of the profession to respond to the problems of the poor.

The ICJ seminars have repeatedly asserted that the solution to the access problems of the poor lies first and foremost in the organization of the poor. For example the participants at the ICJ South-East Asian seminar on Rural Development and Human Rights, after deliberating on the implementation of the land reform programmes in the region, concluded.

" Experience shows that no land reform scheme will achieve its objectives unless the intended beneficiaries are free to mobilise and organise themselves to promote and secure their rights to cooperate in implementing the programme."

As a minimum guarantee to help the poor to organize, the ICJ seminars have recommended that countries in the respective regions should ratify the ILO Conventions on Freedom of Association (No. 87) and on the organization of Rural Workers (No.141) and to apply ILO Recommendations 149 on the means of encouraging the growth of organization of rural workers.

The need for the organization of the rural poor to deal with their access problems illustrates the link between respect for human rights and the resolution of access problems.

In our opinion respect for human rights would also ensure participation of the people thereby guaranteeing

effective implementation of laws as well as governmental programmes.

The effective implementation of laws through the participation of people should be of much interest to the distinguished parliamentarians who are present here and whose concerns I assume include proper implementation of enacted laws.

We feel that participation of the people is essential not only in the implementation of enacted laws but also in their preparations as well as in monitoring them.

In this context the role of non-governmental organizations particularly those groups working with the rural poor becomes very important. It is they who educate the poor about their rights and help the poor to organize themselves to fight for their rights.

It is heartening to see that this national seminar has brought together a large number of groups number of groups working with the rural poor and other disadvantaged groups. We hope that during the next three days a fruitful dialogue will take place between the law makers and the groups working in the rural areas so as to evolve a strategy to deal with the access and other problems of the rural poor.

Chapter 1

Discussion panel

Discussions centred on two topics:

- I. The role of the House of Representatives in promoting legal aid and human rights protection
- II. Problems in providing legal aid services

I. The role of the House of Representatives in promoting legal aid and human rights protection

In general, the House can legislate laws for human rights protection and amend those that are unjust or out of line with economic and social conditions. Some of these are Revolutionary Party orders which were enforced outside normal democratic procedures.

The House, furthermore can appeal to bureaucrats concerned in case of violations, submit questions with the Executive or motions in Parliament in case of violations of human rights.

Obstacles

Though consensus was reached that legal aid services were important to the protection of human rights, participants at the same time perceived obstacles :

- 1) The House, already burdened, can hardly spare time to co-ordinate with Human Rights Non-Government Organisations.
- 2) Enacting just laws or amending unjust laws is no easy task given that most MPs comprise either privileged persons or persons with economic interests who want to maintain their status quo.
- 3) MPs have limited political resources due to the lack of continuity in the parliamentary system resulting from a history of coups d'etat.

This has obliged them to yield to bureaucrats and restrained them from imposing on them too often for co-operation lest it be not forthcoming on bigger issues.

- 4) Lack of co-operation from concerned government agencies which have been known to ignore appeals, cover up problems, fail to report to superiors. Delays in dealing with problems were put down to centralisation.

5) The Government takes considerable time replying to questions put to it, about as much time as it takes to push a motion through Parliament.

6) MPs who speak up for human rights tend to be accused being left-wing or seeking popularity votes rather than truly helping the people.

Suggested Solutions

1. The mass media should provide more information to public to convey the message that violations of human rights are serious dangers to society and hence it is the duty of everyone to help erase them.

2. Constituents should draw the interest of their MPs to human rights problems and make clear that their help would work for their political benefit in the next general elections.

3. A human rights commission should be set up in Parliament. The commission should work in tandem with NGOs and other related agencies and persons. It should enjoy freedom in work and sufficient protection to ensure success in its task.

The commission should look into :

- a) violations of the land rights of farmers
- b) migration of rural people into towns as a result of poverty

- c) factors behind child slave labour and prostitution
- d) exploitation of women
- e) problems of health
- f) the prison system
- g) social injustices, unjust laws.

The commission should also set priorities and draw up a systematic mode of operation.

Problems of extending legal aid

The seminar saw a number of social and legal problems stemming from widespread poverty, lack of education and knowledge about the law.

These omissions, it was felt, made for little collective action or consolidation of bargaining power. Hence people are exploited and do not enjoy equality when they seek protection for their rights.

To deal with the situation, the seminar suggested the following solutions :

- 1) Academics, especially legal experts, should study social and legal problems, especially laws and enforcement of Laws that cause injustices.
- 2) Amendments to a number of unjust laws containing loopholes for violations of human rights:

A) Laws governing land held by sor kor 1 (Document for Declaration of occupation) or nor sor 3 (certificated of Developing the Land) should be amended so that the period of rights enjoyed is extended for more than the present one-year period which means easy loss of rights.

B) Laws on the expropriation of land and reservation of waste land should contain sufficient evidence so as to stop present practice where by people's rights are eroded.

C) Changes to labour laws to stop gaps now enabling employers to make unfair contracts with workers, whereby they can be dismissed without due protection.

D) Changes to laws and regulations concerning prisoners which are outdated and allow for arbitrary use of power by State officials.

E) Powers and jurisdiction of military courts over military personal who committed criminal offences should be trimmed as their dealing with cases like child rape means that damaged parties are not given due protection.

F) More controls should be imposed on use of martial law, extensive use of which infringe on the people's legal rights and freedoms.

G) Special laws on child protection should be legislated so that problems pertaining to children alone, like child smuggling, can be appropriately tackled and the victims given due protection.

H) Amendments to laws on women and children so that they can enjoy special assistance.

I) Amendments to laws on hire purchase and mortgages that debtors are protected against exploitation.

3. Co-ordinated efforts by all sides to put an end to the unequal and dishonest enforcement of laws by State officials whose failure to take culprits to task has been damaging to a large number of people.

4) State officials responsible for protecting the people's rights should deal with appeals in a clean, swift and thorough manner. They should send central officials to investigate the case, rather than assign those on-spot or put the matter in the hand of officials who are accused of violating the people's rights.

The seminar believed the Human Rights Commission to be established among other things should monitor the workings of State officials and certain agencies seen to be violating these rights.

5) A law education campaign for community leaders and the public at large should be made so as to promote peaceful resolution of disputes and provide an understanding of basic laws so that they need not consult lawyers or courts on every case.

6) Existing agencies like the Bureau for the Promotion and Protection of people's rights and Freedoms, Attached to the Prosecutor's Office, and the Law Faculty of Thammasat University, should expand their work, and the Government should lend support to such endeavours.

7) The Government should consider allotting funds from the National Budget or from legal fees paid to State courts to support the work of private agencies which provide legal assistance to the destitute. Their services are of crucial importance in cases where State agencies cannot help --for instance when they themselves are accused of violating the people's rights.

8) The seminar concluded that legal assistance to the people would be more effective if social, economic and educational conditions improved, with more collective political or legal spirit to demand the protection of rights.

Chapter II Workshop

Committee I - Problems of extending legal aid in cases of land disputes

Discussions took place among officials of the Forestry Department, Land Department, Rural Development Department, the Land Reform Bureau, academics, students, the Nature Conservation Group and Human Rights lawyers under the Chairmanship of Prof. Bunlue Khonchantra of Thammasat University.

1. Disputes in reserved Forests

The seminar established that there were a number of disputes over rights in national reserved forests and a great deal of trespassing in and damage done to such forests in every part of the country.

Disputes between the State and the People

The State, in an attempt to control encroachments and reserved forest areas, in 1964 issued a Reserved Forest Act.

Ongoing disputes were largely attributed to the Act which states that people with rights in a reserved forest area declared by the Minister of Agriculture have to notify the District Officer or District Permanent Secretary within 90 days, or stand to forfeit those rights.

The trouble was a large number of villagers were unaware of ministerial regulations on reserved forests and hence did not know that they had to notify local authorities of their rights within a specific period of time.

Because villagers were uninformed - a fact seminar participants put down to lack of education - they lost their rights to land they had worked for a long time. In some cases, because they did not know, villagers were accused of trespassing and put under arrest.

In the view of participants, the law does not fit the realities of Thai society and effectively pushes the responsibilities on to the rural population.

In addition to the said problem, the government agencies concerned had violated the rights in land obtained by Sor Kor 1 and Nor Sor 3 some forestry Department officials suggested that the law be amended so that those with rights notify authorities before the area is declared a reserved forest.

If they fail to notify within specific periods - five years for those with title deeds, and one year for those

holding Nor Sor 3 or Sor Kor 1- they would forfeit their rights.

The proposal met strong objections from a Law professor from Thammasat University who saw it as tantamount to denying the people their constitutional rights to immovable property. Under the constitution, the denial of land rights to individuals would only be possible if that land were developed for public use. In any case fair compensation would be required, he pointed out.

The argument was not concluded but most participants expressed support for the Sor Tor Kor programme to which provided land for land-less-occupiers the rights to cultivate for their living to alleviate the plight of people with illegal occupation of the land rights before 1982.

Participants also urged the Government to launch land reform for agricultural purposes in reserved forests or other State property in order to ease the land problems of farmers.

2. Allowing the private sector to undertake reforestation causes hardships for the people.

The Government's policy to revive used national forests by allowing the private sector to undertake

reforestation has caused problems. The cultivation of eucalyptus in Roi Et, Si Saket and Surin, for example, have deprived a large number of villagers from earning their living from the forest or raising livestock.

At the same time, participants noted, the Government did not always give the private sector concessions on exhausted forests. On the contrary, concessions for reforestation were given on areas that were perfectly fertile, hence enabling the private sector to fell trees and generally damage the forest.

Such action, they said, had met opposition from villagers as in the case of permission given to develop a forest park in None Larn, Ban Siew, in Uthumphornpisai District of Sisaket.

Proposed solutions :

- a) Officialdom should heed the voice of the people, consider their hardships and legal proprieties before allowing the private sector to undertake reforestation.
- b) The Forestry Department should encourage villagers to set up co-operatives of public companies with financiers so that they can develop forests themselves.
- c) Private organizations should encourage widespread public participation in the development of reforestation rather than limit it to only a few companies

d) The State should withdraw the concessions of companies which fail to reforest an area within a specified period of time.

3. Lack of responsibility and Co-operation among officials

It was felt that failure on the part of government officials to uphold the letter of the law-due to vested interests - had made for inefficiency in the protection of national forests.

Added to this was the shortage of officials to look after the forests.

Proposed solutions :

- a) Officials should be more strict in the conduct of their duties
- b) Courses on Forestry should include some inculcation of love of nature, and honesty at work.
- c) Officials of all levels should co-operate with the people in solving related problems. They should not hold in any doubt individuals or students who appeals for justice.

4. Disputes arising from expropriation of uninhabited land for State purposes.

Before the 1933 Act for the expropriation of uninhabited land authorities could declare any piece of land as official property by issuing royal orders, annouements or acts.

The 1933 Act empowered ministries , bureaus and departments to declare by Executive Decree uninhabited areas as reserved property for official use.

They were empowered to draw up a map that would be attached to the Act.

The task was undertaken in the year after the act was issued. The result : many areas declared reserved areas overlapped with land that had been worked by the local residents before the law was enacted.

The problem : there had been no detailed survey before reserved areas were declared. Hence a number of disputes ensued, such as that between the 4th Army Circle and the people of Nakhon Sawan.

The Defence Ministry had issued a royal decree declaring three uninhabited areas in three districts of Pak Nomphe, Payuhakiri and Krokepra to be reserved areas. The decree affected 56,000 people working on some 146,000 rai of land in 57 villages and nine Tambons.

The dispute went to court with the ministry accusing the people of trespassing on State land. The court dismissed the case, saying the people had been working the land there before the royal decree was issued and therefore could not be accused of trespassing.

A number of people later petitioned His Majesty the King and the case concluded with the ministry agreeing to allow certain individuals with proper papers to continue to work their land. Those without documents however, were required to apply for tenures but a large number refused to do so as they feared they would lose their land.

Suggested solutions :

- a) Government agencies should develop land that is truly uninhabited, not touch property of individuals with proper legal rights.
- b) If government agencies need to use private land in such areas, proper compensation should be given under a land expropriation act.

Should there be any eviction of people, government agencies must see to it that they are moved to areas where they can earn a living, not to barren land.

5. Disputes regarding public land for raising livestock

a) There is no clear recording of areas designated as public land for raising livestock. Much is based on estimates, in many cases the law is not observed.

b) Government agencies, in declaring such areas, has not taken into account the reality as to whether people actually raise livestock there.

c) There are inter-agency problems because the Local Administration Department is in charge of looking after the land and conducting surveys and making recordings while the Land Department issues the holding documents.

Vested interests among the officials was also noted.

d) Due to a number of shortcomings, Government agencies have declared as reserved areas land that was already under cultivation with the rights in land acquired by Sor Kor 1 or Nor Sor 3. The result has been hardship for the people, as in the case of 1,545 villagers of Ban Kokesing, Tambon Chumsaeng in Satuek District of Buriram. The dispute involved 2,500 rai of land.

Proposed solutions

- 1) A cross section of knowledgeable people, including university teachers, should be appointed to a verification committee which would then report to concerned government agencies for further action.
- 2) The reviewing of official documents should be done by government agencies. The people should not be told to take the matter to court which means unnecessarily spending of time and money.
- 3) Participants called for the setting up of extraordinary House Commissions on Human Rights and Land.

Committee II - Problems of extending legal aid on Labour issues.

Discussions took place under two headings : Labour Laws and the Protection of Workers; Labour Problems and the Legal Assistance Extended by Government and Private Agencies.

1. Labour Laws and the Protection of Workers

This subject was discussed by Kasemsant Vilawant, Secretary and Judge of the Labour Court, and Chalit Meesithi, formerly lawyer to the Society for the People's Rights and Liberties. The moderator was Professor Dr. Theera Srithammarak, Law Faculty, Ramkhamhaeng.

1.1. The discussion established that there were a large number of labour laws in the civil and commercial codes, in addition to Revolutionary Party Order 103 which empowers the Interior Ministry to issue orders on labour, the 1975 Labour Relations Act, and the 1979 Act setting up the Labour Court and guidelines for considering labour disputes.

The existence of so many laws creates problems of interpretation and makes for difficult deliberations of cases at hand.

Proposed solution :

Amend existing laws and incorporate them into one single text.

1.2. Questions of employment :

a) Present labour laws are not clear on matters of protection or contracts, thereby giving contractual parties considerable freedom to specify the terms of contract

Only the Labour Protection Law stipulates that employers must register employees if they have more than 10.

The freedom of contract led to unfair contracts, made those in weaker economic positions at a disadvantage.

Proposed solution :

For more protection, there should be a delineation of the form of employment contracts. The law could, for example, stipulate that it contain the terms and length of employment.

b) Discrimination at Work. Workers who have represented colleagues during disputes are blacklisted and later have difficulty finding new employment.

Proposed solution : there should be legal provisions to protect workers against this kind of discrimination.

c) Down payments for work required by employers are a source of hardship for destitute workers.

Proposed solution : the State should stipulate by law the amount of down payment that can be demanded.

1.3. Labour laws provide protective measures on hours of work, holidays, leave, payment, women and children, welfare and safety at work. They also provide for compensation in case of danger and sickness at work or in case of dismissal.

In practice however, injustices remain. For example there is no provision for the time span after which an employer can dismiss a worker if he commits the same offence a second time. In the absence of a clear procedure for dismissal, workers stand to be unfairly treated.

Proposed solution : The court should monitor employers who try to evade the law and see to it that they take action within the framework of the law.

2. Labour Problems and the Legal Assistance Extended by Government and Private Agencies.

There were three panellists: Surat Rattanaudom, Judge of the Labour Court, Mongkol Liengbunlertchai,

Legal Personnel, Labour Department and Ekachai Ekharnekamol, Vice Chairman, Labour Federation of Thailand.

Discussions on government agencies centred on the Labour Court and the Labour Department.

2.1 Labour Court

The court arbitrates labour disputes and provides information on labour laws. Its legal personnel extend legal aid services in the form of drafting lawsuits and giving advice on legal action. The court does not assist in lawsuits as it does not have lawyers under its jurisdiction.

Proposed solution :

The court should provide legal counsellors and specify that cases must be considered with speed, economy and fairness.

2.2 Labour Department

The Labour Department serves to propagate knowledge of the law to employers and employees by organising training sessions and distributing documents. It also provides consultancy services on labour laws and sends officers to various places of employment to see to it that employers observe the law.

The department further helps workers overseas through branch offices in various countries. Among other things, it sees to it that employers provide for the return of workers in cases where they have not abided by contracts.

But the Labour Department meets the following obstacles :

- 1) Workers are unable to provide full co-operation as they have to work all week or are obstructed by employers from being contacted by the department's legal personnel.

- 2) Workers are afraid to provide testimonies for colleagues for fear of repercussions from employers.

- 3) The department's legal personnel have to be neutral while employers can hire lawyers to produce false witnesses to change the shape of the case so that employees may not receive fair treatment.

Proposed solution :

Legal personnel of the Labour Department should be upgraded so that they can operate as full-fledged legal officers.

The Prosecution Department also has legal personnel to provide consultation on legal matters.

Labour unions are the main private agencies for providing legal help to workers as well as demanding the

Government to legislate more appropriate protective measures.

But legal services for labour cases is not enough because workers, for the most part, cannot afford the fees of lawyers. Panellists therefore urged government and private agencies to provide more legal aid counsellors to workers.

Committee III-Problems of Providing Legal Aid on cases of violations of the rights of women and children

The workshop on this subject drew the participation of some 50 people including the Vice President of the House Commission on Women and Youth, the former president of the commission, academics, judges, prosecution department officials, lawyers and NGO representatives.

The workshop discussed the following problems :

- 1) General situation of abuses
- 2) Causes of abuses
- 3) Problems of extending legal aid
- 4) Ways for solving problems

1. General situation of abuses against women and children

Abuses are caused by the law and enforcement of the law

a) Physical abuse such as beating and punishing children or battering of wives, or sexual abuse such as rape or forced prostitution.

b) Abuses against rights and freedoms such as abduction for sale in the country or abroad.

c) Abuses of women's rights in education, at work, in government service, in the family law or in administration.

d) Abuses of the rights of problem children such as:

- children who are abandoned at birth in hospitals or later ;

- children born in slums who have no birth certificates, house registration records and hence later will be deprived of general rights, for instance entry into government schools:

- mentally retarded children;

- children who are used as tools for criminal offence;

- child labourers who face torture.

e) Abuses against women in the service industry who face every kind of exploitation from employers.

2. Causes of abuses

These mainly consist of traditional thinking and culture in Thai society, the law and failure to enforce the law.

2.1. The influence of traditional Thai thinking and culture

Though there have been changes in economic, social and political conditions, with acceptance that the State and laws should provide more protection to women and children, the thinking that women and children are the property of and should serve men remains.

Laws for instance empower parents to punish children and husbands to rape their wives without their being liable to any penalties.

Such thinking is influential on authoritative figures - whether they be the police, the prosecutor or the court - who would consider such matters a family affair and therefore would not use their legal powers to deal with what are physical abuses against women and children.

2.2 Problems stem from omissions of the law

Laws in use today do not protect the rights of women and children sufficiently. Moreover, there are Revolutionary

Party orders which overlap each other and make for problems of implementation.

Laws on Rape and Obscenity

a) Rape and obscenity are governed by different laws and do not truly protect sexual rights. Rape is defined as an instance where a man's sexual organ enters that of a woman. Forcing a woman into intercourse by other means is defined only as an obscenity. Hence the laws effectively protect a woman's sexual organ more than her sexual rights.

b) Present laws only provide for rape and obscenities concerning women. The fact is men are also being raped hence laws should also protect their rights. Moreover the age of consent should be raised above 15.

c) The law now allows for rape to be an offence that can be "settled" in cases where the woman is above the age of consent, the act did not take place in public and the woman is not seriously endangered.

The workshop contended that such an offence should not be allowed to be "settled" because it is physically and psychologically damaging to the woman.

d) The law does not provide for the prosecution to demand damages from the offender, leaving it up to the woman to make her demands. In practice the woman does not.

The workshop felt that the prosecution should be empowered to make the demands by adding a clause to Article 43 of the Criminal Code.

e) Procedures for cases of rape are not appropriate as the law leaves it up to the woman to appeal to investigating officers.

The women are usually too shy to do so hence the law should be amended so that her parents or other concerned parties can report the case.

To prevent further embarrassment to the woman, procedures should be readjusted in sympathy with her feelings. For instance, investigating officers, the prosecutor and the judge dealing with such cases should be women.

In the case of children who face physical abuse from their elders, if the children and other relatives are too frightened to file suits, should outside parties like the Organization for the Protection of Children's Rights be allowed to play this role ?

Laws Violating Rights and Freedoms

The law does not fit the situation because there is large-scale abduction of children for sale overseas but yet no law to deal with it.

The law only provides for penalties in the case the children who are kidnapped for ransom.

Hence abductors of children for sale are only penalised for separating them from their parents.

Labour Laws

Child workers cannot expected to be treated by their employers as they are by their parents. The remarkable thing is existing labour laws have few provisions for children.

These for the most part have to resort to clauses for grown-ups although they hardly have the same legal bargaining power.

Family Laws

Inequalities remain for men and women

- In case of divorce, a man can file for a lawsuit if his wife had committed sexual intercourse with other, while woman cannot file a divorce suit on the same ground.

Women have to prove in court that their husbands are keeping other women as wives.

- In cases of terminating an engagement (Articles 1445 and 1446 of the Civil and Commercial Code)

- In cases of the upkeep of children, the law forbids any demands on the husband's salary or pension.

Laws on the physical rights and freedoms of women

Thai women do not enjoy full rights to their bodies

- 1) The Law considers it no offence for the husband to rape his wife

- 2) Abortion is allowed in two cases: when being with child is dangerous to a woman's health; when a woman is pregnant because of rape.

Such laws do not suit present economic and social conditions where a large number of women need to have abortions because they cannot bring up too many children.

Some are pregnant because contraceptives have been ineffective.

Because they are not allowed to have abortions legally, they resort to backstreet services which are expensive and potentially dangerous.

Each year, some 500 new-born babies are abandoned in hospitals. In Nonthaburi, the figure was placed at 200.

The workshop therefore urged an amendment to the abortion law in line with the economic and social conditions of today. The changes, they noted, should bring down the number of abandoned babies.

3) Laws on battery by marriage partners

The workshop held that these laws should be amended to increase penalties because wifebeating is a usual occurrence which police officers tend to ignore, regarding it as a family affair.

A common attitude by officers, participants noted, was that the husband is entitled to teach his wife a lesson.

Increasing penalties will have the effect of upgrading the offence in the eyes of the police, they added.

Laws on Rights to Nationality

The workshop noted that under Revolutionary Party Order 337, A child born of a foreign father and Thai mother is not entitled to Thai nationality automatically, even though he or she may have been born in Thailand.

Laws that limit the rights of women

1) Educational Rights

Regulations of the State Universities Bureau on admissions to higher education give female students smaller quot as than their male counterparts, for entry into several universities, for example, Kasetsart, Chulalongkorn and Chiangmai,

2) Rights at work

Regulations of the Civil Service Commission bar women from becoming administrative staff, district chartered accountant, revenue inspectors, chaplains or forestry department officials

In the private sector, employers can choose whom they want but the fact is they tend to prefer men because they don't want responsibilities over maternity leave. The attitude that men can do more work than women remains.

2.3 Violations of the rights of women and children stemming from law enforcement

The workshop held that widespread prostitution stemmed from leniency on the part of authorities and the Government's tourism promotion policy.

They noted that a large number of women and children were engaged in prostitution, with daily records of 20,000 in Hat Yai 6,000 in Sungai Kolok, 3,000 at Pedang Besar and 4,000 in Yala

Of concern, the participants noted, was the lowering age of prostitutes. Of the number counted, 5-10% were children less than 15, 60% youths aged between 15-25 and 30% aged more than 25.

problems of law enforcement

1) Though a number of laws exist in the Criminal Code and the 1960 Prostitution Anti-Prostitution Act there is no serious enforcement by police, the prosecutor or lawcourts.

When action is taken, it is usually against the prostitutes while those who benefit from the racket escape Scot free or with minor penalties.

In more than 100 cases of prostitution in Chiang Mai between 1984-85, only four brothel owners were penalised, the highest penalty being four months' imprisonment.

2) The workshop believed prostitutes themselves should not be penalised because economic conditions pushed them to the profession. They therefore called for the abolition of the 1960 Anti-Prostitution Act and urged stringent enforcement of the Criminal Code on brothel owners and pimps.

They cited the methods adopted by England which has no anti-prostitution law but has laws against the setting up of brothels.

3) One panellist suggested why laws protecting the rights of women and children were not being enforced:

a) In general, the State does not lend important to the rights and freedoms of the people and their worth as human-beings. Moreover, society continues to regard material assets as more important than human values.

b) There is no central body to see to the laws which are scattered in various texts.

c) Society at large pays little attention

3. Problems of extending legal aid in cases of violations of the rights of women and children.

Most participants agreed that these stemmed from omissions in the law and shortcomings on the part of State officials. In addition, there were sexual prejudices and ethical flaws among lawyers .

4. Ways of solving problems of abuse

1. At government Level

1.1 The Government must appreciate the importance of women and children as valuable human resources. Women should be seen as honourable human-beings equal to men and therefore entitled to enjoy equalities in education, at work and in the administration of the country. So far, it has been apparent that some of officials agencies of the Government considers women to be only sex objects to be at the service of tourists.

1.2 The Government should not focus on economic development to the exclusion of social considerations, permitting the rights of women and children to be abused.

The promotion of tourism draws women and children into prostitution. Liquor production causes wife-beating and rape.

1.3 The Government should support private organizations that work for the protection of the rights of women and children by exempting them from tax.

Political courage on the part of government leaders would ensure that all three suggestions bear fruit.

2. Parliament's Role

2.1 The House of Representatives should review all existing regulations and laws and propose new laws to ensure effective protection of the rights of women and children

2.2 The House should lend importance to private development agencies that do this protection work by:

- co-ordinating with them in exchanges of information points of views and proposals;
- allocating a budget for these organizations;
- setting up a House Commission for Human Rights;
- Reforming government agencies for more efficiency.

On this last suggestion, a participant observed that the Interior Ministry had too much work, dealing with both Crime suppression and matters of social welfare, which directly concern women and children. the load was too heavy and a restructuring should make for more efficiency.

3) The Role of private development organizations concerned with rights of women and children Should be to:

- Step up co-ordination among themselves, with government agencies and the Human Rights Commission to be set up;
- Educate people, persuade them to see the need to protect the rights of women and children.
- Their target groups should be counterparts in government and private agencies.
- A central organization should be set up to co-ordinate the work.

The workshop also suggested that there be another seminar on the problems of women and children.

Committee IV-Problems of extending legal aid in political and administrative cases.

General Situation

The roots of human rights problems in Thailand lie in economic and political inequalities. Today, human rights problems may seem less intense but this is only a temporary reprieve, one that holds many complexities.

In the mean time, physical abuses remain unchanged.

1) Shortcomings in present laws

There remain a great deal of unjust laws, notably the estimated 460 Revolutionary Party or Reform Council orders, which were enforced outside normal legislative procedures and give extensive powers to state officials.

Laws on search, arrest, imprisonment, investigation and bail are examples of such powers granted to officials without any check-and-balance system.

Police alone can make arrests and carry out interrogations in an instance of centralisation of power which makes for abuse.

The Corrections Law provides basic principles and empowers the Executive to fill in details by ministerial

regulations. These in fact often do not fall in line with the law or the lowest standards of the United Nations.

2) Shortcomings in State officials

In many cases, though laws show progress on questions of human rights, violations are still committed by State officials.

2.1 They fail to carry out their duties or delay them

2.2 There is discrimination in law enforcement on matters of shackling prisoners or giving bail.

2.3 There is outright violation of the law in the submission of prisoners to various forms of torture: beating, immersing them in water, and executing people who surrender under the 66/23 policy or those who create disorder in prison.

3) There is no efficient supervision of State officials

4) The people do not know their rights and do not dare demand them when there are violations. Largely destitute, they also cannot afford to hire lawyers to defend them.

5) The State has no clear policy on the granting of Thai nationality to hilltribe people. These face many limitations which prevent them from leading normal lives. They have difficulties contacting government officials,

entering government schools. Their uncertain situation makes for security problems.

Ways towards solutions

1) Laws that are unjust - notably the Revolutionary Party and Reform Council orders - should be amended or abolished.

New laws should be legislated. The legislative structure should be reformed so that There is a House of Representatives that truly represents the people who in turn can monitor them.

2) There should be a change from the present thinking that the law is justice to one that sees justice as being above the law.

Moreover, there should be some development of the mentality of State officials (for instance teach policemen to be people not people to be policemen)

3) Human Rights organizations must develop themselves in terms of roles and personnel so as to be more effective.

4) Co-operate in the propagation of human rights and the problems that stem from their being violated. The aims are :

4.1 To stimulate the people to be more aware of their rights thereby solving problems of ignorance and encouraging them to protect their rights.

4.2 To make government agencies and MPs more aware of abuses and encourage them to help solve them.

4.3 To inform other countries and appeal for political and economic help in tackling these problems.

5. Improve the legal system to make for more checks and balances such as by having lawyers present at interrogations or bringing about joint interrogations conducted by police and the prosecutor or administrative personnel.

At the same time, the powers of arrest and interrogation could be separated so that the prosecutor or administrative officials undertake interrogation as used to be the case.

6) Set up a Human Rights Commission in the House of Representatives.

On this point, some people felt that it would be better to call for an extraordinary commission since an ordinary one would require changes to House regulations and membership of it would only be open to MPs.

Others then argued that an extraordinary commission would end with the present Parliament.

Those for setting up an ordinary commission noted that it would be more long lasting and enable human rights organizations to participate as members.

Others again suggested that one moved for an extraordinary commission first before progressing towards an ordinary commission

The purposes of the commission, in whatever form, would be to :

- a) review laws
- b) monitor law enforcement
- c) assemble all violations of human rights in order to solve them
- d) centralise all campaigns for human rights in Thailand, act as a base for all government, state agencies and individuals who work in this field so that they need have no fear of being accused of undermining national security.

The seminar ruled out fears that the commission would double the work of the existing house commissions on women and children and labour. These commissions work on specific questions where as the new commission would cover general human rights issues. In anyt case, the human rights commission would solicit their help on a case by case basis.

Conclusions of Seminar on Legal Aid and Promotion of Human Rights in Thailand

An estimated 200 people - MPs, government officials, lawyers, the mass media, human rights workers and interested members of the public - participated in a seminar on legal aid and promotion of human rights in Thailand.

Held at Parliament House, the seminar split into workshops on problems related to land, labour, women and children and political cases.

The following conclusions were drawn :

1) People are jealous of their rights and freedoms and desire securities in their lives and properties but often find their rights and freedoms violated by powers-that-be. Therefore there should be effective measures to protect human rights.

2) Legislative procedures and legal systems are important to the protection of human rights. Laws therefore should be under constant review and new laws in line with

economic, social and cultural conditions legislated. Law enforcement should be enforced equally, on everyone, with justice, free of any discrimination.

3) Given the complexities of the legal system and the fact that the privileged tend to enjoy more benefits than the underprivileged, an extensive programme of legal aid and education should be launched. Popular organizations for the protection of rights and freedoms should also be encouraged.

4) Such organizations would only be effective with true decentralisation of power.

5) The House of Representatives has wide ranging duties, from receiving their constituents appeals to submitting motions, interpellations, proposing and deliberating laws.

The House should be a main pillar of hope for the people in the protection of their rights and tackling any problems of rights violations.

6) There is an increasing number of disputes involving land in reserved forests, public areas and property declared reserved by authorities --largely because the population is growing and there is a shortage of land for them to work.

Problems of land and forestry should be solved justly. In the process, the truth of each case is important and many sides should be allowed to play a part in fact-finding

7) Labour laws should be amended and a social security law enacted. More legal aid services should be provided to workers. Inspection of labour situations should be adjusted and improved.

8) Women and children have been subject to rights abuses and discrimination in many respects. They face unequal opportunities in education and at work and inequalities in the Civil Code and the Family Law. They are subject to physical and sexual abuse.

The national development plan should concentrate more on social aspects. Economic development should not have adverse repercussions on women and children.

9) Violations of political rights in part stem from economic conditions. protecting these rights requires economic development as well as legal measures.

This means amending unjust laws and legislating new ones that are just. Moreover, there is a need to develop law enforcement officers to understand their duties. A mechanism for monitoring and checking the use of powers of state officials is also necessary.

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