

# **THE THAI CONSTITUTION OF 1997 AND ITS IMPLICATION ON CRIMINAL JUSTICE REFORM**

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## **I. INTRODUCTION**

It is indeed a great honor and privilege for me to be invited to share my views on recent trends and developments on criminal justice reform in Thailand with distinguished criminal justice officials at UNAFEI's 120th International Senior Seminar.

The topic of my talk today concerns the latest developments in the Thai criminal justice system. With the passage of the new Constitution, widely called "the People's Charter," on October 10, 1997, Thailand is now set to embark upon a major reform course which will embrace not only political reform but also the long anticipated overhaul of the criminal justice system. The Constitution have many detailed provisions relating to the court and criminal justice, particularly on the procedural protection of the rights of the accused, so much so that it has been called the constitutional code of criminal procedure by some critics. It also stipulated that the Court of Justice should have its own executive office separated from the Ministry of Justice, which, as a consequence, has paved the way for the promotion of the independence of the judiciary and the opportunity to reorganize the criminal justice agencies into the new Ministry of Justice. (Some selected articles related to criminal justice are listed in Appendix 1 of this paper.)

In my presentation today, after briefly introducing the Constitution and the Thai criminal justice system, I will then focus upon the new procedural reform towards due process as introduced by the Constitution. These new constitutional requirements have made a considerable impact to the practices of the police, prosecutors and judges in the investigation, prosecution and trial processes. After that, I will also discuss about the ongoing organizational reform of the criminal justice as a result of the new Constitution.

## **II. THE CONSTITUTION OF THAILAND OF 1997 AND ITS ROLES IN CRIMINAL JUSTICE REFORM**

The Constitution of 1997 represents another step of evolution of democratic principles in Thailand. Prior to this new Constitution, Thailand has had 15 Constitutions since 1932 when the country's political system was changed from the Absolute to Constitutional monarchy. However, this Constitution is the first one that was draft by members of the Constitutional Drafting Assembly, who come to power by direct election and stringent selection process. In addition, it was drafted from the perspective of the common people, through highly participatory process. This pro-rights, pro-reform Constitution would not have passed the Parliament, had it not been that Thailand was hard hit by economic crisis during that same year. The economic crisis has waken the Thai society and forced them to question the past administration perceived to be corrupt, inefficient, non-transparent and indifferent to the plight of the marginal and the underprivileged sectors. Such dissatisfaction, together with the campaign for political reform supported by the businessmen and the growing middle class, are combining factors which led to the endorsement of the progressive, revolutionary Constitution of 1997.

The new Constitution has created the ground rules for transforming Thailand from a bureaucratic polity prone to abuse of political rights and corruption into more participatory in which citizens will have greater opportunity to charge their own destiny. It has set the frameworks of laws and administrative procedures, which promote citizen participation, protect individual liberties, restricted state's power to infringe upon individual rights, advocate independent judiciary, and create mechanisms for greater transparent and accountable government. Although the smooth implementation of the principles espoused in the Constitution is by no means guaranteed, in my opinion, there are adequate reasons to be optimistic. The rapid growth of civil and society movement, the changing attitudes among the bureaucrats and the military, the vibrant media and academia, the higher rate of education, and the generation shift of professional and society leaders

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from the right wing, reactionary to the progressive, liberal groups of people whose political views were forged during the tumultuous years of the late 1960s and early 1970s, are among the encouraging signs for successful reform.

As the rule of law is one of the most important elements for good governance, the Constitution has put great emphasis on overhauling the criminal justice system. The timing of the drafting of the Constitution was also coincided with the public sentiments for reform, triggered by public dissatisfaction of criminal justice as a result of the wide media coverage on the abuse of powers by criminal justice officials, the infringement of human rights, the long and cumbersome criminal process without adequate check and balance, etc. The public also learned of conflicts in the judiciary and other judicial organs which at times were spread out and, thereby, deteriorated public faith in the justice system. With such background, the members of the Constitutional Drafting Assembly used the occasion to introduce a major overhaul of the Thai criminal justice.

### III. IDEOLOGICAL IMPLICATIONS ON DIRECTION OF REFORM

To understand the reform trends and presented in the Constitution, ones should first start with a quick glance at the legal system of Thailand. To become familiar with the legal system of other countries, one of the most frequently asked questions is whether the system is more related to the common law tradition or to that of the civil law. If one can determine which of the two most important legal families such a system belongs to, one will also see a rough picture of the law and procedure, the legal institutions and the roles of agencies in the criminal justice system of that country. However, in the case of Thailand, there is no easy answer to this question. Due to her unique historical development, the Thai legal system is a mixture of elements of both civil and common-law traditions. Of course, there is nothing wrong with a mixed legal system, which is now the trend of every legal system in the age of globalization where countries can learn from the experiences of others. However, in the case of Thailand, the rivalry between the two major colonial powers to insert their influence over Thailand has resulted in an unbalanced system, particularly with regard to the protection of the accused.

Even though Thailand was able to maintain her independence during the colonial era, she was forced to quickly “modernize” or “westernize” her legal system so as to be free from the curse of extraterritoriality. Caught in the rivalry between the English and the French in their colonial interests, Thailand was practically forced to adopt elements from both legal systems. Although structurally modeled after the civil law system, the Thai legal system had been strongly influenced by the common law traditions in many areas of law and procedure. This is especially true regarding the role of agencies involved in the administration of justice.

The adoption of common law-based adversary attitudes in the structure of the civil law system has resulted in much disadvantageous position for the accused. For instance, in the past, many Thai judges who were trained in England brought home to their office the concept of adversary proceedings where judges are supposed to maintain passive impartial role throughout the trial. This was so despite the fact that the Continental model had influenced the structure of the Thai criminal process where judges are supposed to be more active in searching for the truth during trial. Such an attitude has had a considerable adverse impact on the rights of criminal suspects who have been drawn into the process because the concept of a state-sponsored defense counsel, which is an indispensable component of the adversary process, has not yet been fully recognized. A passive attitude on the part of the court can also be observed in a motion for a detention warrant and a preliminary hearing during which the court abandons the opportunity to participate actively in the control of police conduct.

Discrepancies in ideologies can also be seen regarding the roles of prosecutors and police. Since, structurally, the Thai prosecutors have been modeled after the continental system; they should assume a true quasi-judicial role, as do their counterparts in Germany or France. However, because of the influences of the English system, the Thai prosecutors play a substantially less significant role than their counterparts in the civil law traditions. For instance, in Thailand, prosecutors are not allowed to initiate or conduct criminal investigation. The Thai prosecutors can only request the police to conduct additional investigation if they are of the opinion that the files of inquiry submitted to them by the police do not have sufficient evidence for prosecution. They cannot conduct investigation on their own. This has made the Thai prosecutors play less active role in the pretrial process and allows the police to dominate criminal investigation. Moreover, the influence of the adversary model also makes it more difficult for them to maintain an objective and impartial role. Seeing themselves as protagonists, the Thai prosecutors and, to a larger degree, the Thai police have often been too overzealous in convicting the accused.

In my opinion, the criminal process in any society should be a model that can best balance the common goals of every criminal justice system-the efficiency in law enforcement and the protection of the accused. It does not matter

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whether it belongs to the civil or common law family as long as it works well in that society, considering its social, economic and political contexts. The practice in Thailand is a good example how partial importation of only certain elements in one legal culture without taking into consideration the whole context where they actually operate has created more harm than good.

With this new Constitution, there have been attempts to balance the scale towards protecting the rights of the accused much more than earlier. Many good elements from the two legal systems have been strengthened. For instance, the Constitution provides more right to counsel to the accused as well as the right not to be witness against himself, which is a trait of the common law, adversary model. In addition, the impeachment process has been introduced for the first time in this Constitution. At the same time, the Constitution also provides for a stricter quorum of the court, which is reminiscent of the civil law tradition.

#### IV. DIRECTION OF REFORMS AS APPEARED IN THE NEW CONSTITUTION

The Constitution of Thailand of 1997 has put great emphasis on establishing the rule of law in Thailand. As a sound system of justice is a prerequisite for achieving such goal, the Constitution has placed great importance to the issues of due process in the criminal justice process. As a matter of fact, there have long been attempts to overhaul the criminal justice system in Thailand due to various problems it is encountering, namely, the abuse of powers and the lack of adequate check and balance among the authorities involved, the inefficiency in investigation, prosecution and the trial process, the violation of human rights, etc.

The direction of reforms as appeared in the Constitution is also a reflection of the dissatisfaction of the public towards the inefficiency and the lack of due process protection in the current system. Here are some of the major points:

\* **The Warrant Requirement:** Article 237 of the new Constitution reduces the police's authority to conduct warrantless search and arrest and the power to issue arrest and search warrant is now handed over to the courts.

\* **The Right to Prompt Arraignment:** After the arrest, the police will be required to bring the suspect to the court in due course. Article 237 demands that the police must bring the suspect to the court within 48 hours.

\* **The Right to Bail:** Article 239 establishes a more transparent bail procedure where the arrested person shall entitled to reasonable amount of bail in relation to the offence committed, to prompt consideration by the court, to demand the reason if it is denied, and to appeal the denial to the higher court.

\* **The Right to Counsel and Right to have Lawyers or Trusted Persons Present During Interrogation:** Article 241 grants the suspect the right to have a lawyer or trusted person present during police interrogation. The right to have assistance from the state for legal counsel is stipulated in Article 242. The state is required to promptly find a lawyer for the suspect if he or she is confined or detained.

\* **The Right to Speedy Trial:** To prevent the delay of the criminal process, Article 241 provides that a suspect shall rightfully receive an expeditious, *continual*, and fair investigation or trial. The term "*continual*" was never before appeared in the previous Constitutions but was intentionally added to prevent the current practice in court where there will normally be only one half-day hearing session a month for criminal trial.

\* **The Strict Quorum Requirement:** Article 236 requires that judges must be present in full quorum when trying a case. It also stipulates that any judge who is not in charge of trying a certain case shall not make a judgment or ruling on the case.

\* **Witness Protection:** Article 244, for the first time, recognizes the rights of a witness in criminal case to be protected and treated properly.

\* **Rights of Crime Victims:** Article 245 demands that the state must look after the injured party or his or her relative in case that he or she was killed or physically or mentally assaulted by criminal offence committed by others.

\* **Miscarriage of Justice:** Article 246 provides that any person who has become the accused in a criminal case and has been detained during the trial is entitled to appropriate compensation, expenses and the recovery of any right lost on account of that incident, if it is proved that he has not committed the offense or if his conduct does not constitute a crime.

## V. THE ORGANIZATIONAL REFORM OF THE CRIMINAL JUSTICE

Another major problem on the administration of criminal justice in Thailand, that is the “non-system” of the criminal justice agencies. Unlike in most countries where major organs in the criminal justice system, such as the police, the prosecutors, the probation and correction officers, are under the purview of the Ministry of Justice, in Thailand, criminal justice agencies are scattered in different places. For instance, the police and prosecutors have long been under the Ministry of Interior before becoming independent entities since 1992 and 1998 respectively. The Correction Department is under the Ministry of Interior, while the Ministry of Justice only looks after administrative affairs of the Court of Justice and part of the probation works related to the Court. As a consequence, instead of being the focal point for setting national criminal justice policy and overseeing the administration of the whole justice system, the Ministry of Justice only involved itself in the administration of the courts of justice.

Such an unorganized structure of the criminal justice system is one of the major causes for the lack of cooperation and coordination among organs within the system. In Thailand, the criminal process is not viewed as a single, coordinated process. Each agency in the criminal justice system – that is, the police, the prosecutors, the defense lawyers, the courts, and the correction officers – often focuses its resources in solving problems or creating works and projects within its own organization without adequate consideration on the impact of such efforts on the criminal justice process as a whole. These have resulted in repetition of works, the building of empires among criminal justice agencies, the lack of national criminal justice policy, the end results of which is inefficiency in the administration of justice.

### A. The Restructuring of the Ministry of Justice

The unorganized structure of the justice agencies in Thailand has long been an issue for discussion at the academic and policy levels. The Senate’s Committee on the Administrative and Judicial Affairs have conducted studies and published 2 famous reports in 1996 and 1998 supporting the reorganization of the Ministry of Justice. The first report, which came before the Constitution of 1997, has highlighted the necessity of the structural reform and has paved the way for the constitutional-drafting members to introduce provisions for criminal justice reform. As regards organizational reform, the new Constitution has stipulated that the Courts must have their own Offices of Secretary independent from the executives. To implement the idea in the Constitution, the Senate’s Committee on Administrative and Judicial Affairs, in its second report of 1998, focused upon the organizational structure of the Ministry of Justice and the Court of Justice. They have studied the structure of the Ministry of Justice and the equivalent organization of many countries including those of Japan, Korea and the United States, etc. The findings and recommendations were well received by both the Prime Minister Chuan Leekpai and Prime Minister Thaksin Governments. The Justice Reform Committee set up by Prime Minister Chuan Leekpai prepared their own Report endorsing the Senate’s recommendations which only a slight variation. Although the ideas have been well received by most academics and policy makers, actual implementation has, however, not been easy.

When the Thaksin Government took over in February 2001, it has set up the Committee for the reorganization of the Ministry of Justice, chaired by a Deputy Prime Minister (Mr. Suvit Khunkitti). I was appointed as the Secretary to this Committee. The Committee has submitted its Report to the Cabinet in October 2001. According to the Report, it was recommended that the new Ministry of Justice should consist of the following agencies: (1) The Office of the Permanent Secretary, (2) the Office of the Minister of Justice, (3) Office of Justice Affairs, (4) The Special Bureau of Investigation, (5) the Institute of Forensic Science, (6) the Rights and Liberties Protection Department, (7) the Department of Immigrations, (8) the Department of Correction, (9) the Department of Probation, (10) the Department of Child Observation and Protection, (11) the Department of Legal Execution. After receiving the Report, the Government decided that since the Government was in the process of introducing a major reorganization and reform of the whole Bureaucratic system in which the justice system is a part thereof, the matter should therefore be considered by the Bureaucratic Reform Committee. The Prime Minister himself chaired the Committee.

The Report of the Committee for the Reform of the Ministry of Justice has been fully endorsed by the Bureaucratic Reform Committee. The Committee shared the views represented in the Report that to provide more efficiency and promote better coordination in criminal justice administration, all agencies related to criminal justice administration should be grouped together at the new Ministry of Justice. In addition, the Committee also raised several new issues such as, whether the National Police Agency, the Office of the Attorney General, the Office of the Narcotics Control Board, the Office of the Anti-Money Laundering Board, which are also involved with law enforcement, should also be included in this new structure.

Taking into consideration all aspects of the pros and cons, the government has finally made a decision on January 9, 2002 that the Ministry of Justice shall consist of the following agencies:

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1. Office of the Minister of Justice;
2. Office of the Permanent Secretary;
3. Office of Justice Affairs;
4. Department of Rights and Liberties Protection;
5. Special Bureau of Investigation;
6. Office of the Narcotics Control Board;
7. Office of the Anti-Money Laundering Board;
8. Institute of Forensic Science;
9. Department of Correction;
10. Department of Probation;
11. Department of Child Observation and Protection;
12. Department of Legal Execution;

Apart from these 12 agencies, the Office of the Attorney General, which is currently an agency under the supervision of the Prime Minister, will be under the supervision of the Minister of Justice. As a result, while the Office of the Attorney General can still maintain its independence from being under the full control of the Ministry of Justice, it will, through this new structure, have a connection with the new Ministry. Moreover, the Ministry will be responsible for the works of the Office of the Narcotics Control Board and the Office of the Anti-money Laundering which are now under the Office of the Prime Minister. In addition, the Ministry will also supervise the Thai Bar Association and the Law Society. It should be noted that the Immigration Department is the only agency proposed by the Committee for the Reform of the Ministry of Justice that was finally left out of the new structure.

It is expected that the bills affecting these changes will be presented to the Parliament in its next session in February 2002, and the dateline given by the Prime Minister for the new Ministry to begin its operation is on 1st October 2002.

#### **B. Selected Debating Issues during the Restructuring**

Although the proposed new structure of the new Ministry of Justice has in general been well received by all parties involved, it has created debates on several issues, namely:

1. Whether the Whole National Police Agency should be Transferred to the Ministry of Justice?

The idea of having all the police forces transferred to be under the Ministry of Justice was first initiated for the first time during the meeting of the Bureaucratic Reform Committee by the Prime Minister who chaired the meeting himself. After a long national debate on the issue, the idea was later turned down because it was afraid that the National Police Agency which currently has more than 200,000 manpower is too big for the new Ministry of Justice and will make it into "Ministry of Police Forces" instead. It was argued, among other things, that there must first be a decentralization of the force to become local police, then we can incorporate only the "National Police Agency," which should not be too large (a model seminar to that in Japan), to the new Ministry. Finally, it was agreed that the National Police Agency would remain as an independent unit under the Prime Minister, while only part of the police, i.e. the economic crime unit, will be transferred to the new Ministry. I was also agreed that process of decentralization and localization of the police should be expedited.

2. Whether the Special Investigation Bureau should be established in the Ministry and What should be the Role of the New Special Investigation Bureau vis-a-vis the Current Investigative Power of the Police?

The proposal by the Committee for Restructuring the Ministry of Justice coincided with the recommendations by the Senate's Report that a Special Investigation Bureau should be established within the Ministry of Justice. The reasons for such initiative are two folds: efficiency and check and balance. The lack of efficiency in the police investigation of sophisticated crimes is quite obvious given the past records of unsuccessful investigation in high profile economic crime cases. There are several reasons for such failure: namely, the lack of "professional investigators" trained and spent career in this field, the lack of cooperation and coordination among agencies during the pretrial periods, the lack of efficient laws to allow the investigators to conduct effective investigation. Due to the large size and its ineffective management, it is difficult for the Police to train special investigators for sophisticated crimes. Moreover, there are cumbersome procedures that do not allow all parties involved during the pretrial periods, such as the injured party, the police and the prosecutors, to work together. With such drawbacks, the time spent during the pretrial process for economic crime cases is often long and as the police and prosecutors do not work together from the start the cases presented to the Courts are often too weak to punish the offenders.

In Thailand, the police are the only agency that can initiate criminal investigation. The prosecutors cannot prosecute any criminal cases unless the police have already conducted the investigation into that case. This requirement has made the police in Thailand dominate the criminal process for a long time. There has long been an attempt to curb police investigative powers by proposing that the prosecutors should be allowed to participate in investigation together with the police in sophisticated and severe crimes. However, such attempt has however not been successful. The setting up of the Special Investigation Bureau is perhaps a new alternative and a solution to this long lasting problem. According to the new proposed bill, the Special Investigation Bureau will have the jurisdiction to investigate “sophisticated crimes” as defined by the Bill. The list of the names of the laws, which are considered sophisticated crimes, will appear in the Annexes of the Bill. A committee consist of senior government officials in the areas of finance and security will also be set up to determine what types of offenses in each particular law to be under jurisdiction of the new Special Investigation Bureau.

Apart from the jurisdiction to investigate sophisticated crimes, the new Bureau, through the endorsement of the Committee, will also be given the power to intervene in any crime it considers necessary to maintain public order. This will allow the new Bureau to provide the long awaiting, necessary check and balance with the police. It will also make the Minister of Justice accountable to the ineffective law enforcement, which has never before been the case due to the fragmented criminal justice agencies and the lack of responsible officer for effective law enforcement in the country. The new draft bill also proposes a scheme for the prosecutors to work closely with the special investigators from the start so as to make more effective investigation and prosecution.

3. Whether the Police have to Transfer its Forensic Division to the Institute of Forensic Science to be Established within the Ministry of Justice?

During recent years, there have been many incidents which have made the public lose faith in the forensic tests conducted mainly by the Police by its Forensic Division, the Police Hospital, an organ attached with the Police. The lack of accountability and the non-transparent procedures are among the major causes for such distrust. Due to the common agreement that there should be improvement of the forensic science in Thailand, the new Ministry of Justice will include the Institute of Forensic Science as a new agency under its purview. The Institute will be responsible for setting standards and guidelines for forensic related works. A national committee shall be set up to supervise and control the professional standards in this area. It will also be responsible for training and building the capacity of personnel in forensic science. It was also proposed that the Forensic Division of the police should be transferred to the Institute. However, after long debate, it was agreed that the new Institute should not become a large operation center but a standard setting and capacity building organization, therefore, it is not necessary to include the Forensic Division of the police in this new Institute. The Institute will promote and set standards to all forensic units including those at universities as well as police labs.

4. Whether the Public Prosecutors which is Currently under the Office of the Attorney General should be Moved to the Ministry of Justice and What should be their Relation vis-a-vis the Ministry of Justice?

The issue of whether or not the Office of the Attorney General should be under the new structure of the Ministry of Justice has been a topic of hot debate during the Chuan Administration. The Committee for the Restructuring of the Ministry of Justice decided to drop this issue at the beginning of their deliberation for fear of putting its feet into a quagmire. It has therefore left this issue to be decided later on by the Bureaucratic Reform Committee chaired by the Prime Minister. The Bureaucratic Reform Committee was of the opinion that the Office of the Attorney General should be attached to the Ministry of Justice. It was realized however that due to the quasi-judicial status of the prosecutors, they should be relatively free from direct control of the Ministry. As a result, the new proposal only changes the supervision authority of the Office of the Attorney General, which is currently directly under the Prime Minister, to the Minister of Justice. In this new structure, the prosecutors’ powers under the Public Prosecutors Act and the Criminal Procedure Code are still left intact and the prosecutors are still free to make decision on criminal cases without any other outside interference. The status of the Office of the Attorney General will therefore be different from other agencies in the Ministry in that its line of supervision will not involve with the Ministry but will be supervised by the Minister himself.

## VI. CONCLUSION

The past decade has been the busiest time for criminal justice officials in Thailand. After a long campaign, finally the long awaited criminal justice reform has become a reality due to the new Constitution. However, even though the ground works have already been laid down, it is not at all easy to implement the ideas and principles espoused by the Constitution. It may take some times for agencies in the new criminal justice structure to get accustomed to the new roles and responsibilities. Nonetheless, I am quite confident that the Constitution has provided clear guidelines and frameworks towards a fair and efficient criminal justice process.

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In my opinion, there is a big different between the first law reform in Thailand which began more than a century ago during the colonial era. At that time, the reform was a product of national political necessity rather than any real attempt to change basic ideology and values in the society. The ongoing reform in Thailand this time is much different than the prior one in that it was demanded and fully endorsed by the public. With such a solid foundation, I am convinced that the Thai criminal justice process and the administration of justice will soon be improved.

**APPENDIX A**

*CONSTITUTION OF THE KINGDOM OF THAILAND OF 1997*  
(Selected Provisions concerning criminal justice reform)

**CHAPTER VIII**  
**the Courts**

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**Part 1**  
**General Provisions**

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**Section 233.** The trial and adjudication of cases are the powers of the Courts, which must proceed in accordance with the Constitution and the law and in the name of the King.

**Section 234.** All Courts may be established only by Acts. A new Court for the trial and adjudication of any particular case or a case of any particular charge in place of an ordinary Court existing under the law and having jurisdiction over such case shall not be established.

**Section 235.** A law having an effect of changing or amending the law on the organization of Courts or on judicial procedure for the purpose of its application to a particular case shall not be enacted.

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

**Section 237.** In a criminal case, no arrest and detention of a person may be made except where an order or a warrant of the Court is obtained, or where such person commits a flagrant offence or where there is such other necessity for an arrest without warrant as provided by law. The arrested person shall, without delay, be notified of the charge and details of such arrest and shall be given an opportunity to inform, at the earliest convenience, his or her relative, or the person of his or her confidence, of the arrest. The arrested person being kept in custody shall be sent to the Court within forty eight hours as from the time of his or her arrival at the office of the inquiry official in order for the court to consider whether there is a reasonable ground under the law for the detention of the arrested person or not, except for the case of *force majeure* or any other unavoidable necessity as provided by law.

A warrant of arrest or detention of a person may be issued where:

1. there is reasonable evidence that such person is likely to have committed a serious offence which is punishable as provided by law; or
2. there is reasonable evidence that such person is likely to have committed an offence and there also exists a reasonable cause to believe that such person is likely to abscond, tamper with the evidence or commit any other dangerous act.

**Section 238.** In a criminal case, a search in a private place shall not be made except where an order or a warrant of the Court is obtained or there is a reasonable ground to search without an order or a warrant of the Court as provided by law.

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

The right to appeal against the refusal of a bail is protected as provided by law.

A person being kept in custody, detained or imprisoned has the right to see and consult his or her advocate in private and receive a visit as may be appropriate.

**Section 240.** In the case of the detention of a person in a criminal case or any other case, the detainee, the public prosecutor or other person acting in the interest of the detainee has the right to lodge with the Court having criminal jurisdiction a plaint that the detention is unlawful. Upon receipt of such plaint, the Court shall forthwith proceed with an *ex parte*



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examination. If, in the opinion of the Court, the plaintiff presents a *prima facie* case, the court shall have the power to order the person responsible for the detention to produce the detainee promptly before the Court, and if the person responsible for the detention can not satisfy the Court that the detention is lawful, the Court shall order an immediate release of the detainee.

**Section 241.** In a criminal case, the suspect or the accused has the right to a speedy, continuous and fair inquiry or trial.

At the inquiry stage, the suspect has the right to have an advocate or a person of his or her confidence attend and listen to interrogations.

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

In a criminal case for which the public prosecutor issues a final non-prosecution order, an injured person, the suspect or an interested person has the right to know a summary of evidence together with the opinion of the inquiry official and the public prosecutor with respect to the making of the order for the case, as provided by law.

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

In a civil case, a person has the right to receive a legal aid from the State, as provided by law.

**Section 243.** A person has the right not to make a statement incriminating himself or herself which may result in criminal prosecution being taken against him or her.

Any statement of a person obtained from inducement, a promise, threat, deceit, torture, physical force, or any other unlawful act shall be inadmissible in evidence.

**Section 244.** 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 245.** 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 other 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 an aid from the State, upon the conditions and in the manner provided by law.

**Section 246.** Any person who has become the accused in a criminal case and has been detained during the trial shall, if it appears from the final judgement of that case that the accused did not commit the offence or the act of the accused does not constitute an offence, be entitled to appropriate compensation, expenses and the recovery of any right lost on account of that incident, upon the conditions and in the manner provided by law.

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

**Section 248.** In the case where there is a dispute on the competent jurisdiction among the Court of Justice, the Administrative Court, the Military Court or any other Court, it shall be decided by a committee consisting of the President of the Supreme Court of Justice as Chairman, the President of the Supreme Administrative Court, the President of such other Court and not more than four qualified persons as provided by law as members.

The rules for the submission of the dispute under paragraph one shall be as provided by law.

**Section 249.** Judges are independent in the trial and adjudication of cases in accordance with the Constitution and the law.

The trial and adjudication by judges shall not be subject to hierarchical supervision.

The distribution of case files to judges shall be in accordance with the rules prescribed by law.

The recall or transfer of case files shall not be permitted except in the case where justice in the trial and adjudication of the case shall otherwise be affected.

The transfer of a judge without his or her prior consent shall not be permitted except in the case of termly transfer as provided by law, promotion to a higher position, being under a disciplinary action or becoming a defendant in a criminal case.

**Section 250.** Judges shall not be political officials or hold political positions.

**Section 251.** The King appoints and removes judges except in the case of removal from office upon death.

The appointment and removal from office of a judge of any Court other than the Constitutional Court, the Court of Justice, the Administrative Court and the Military Court as well as the adjudicative jurisdiction and procedure of such Courts shall be in accordance with the law on the establishment of such Courts.

**Section 252.** Before taking office, a judge shall make a solemn declaration before the King in the following words:

*“I, (name of the declarer) do solemnly declare that I will be loyal to His Majesty the King and will faithfully perform my duties in the name of the King without any partiality in the interest of justice, of the people and of the public order of the Kingdom. I will also uphold and observe the democratic regime of government with the King as Head of the State, the Constitution of the Kingdom of Thailand and the law in every respect.”*

**Section 253.** Salaries, emoluments and other benefits of judges shall be as provided by law; provided that the system of salary-scale or emoluments applicable to civil servants shall not be applied.

The provisions of paragraph one shall apply to Election Commissioners, Ombudsmen, members of the National Counter Corruption Commission and members of the State Audit Commission *mutatis mutandis*.

**Section 254.** No person may simultaneously become a member, whether an ex officio member or a qualified member, of the Judicial Commission of the Courts of Justice, the Administrative Court or any other Court as provided by law.

APPENDIX B

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# The New Structure of the Ministry of Justice

