

Overall Score:

65 - Weak

Legal Framework Score:

77 - Moderate

Actual Implementation Score:

50 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷¹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

References:

Chapter III, Section 45 of the Constitution of The Kingdom of Thailand 1997 states that:

A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organization or any other group.

The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.

http://en.wikisource.org/wiki/1997_Constitution_of_Thailand

Section 14 of the National Cultural Act (2nd) 1942 states that to establish civil society associations, one must receive approval from the National Cultural Commission.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within

last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

References:

Section 13 of the National Cultural Act 1942

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Registered civil society organizations are obligated to report their financial status annually.

References:

The National Cultural Act (2nd) 1943

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

58

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Mr.Nu-Ring (pseudonym), the activist of the Mirror Foundation on August 30, 2007

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Normally, the civil society organizations do not participate directly in policymaking process. They observe the action of government officials from the outside.

References:

Telephone interview with Mr.Nu-Ring (pseudonym), the activist of the Mirror Foundation on Aug. 30, 2007

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

1. Telephone interview with Mr.Nu-Ring (pseudonym), the activist of the Mirror Foundation on Aug. 30, 2007
2. Interview with Ms. Kratib, the political journalist of The Post Today Newspaper on Aug. 30, 2007

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

Activist Chalard Worachat and former MP Thawee Kraikup held a protest against the junta at the Democracy Monument the day after the coup. Thawee held up a sign saying Fasting in Protest Against the Destroyer of Democracy." Military forces arrived soon afterward and arrested Chalard at 12:30. Thawee refused to stop his protest and was arrested three hours later. Their fate is not known.

References:

The Nation, Former Activists Such as Former MP, Were Arrested After Staging Protest, Sept. 20, 2006

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

1. Telephone interview with Mr.Nu-Ring (pseudonym), the activist of the Mirror Foundation on Aug. 30, 2007
2. Interview with Ms. Kratib, the political journalist of Post Today Newspaper on Aug. 30, 2007

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

1. Telephone interview with Mr.Nu-Ring (pseudonym), the activist of the Mirror Foundation on Aug. 30, 2007
2. Interview with Ms. Kratib, the political journalist of Post Today Newspaper on Aug. 30, 2007

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Chapter III, Section 45 of the Constitution of The Kingdom of Thailand 1997 states that:

A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organization or any other group.

The restriction on such liberty under paragraph one shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.

http://en.wikisource.org/wiki/1997_Constitution_of_Thailand

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can organize into trade unions. There was one Labour Union Federation (Private Enterprise) organized during this research period.

References:

The statistical records and telephone interview with a government official of the Labour Relations Bureau, Department of Labour Protection and Welfare, (www.labour.go.th), August 29, 2007

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

0

5a. In law, freedom of the media is guaranteed.

YES

NO

Comments:

Comment: However, under martial law, since September 19, 2006, freedom of the media was tightened by the National Security Council of Thailand.

References:

Article III, Section 3 of the Constitution of The Kingdom of Thailand 1997 states that:

A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means.

The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made.

The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict, provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media business shall be a Thai national as provided by law.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES

NO

References:

Article III, Section 3 of the Constitution of The Kingdom of Thailand 1997 states that:

A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means.

The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other persons, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

94

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Interview with a media representative of the Thai Journalists Association on September 10, 2007.

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

Section 10 of the Printing Act, 1941

www.ratchakitcha.soc.go.th

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can obtain a print media license within 30 days”.

References:

Interview with Police Captain, Pathra D., the government official of General Staff Division, Special Branch of The Royal Thai Police on September 10, 2007

Interview with an official from the Newspapers Association of Thailand (December 12, 2007)

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no fee to obtain print media license.

References:

Interview with Police Captain Pathra D., the government official of General Staff Division, Special Branch of The Royal Thai Police on September 10, 2007

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | **50** | 25 | 0

Comments:

People's Television (PTV's) inaugural broadcast on March 1, 2007, was stopped because of CAT Telecom's refusal to grant an Internet link from Bangkok to a satellite uplink station in Hong Kong. CAT Telecom claimed that it never received PTV's application for Internet access. PTV executives claimed that CAT Chairman and junta leader Saprang Kalayanamitr was preventing it from broadcasting for political reasons.

PTV executives led several public protests against the junta's censorship. In a demonstration on March 23, 2007, attended by 1,500-3,000 protesters, thousands of police in riot gear attempted to disperse the protest. The protests caused the junta to request that the government declare emergency rule in Bangkok.

References:

1. Interview with a media representative of the Thai Broadcast Association
2. The Nation, PTV Says 'CAT Attack' Ruined Debut, March 2, 2007
The Nation, Full Gear Police Fail Again to End PTV Protest, March 23, 2007
3. http://en.wikipedia.org/wiki/People%27s_Television

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

Chapter IX, Section 65 of Telecommunications Business Act 2001 states that:

In the case where the licensee is not satisfied with the order of the Secretary-General under Section 64, he or she shall have the right to appeal to the Commission within fifteen days as from the date of receiving such order. The decision of the Commission shall be final.

http://eng.ntc.or.th/index.php?option=com_content&task=view&id=18&Itemid=26

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can obtain a broadcast media license within 30 days.”

References:

Interview with a government official of the National Telecommunications Commission, September 10, 2007

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

The source states that the license fee is reasonable. It does not impose a major financial burden.

References:

Interview with a media representative of Thai Broadcast Association

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

25

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | **25** | 0

Comments:

1. On September 21, during a meeting with Internet service providers and operators of TV stations, radio stations and other ICT businesses, the ICT Ministry (ICT) asked webmasters to close political web boards found to contain provocative messages for 12 days.

Kraisorn Pornsuthsee, ICT Permanent Secretary, said that Web sites and web boards will face permanent closure if such messages continue to appear, but that messages could be posted on web boards as long as they do not provoke any misunderstandings. The anti-coup website 19sep.org was shut down, but later relocated to the United States. The official Web site of the Thai Rak Thai party was also shut down.

2. On September 27, the ICT ministry confirmed that at least 10 Web sites were shut down for violating the junta's regulations.

3. The Midnight University Web site, a free scholarly resource and discussion board, was temporarily shut down after the management of Midnight University and scholars from Chiang Mai University conducted a protest against the junta's draft interim charter. Somkiat Tangnamo, the webmaster of Midnight University, claimed the site contained 1,500 free scholarly articles and received 2.5 million visits per month. Kasian Tejapira of Thammasat University claimed the website was the foremost free and critical educational and public intellectual website in Thailand. The shutdown is not only a huge loss to academic and intellectual freedom in Thai society, but also the closure of a free forum for the contention of ideas so as to find a peaceful alternative to violent conflict in Thailand."

Kraisorn Pornsuthee, the ICT Ministry permanent secretary, said he did not know about the shutdown of the Web site and would ask for details from his officials.

4. In the second week after the coup, the Thai Rak Thai Web site was temporarily inaccessible, without indication if it was an act of censure or not. The Thaksin.com Web site used by Thaksin to receive mails and comments from his supporters and to promote himself was also inaccessible.

References:

1. The Nation, 19sep.org Shut Down, Sept. 22, 2006
2. Reporters Without Borders, open letter to interim Prime Minister Surayud Chulanont about press freedom violations
3. The Nation, Midnight University Website Shut Down After Protest, Oct. 1, 2006
4. The Nation, Thai Rak Thai Website Back Online, Oct. 4, 2006

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

References:

1. The Nation, 19sep.org Shut Down, Sept. 22, 2006
2. Reporters Without Borders, open letter to interim Prime Minister Surayud Chulanont about press freedom violations

3. The Nation, Midnight University Website Shut Down After Protest, Oct. 1, 2006

4. The Nation, Thai Rak Thai Website Back Online, Oct. 4, 2006

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

Comments:

Comment: In practice, the reporter may face lawsuits.

References:

Chapter III , Section 3 of the Constitution of The Kingdom of Thailand 1997 states that:

A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicize, and make expression by other means.

The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made.

The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict, provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

The owner of a newspaper or other mass media business shall be a Thai national as provided by law.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | **25** | 0

Comments:

Former Prime Minister Thaksin Shinawatra uses his political power to silence dissenting voices and curb freedom of speech, based on the fact that he has direct authority over the state-owned TV stations while his family controls the other broadcast TV channels.

References:

Interview with Ms. Kratib, the political reporter of The Post Today Newspaper on September 10, 2007

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | **50** | 25 | 0

Comments:

Since there are several types of media, alleged censorship of government corruption stories varies. During the Thaksin era, there was a high level of censorship exercised against reports that criticized Thaksin. This is especially true in the case of TV. But newspapers could still report corruption news (though they allegedly faced harsh countermeasures by Thaksin. During the present military rule, reports about corruption allegations on the part of the prime minister and the junta elite can be read in newspapers as well.

References:

1. Interview with Ms. Kratib, the political reporter of The Post Today on September 10, 2007

2. Self-survey research at bookstores: Chulalongkorn University Bookstore, Thammasart Universities Bookstores and Se-Ed Bookstore

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

60

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

Section 10 of Printing Act 1941

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

Article II, Section 7 of Telecommunications Business Act states that:

Any person who intends to operate a telecommunications business in accordance with the nature and categories prescribed in notification of the Commission under the law on the organisations to assign radio-frequency spectrum and to regulate the sound broadcasting, television broadcasting and telecommunications services shall obtain a licence from the Commission.

There shall be three types of licence as follows:

(1) Type One Licence: being a licence granted to the telecommunications business operator who operates without his or her own network for telecommunications services which are deemed appropriate to be fully liberalized. The Commission shall grant a licence once notified by a person who intends to operate such business;

(2) Type Two Licence: being a licence granted to the telecommunications business operator who operates with or without his or her own network for telecommunications services intended for a limited group of people, or services with no significant impacts on free and fair competition or on public interest and consumers. The Commission shall grant a licence once a person who intends to operate such business has completely fulfilled the standard criteria prescribed in advance in notification of the Commission;

(3) Type Three Licence: being a licence granted to the telecommunications business operator who operates with his or her own network for telecommunications services intended for general public, or services which may cause a significant impact on free and fair competition or on public interest, or a service which requires special consumer protection. A person who intends to operate such business can commence the operation only after he or she is approved and granted a licence by the Commission.

The rights of Type One, Type Two or Type Three licensee to operate telecommunications business in which nature, categories and scope of service shall be in accordance with notification prescribed by the Commission, which shall be in conformity with the nature of telecommunications business for each type of licence under paragraph two. In issuing such notification, the Commission shall also have regard to the development of diverse telecommunications services and fairness among the operators.

In applying for a licence, the applicant shall specify type of the licence he or she requires as well as the nature or categories of telecommunications service he or she intends to operate. Should the operator intend to provide additional service of different nature or categories after the licence is granted, he or she shall inform the Commission prior to the commencement of the operation. In such case, the Commission may prescribe certain conditions the operator has to fulfill.

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

References:

1 www.tja.or.th and www.thaibja.org

2. Interview by phone with Ms. Kratib, a political reporter of The Post Today Newspaper on September 12, 2007

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The first source states that it was found that the TRT Party gets quantity and quality (69.7 percent) on prime time news television.

References:

1. Survey results of ABAC Poll
www.abacpoll.com

2. The Nation, Poll Finds TRT Gets Quantity and Quality in Live News Time, Sept. 4, 2006
http://www.nationmultimedia.com/search/page_arcview.php?clid=5&id=30012705

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The first source states that the TRT Party received both quantity and quality (69.7 percent) on prime time news television.

References:

1. Survey results conducted by ABAC Poll
www.abacpoll.com

2. The Nation, Poll Finds TRT Gets Quantity and Quality in Live News Time, Sept. 4, 2006
http://www.nationmultimedia.com/search/page_arcview.php?clid=5&id=30012705

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

67

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES

NO

Comments:

The source states that two-year prison sentences were imposed by a Bangkok court on two TV talk show hosts on April 12 after finding them guilty of defaming Deputy Bangkok Governor Samart Ratchapolasit by saying on two different occasions that he had taken bribes.

Samak Sundaravej and Dusit Siriwan, the hosts of This Morning in Thailand on public television Channel 5, were sued by Samart for claiming on two different programmes in January 2006 that he accepted bribes from a construction company. Finding them guilty of slander, the judge said they did not verify their information. Samak, a former Bangkok governor, and Dusit, a former senator, are both supporters of deposed Prime Minister Thaksin Shinawatra.

The two have paid bail of 200,000 bahts (4,530 euros; US\$6,600) to avoid going to jail while they appeal. The court also ordered them to pay for the publication of an apology in the country's leading national daily for three days in a row. Samart is also demanding 100 million bahts (about 2 million euros; about US\$3,300,000) in damages.

References:

www.rsf.org (Reporters without Borders)

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

From the second source: In the studied period there was no (evidence that) journalists (who were) investigating corruption have been physically harmed. “

References:

1. Review from newspapers Matichon, Bangkok Post and The Nation
2. Interview by phone with Ms.Kratib, a political reporter of The Post Today Newspaper, Sept. 12, 2007.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

From the second source: In the period under investigation, there was no (evidence that) journalists (who were) investigating corruption have been killed. “

References:

1. Newspapers Matichon, Bangkok Post and The Nation
2. Phone interview with Ms.Kratib, a political journalist of The Post Today on Sept. 12, 2007

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES

NO

Comments:

Comment to first source: In practice, ordinary citizens encounter difficulties in trying to access government information.

Comment to second source: Martial Law has not had an effect on the Official Information Act 1997. However, an official has more power to inspect the information request.

References:

Chapter III, Section 59 of the Constitution of The Kingdom of Thailand 1997 states that:

A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

Chapter I, Section 9 of Official Information Act 1997 states that:

A person, whether interested in the matter concerned or not, has the right to inspect or obtain a copy or a certified copy of the information under paragraph one. In an appropriate case, a State agency may, with the approval of the Board, lay down the rules on the collection of fees, therefore. For this purpose, regard shall also be had to the making of concession given to persons with low incomes, unless otherwise provided by specific law.

The extent to which an alien may enjoy the right under this section shall be provided by the Ministerial Regulation.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES

NO

References:

Article I, Section 13 of the Official Information Act 1997

Any person, who considers that a State agency fails to publish the information under section 7, fails to make the information available for public inspection under section 9, fails to provide him with the information under section 11, violates or fails to comply with this Act, or delays in performing its duties, or considers that he does not receive convenience without reasonable cause, is entitled to lodge a complaint with the Board, except where it is the case concerning the issuance of an order prohibiting the disclosure of information under section 15 or an order dismissing the objection under section 17 or an order refusing the correction, alteration or deletion of the personal information under section 25.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

References:

Chapter I, Section 7 and 11 of the Official Information Act 1997 states that:

Section 7: A State agency shall at least publish the following official information in the Government Gazette:

- (1) the structure and organization of its operation;
- (2) the summary of important powers and duties and operational methods;
- (3) a contacting address for the purpose of contacting the State agency in order to request and obtain information or advice;
- (4) by- laws, resolutions of the Council of Ministers, regulations, orders, circulars, Rules, work pattern, policies or interpretations only insofar as they are made or issued to have the same force as by-laws and intended to be of general application to private individuals concerned;
- (5) such other information as determined by the Board.

If any information which has already been published for dissemination in sufficient number is published in the Government Gazette by making reference to such prior published material, it shall be deemed to comply with the provisions of paragraph one.

A State agency shall, for dissemination purpose, compile and make available the information under paragraph one for sale, disposal or distribution at its office as it thinks fit.

Section 11: If any person making a request for any official information other than the official information already published in the Government Gazette or already made available for public inspection or already made available for public studies under section 26 and such request makes a reasonably apprehensible mention of the intended information, the responsible State agency shall provide it to such person within a reasonable period of time, unless the request is made for an excessive amount or frequently without reasonable cause.

If any official information is in a condition which can be easily damaged, a State agency may request for an extension of the period for its provision or may provide copies thereof in any such condition as to avoid damage thereto. The official information provided by the State agency under paragraph one must be the information already subsisting in the condition ready for distribution without requiring new preparation, analysis, classification, compilation or creation, unless it is the case of transformation into a document from the information recorded in the visual or sound recording system, computer system or any other system as determined by the Board. If the State agency is of the opinion that the request is not for the benefit of trade and is necessary for the protection of the rights and liberties of such person or is beneficial to the public, the State agency may provide such information.

The provisions of paragraph three shall not prevent the State agency from creating new official information available to the person making the request if it is consistent with the usual powers and duties of such State agency.

The provisions of section 9, paragraph two, paragraph three and paragraph four shall apply mutatis mutandis to the provision of the information under this section.

Chapter IX, Section 26 of Official Information Act 1997 states that:

A State agency shall deliver official information, which it does not wish to keep or which is kept beyond the period under paragraph two as from the date of completing such information, to the National Archives Division, Fine Arts Department or other State agencies as specified in the Royal Decree, in order that it is selected for public studies.

Reference: www.oaep.go.th/info-act/act2540eng.doc

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

70

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Citizens can gain access to information through:

1. the Web sites of the government sectors and state agencies
2. contact the states agencies directly
3. the National Archives Division
4. the Government Gazette: www.ratchakitcha.soc.go.th

References:

Phone interview with Ms.Rudee, S., Office of the Official Information Commission, Sept. 12, 2007

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access to information through:

1. Web site (free of charge)
2. The duplicated documents cost 1 baht per page (US\$0.03) and 5 baht per page (US\$0.15) in case of recognized documents.

References:

Phone interview with Ms. Rudee, S., Office of the Official Information Commission, Sept. 12, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Phone interview with Mr.Somchai, K., Office of the Official Information Commission, Sept. 13, 2007

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can resolve appeals to information requests without expense.

References:

Phone interview with Mr.Somchai, K., Office of the Official Information Commission, Sept. 13, 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

References:

1. Annual Report Year 2006 http://www.parliament.go.th/parcy/sapa_db/e_service/genews_index.php

2. My own graduate student experience on June 6, 2006, at the Ministry of Public Health.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁴⁷Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

0

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES

NO

Comments:

Before September 19, 2006, the 1997 Constitution guaranteed equal adult suffrage. Since the military coup of that day, Thailand has been under martial law with the Council for Democratic Reform as the governing body. Therefore, universal and equal suffrage rights were not guaranteed by a constitution.

References:

Section 105 of the Thai Constitution 1997.

According to the Provisional Thai Constitution of 2006, Section 3.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

The 1997 Constitution required regular elections to be held every four years. Under martial law, there were no elections.

References:

Organic Act on the Election Of Members of the House of Representatives and Senators, B.E. 2541 (1998), Section 7

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

50

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

Before September 19 , 2006, all qualified citizens could vote.

References:

Telephone interview with Wuthikai Jaturongsereekul, an investigator at Bang Plad Police station, Sept. 23, 2007

Telephone interview with Election Commission Official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

There was a notorious case of April 2, 2006. The Election Commission was criticized for mismanaging the set up of vote stands in such a way that outsiders could easily guess how the voters voted.

References:

<http://webboard.mthai.com/5/2006-06-03/241596.html>

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

The timing of the April 2, 2006 elections was said by many to benefit the ruling Thai Rak Thai Party.

References:

<http://webboard.mthai.com/5/2006-06-03/241596.html>

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

20

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Organic Act on Political Parties, B.E. 2541 (1998) states that:

A State agency shall deliver official information, which it does not wish to keep or which is kept beyond the period under paragraph two as from the date of completing such information, to the National Archives Division, Fine Arts Department or other State agencies as specified in the Royal Decree, in order that it is selected for public studies."

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

After September 19, 2006, it became illegal for more than four persons to gather for political purposes.

References:

Announcement of the Council for Democratic Reform No. 7

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

In the case of the April 2, 2006 elections, many small political parties were easily formed because a political party could be set up with only 15 members.

Monks, priests, prisoners, and madmen are not eligible for voting.

References:

1. Election Commission Call Center, 02-613-7333, Aug. 26, 2007
2. Sarun Rachsaiy, researcher, Chulalongkorn University, Aug. 29, 2007, Bangkok

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Before September 19, 2006, qualified adult citizen can run for public office. But after decisions by the Council for Democratic Reform, elections was banned.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007
2. Sarun Rachsaiy, researcher, Chulalongkorn University, Aug. 29, Bangkok

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

2. Sarun Rachsaai, researcher, Chulalongkorn University, Aug. 29, 2007, Bangkok

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

Organic Act on the Election Commission, B.E. 2541 (1998)

Organic Act on the Election of Members of the House of Representatives and Senators, B.E. 2541 (1998)

Organic Act on Political Parties, B.E. 2541 (1998)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

40

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

Since September 19, 2006, Thailand is under martial law. The Council for Democratic Reform appointed the election commissioners following the Announcement of the Council for Democratic Reform N.13.

References:

Thai Constitution of 1997

The Provisional Thai Constitution of 2006, Announcement of the Council for Democratic Reform N.13.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Since September 19, 2006, Thailand is under martial law. The Council for Democratic Reform appointed the election commissioners following the Announcement of the Council for Democratic Reform N.13.

References:

Nation Integrity System, Thailand 2006, Transparency International
<http://www.transparency.org/>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Election Commission Call Center, 02-613-7333, Aug. 26, 2007

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

All reports are published in the Royal Government Gazette.

References:

Election Commission Call Center, 02-613-7333, Aug. 26, 2007

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

News about offenders is abundant, but actual punishment is limited.

References:

Election Commission Call Center, 02-613-7333, Aug. 26, 2007

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

During the elections of April 2, 2006, there was some confusion regarding whether to use a stamp or a pen.

References:

Newspaper, Piyabutr Sengkanokkun, Election Case of 2nd May, Voided or Not, May 8, 2006
<http://www.nidambe11.net/ekonomiz/2006q2/2006may08p2.htm> (in thai)

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Organic Act on the Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), Section 94 and 95

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Complaints have to be filed with the Elections Commission first before proceeding to the Court. The Elections Commission allegedly has a tendency to judge the complaints to be invalid.

References:

Telephone interview with Suporn Depan, analyst, real estate team, the Bank of Thailand, Sept. 5, 2007

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

It is considered common knowledge that the military and security forces are not neutral.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

Telephone interview with Noppadol Themmatha, a police officer at Bang Yeekan Police station, Sept. 5, 2007

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | **NO**

Comments:

In practice, international observers can be allowed to observe the elections if the Election Commission approves the request.

References:

None.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

References:

Telephone interview with Election Commission Official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

62
II-3. Political Financing

20. Are there regulations governing political financing?

86

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Election Commission of Thailand Announcement: Contribution Rule and Procedure to Political Parties, June 15, 1998, No.7
<http://www.ect.go.th/english/about.html>

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

References:

Organic Act on Political Parties, B.E. 2541 (1998), Section 52 and 53

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

References:

Organic Act on Political Parties, B.E. 2541 (1998), Section 52 – 55

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Organic Act on The Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), Section 41

Organic Act on Political Parties, B.E. 2541 (1998), Section 44.

<http://www.ect.go.th/thai/aw/law.html>

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

References:

Organic Act on Political Parties, B.E. 2541 (1998), Chapter 3, Part 1

<http://www.ect.go.th/english/files/about%20ect/Organic%20Act%20on%20the%20Election%20Commission.pdf>

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | **NO**

Comments:

According to the law, the Elections Commission set up the rules for the accounting system of political parties. The Elections Commission has discretion with regard to the independent auditing of the finances of political parties.

References:

Organic Act on The Election of Members of the House of Representatives and Senators, B.E. 2541 (1998)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

The agency is the Elections Commission.

References:

Organic Act on The Election Commission, B.E. 2541 (1998)

Organic Act on The Election of Members of the House of Representatives and Senators, B.E. 2541 (1998)

Organic Act on Political Parties, B.E. 2541 (1998)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

17

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

I believe it is impossible to uncover whether the donor has given more financial support to the political party and candidate than stipulated publicly.

References:

Telephone interview with an Election Commission Official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

I believe it is impossible to uncover whether the donor has given more financial support to the political party and candidate than stipulated publicly.

References:

Telephone interview with Election Commission official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | **25** | 0

Comments:

Most election corruption usually occurs in undeveloped areas.

References:

An election canvasser, Aug, 29, 2007, Bangkok.(Unnamed)

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Organic Law on Elections Commission gives power to the Election Commission (EC) members to initiate investigations. In practice, the EC does not have enough staff to do so. The EC uses the police to carry out the investigations according to the rules laid out by the EC.

References:

Telephone interview with Election Commission official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Election Commission of Thailand can revoke offenders' right to run in an election only. The difficulty of finding legal evidence to convict the violators is the reason why none has been penalized. The Election Commission's neutrality is also being questioned by many Thais.

References:

Telephone interview with Election Commission official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

There were no elections during the period under investigation and no auditing is required by law.

References:

Telephone interview with Election Commission official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

67

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Some political parties delayed their disclosure of their financial support.

References:

Telephone interview with Election Commission official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This information can be obtained from the library of the Election Commission Office.

References:

Telephone interview with Election Commission Official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no charge for the information, but requesters have to pay their own travelling costs.

References:

Telephone interview with Election Commission official, Political Party Affairs, Election Commission Office, Sept. 5, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁶¹Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES

NO

Comments:

Comment: Thaksin's era.

References:

Chapter III, Section 62 of Constitution of The Kingdom of Thailand 1997 states that:

The right of a person to sue a State agency, State enterprise, local government organization or other State authority which is a juristic person to be liable for an act or omission done by its Government official, official or employee shall be protected, as provided by law.

Reference: http://en.wikisource.org/wiki/1997_Constitution_of_Thailand

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Normally, the Prime Minister outlines the government policy statements in parliament. He is also obliged to answer queries imposed by MPs.

The prime minister needs to explain his policy choices to the public (through TV and newspaper interviews and special programs). Sometimes MPs appointed by the junta also question the PM.

References:

1. www.opm.go.th
2. <http://www.cabinet.thaigov.go.th/>
3. Interview with the government official of the Secretariat of the Prime Minister, Sept. 6, 2007

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

Comment: Thaksin's era.

References:

Chapter IIX, Section 272 of Constitution of The Kingdom of Thailand 1997 states that:

There shall be three levels of Courts of Justice, viz, Courts of First Instance, Court of Appeal and the Supreme Court of Justice, except otherwise provided by this Constitution or other laws.

There shall be in the Supreme Court of Justice a Criminal Division for Persons Holding Political Positions the quorum of which consists of nine judges of the Supreme Court of Justice holding a position of not lower than Judge of the Supreme Court of Justice and elected at a general meeting of the Supreme Court of Justice by secret ballot and on a case-by-case basis.

The competence of the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions and the criminal procedure for such persons shall be as provided by this Constitution and the organic law on criminal procedure for persons holding political positions.

Reference: http://en.wikisource.org/wiki/1997_Constitution_of_Thailand

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

There is no case of this in the studied (junta) period, but normally the Supreme Court of Thailand has the legitimacy to review the actions of the executive.

References:

1. Interview with the government officials of the Supreme Court's Criminal Division for Persons Holding Political Positions, Sept. 6, 2007

2. www.ratchakitcha.soc.go.th

3. www.supremecourt.or.th

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Both parliamentary acts and executive orders are used.

Strong prime ministers usually issue executive orders more extensively than weak ones regardless of regime types.

References:

The Prime Minister's Office: www.opm.go.th

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

Comment: Thailand is under a constitutional monarchy. The King cannot be prosecuted for crimes.

References:

Chapter X, Section 308 of Constitution of The Kingdom of Thailand 1997 states that:

In the case where the Prime Minister, a minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption according to other laws, the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case.

The provisions of paragraph one shall also apply to the case where the said person or other person is a principal, an instigator or a supporter.

Chapter X, Section 309 of Constitution of The Kingdom of Thailand 1997 states that:

A person injured by the act under section 308 shall have the right to lodge with the National Counter Corruption Commission the petition for action to be taken under section 301 (2) in accordance with the organic law on counter corruption.

The provisions of section 305 paragraph one, paragraph four and paragraph five shall apply mutatis mutandis.

Reference: http://en.wikisource.org/wiki/1997_Constitution_of_Thailand

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | **NO**

References:

Chapter X, Section 308 of Constitution of The Kingdom of Thailand 1997 states that:

In the case where the Prime Minister, a minister, member of the House of Representatives, senator or other political official has been accused of becoming unusually wealthy, or of the commission of malfeasance in office according to the Penal Code or a dishonest act in the performance of duties or corruption according to other laws, the Supreme Court of Justices Criminal Division for Persons Holding Political Positions shall have the competent jurisdiction to try and adjudicate the case.

"The provisions of paragraph one shall also apply to the case where the said person or other person is a principal, an instigator or a supporter."

Chapter X, Section 309 of Constitution of The Kingdom of Thailand 1997 states that:

"A person injured by the act under section 308 shall have the right to lodge with the National Counter Corruption Commission the petition for action to be taken under section 301 (2) in accordance with the organic law on counter corruption.

"The provisions of section 305 paragraph one, paragraph four and paragraph five shall apply mutatis mutandis."

Reference: http://en.wikisource.org/wiki/1997_Constitution_of_Thailand

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Comments: The head of state is the Prime Minister.

References:

Chapter III, Section 32 of Organic Act on Counter Corruption 1999 states that:

Persons holding political positions shall, on each occasion of taking or vacating office, submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris as they actually exist on the date of the submission, in accordance with the form prescribed by the N.C.C. Commission.

The assets and liabilities which are subject to the declaration requirement shall include assets and liabilities in foreign countries and those which are not in possession of the declarers, their spouses and children who have not become sui juris.

In the case where any person holding a political position under paragraph one hold more than one political position, such person shall submit separate accounts showing particulars of assets and liabilities for every position in accordance with the time prescribed for the submission of the account in respect of such position.

Chapter X, Section 291 of Constitution of The Kingdom of Thailand 1997 states that:

Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become sui juris to the National Counter Corruption Commission on each occasion of taking or vacating office:

- (1) Prime Minister;
- (2) Minister;
- (3) members of the House of Representatives;
- (4) senators;
- (5) other political officials;
- (6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year. The declarer shall certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Chapter III, Section 32 of Organic Act on Counter Corruption 1999 states that:

Persons holding political positions shall, on each occasion of taking or vacating office, submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris as they actually exist on the date of the submission, in accordance with the form prescribed by the N.C.C. Commission.

The assets and liabilities which are subject to the declaration requirement shall include assets and liabilities in foreign countries and those which are not in possession of the declarers, their spouses and children who have not become sui juris.

In the case where any person holding a political position under paragraph one hold more than one political position, such person shall submit separate accounts showing particulars of assets and liabilities for every position in accordance with the time prescribed for the submission of the account in respect of such position.

Chapter X, Section 291 of Constitution of The Kingdom of Thailand 1997 states that:

Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become sui juris to the National Counter Corruption Commission on each occasion of taking or vacating office:

- (1) Prime Minister;
- (2) Minister;
- (3) members of the House of Representatives;
- (4) senators;
- (5) other political officials;
- (6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year. The declarer shall certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES

NO

References:

Section 5 of Notification of the N.C.C. Commission Concerning the provisions of the acceptance of property or any other benefit on ethical basis by State officials 2000 states that:

Any State official shall receive property or any other benefit on ethical basis only as follows:

- (1) to receive property or any other benefit from relative as a gift and the amount of the gift is proper to the station in life;
- (2) to receive property or any other benefit from any person other than relative and the price or value of the thing received from each person and on each occasion does not exceed 3,000 baht (US\$99);
- (3) to receive property or any other benefit on the occasion that the giving is meant for general people.

Any State official shall not receive property or any other benefit from any person other than the legitimate property or benefit derived under the law, rules or regulations issued by virtue of the provisions of law, with the exception of the acceptance of the property or any other benefit on the ethical basis in accordance with the rules and in such amount as prescribed by the N.C.C. Commission.

The provisions of paragraph one shall apply mutatis mutandis to the acceptance of property or any other benefit by the person who has ceased to be a State official for less than two years.

Reference: http://www.nccc.thaigov.net/nccc/en/law_e.php

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

Chapter II, Section 19 (No.4) of Organic Act on Counter Corruption 1999 states that:

Persons holding political positions shall, on each occasion of taking or vacating office, submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris as they actually exist on the date of the submission, in accordance with the form prescribed by the N.C.C. Commission.

Reference: http://www.nccc.thaigov.net/nccc/en/law_e.php

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

Restrictions on post ministerial employment are implemented. Ministers as state officials, have to have at least 2 years post employment before they are allowed to be employed in the companies that have received concession, license, or contracts from the government.

Chapter IX, Section 101-103 of Organic Act on Counter Corruption 1999 state that:

Section 100: Any State official shall not carry out the following acts:

(1) being a party to or having interest in a contract made with a Government agency where such State official performs duties in the capacity as State official who has the power to conduct supervision, control, inspection or legal proceedings;

(2) being a partner or shareholder in a partnership or company which is a party to a contract made with a Government agency where such State official performs duties in the capacity as a State official who has the power to conduct supervision, control, inspection or legal proceedings;

(3) being a concessionaire or continuing to hold a concession from the State, State agency, State enterprise or local administration or being a party to a contract of a directly or indirectly monopolistic nature made with the State, a Government agency, State agency, State enterprise or local administration, or being a partner or shareholder in a partnership or company which is a concessionaire or a contractual party in such manner;

(4) being interested in the capacity as a director, counsel, representative, official or employee in a private business which is under supervision, control or audit of the State agency to which such State official is attached or where such State official performs duties in the capacity as State official, provided that the nature of the interest of the private business may be contrary to or inconsistent with public interest or the interest of the Government service or may affect the autonomy in the performance of duties of such State official.

The positions of State officials prohibited from carrying out the activities under paragraph one shall be prescribed and published in the Government Gazette by the N.C.C. Commission.

The provisions of paragraph one shall apply to spouses of the State officials under paragraph two. For this purpose, the activities carried out by the spouse shall be deemed as the activities carried out by the State official.

Section 101: The provisions of section 100 shall apply mutatis mutandis to the activities carried out by the person who has already ceased to be the State official for less than two years, with the exception of the holding of shares of not more than five percent of the total number of shares issued by a public limited company which is not a party to a contract made with the State agency under section 100 (2), for which permission is obtained under the law on securities and securities exchange.

Section 102: The provisions of section 100 shall not apply to the carrying out of activities of the State official who is entrusted, by the Government agency having the power to supervise, control or inspect the operation of a limited company or a public limited company, to perform duties in the limited company or public limited company in which the State agency holds shares or with which it participates in an undertaking.

Section 103: Any State official shall not receive property or any other benefit from any person other than the legitimate property or benefit derived under the law, rules or regulations issued by virtue of the provisions of law, with the exception of the acceptance of the property or any other benefit on the ethical basis in accordance with the rules and in such amount as prescribed by the N.C.C. Commission.

The provisions of paragraph one shall apply mutatis mutandis to the acceptance of property or any other benefit by the person who has ceased to be a State official for less than two years.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with an official of Office of the National Counter Corruption Commission Sept. 7, 2007

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms.Kratib, a political news journalist, The Post Today Newspaper, Sept. 13, 2007

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The NCCC audits the disclosed assets though the quality of the audits is not known.

References:

Citizens can access the asset disclosure records of the heads of state and government through the Internet:

1. <http://www.nccc.thaigov.net/nccc/1.php> ->
<http://www.nccc.go.th/asset/shownewgov/main.html>

2. <http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9490000148176>
(December 1, 2006) -> Only Member.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

100

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

Only the records of the head of government (the prime minister); not those of the King.

References:

Article II, Section 35 of Organic Act on Counter Corruption 1999 states that:

When the account showing the particulars of assets and liabilities and its supporting documents under section 33 have been received, the President or the member as entrusted by the President shall affix his or her signature on every page of the account.

The account and supporting documents under paragraph one submitted by the Prime Minister and Ministers shall be disclosed to the public without delay but not later than thirty days as from the date of the expiration of the time-limit prescribed for the submission of such account. The account of the persons holding other positions shall not be disclosed to any person unless the

disclosure will be useful for the trial and adjudication of cases or for the making of a determination and is requested by the courts or the State Audit Commission.

The President shall convene a meeting of the N.C.C. Commission to inspect the accuracy and the actual existence of assets and liabilities without delay.

Chapter X, Section 293 of Constitution of The Kingdom of Thailand 1997 states that:

When the account showing the particulars of assets and liabilities and its supporting documents has been received, the President of the National Counter Corruption Commission or the member of the National Counter Corruption Commission as entrusted by the President shall affix his or her signature on every page of the account.

The account and supporting documents under paragraph one submitted by the Prime Minister and Ministers shall be disclosed to public without delay but not later than thirty days as from the date of the expiration of the time limit for the submission of such account. The account of the persons holding other positions shall not be disclosed to any person unless the disclosure will be useful for the trial and adjudication of cases or for the making of a decision and is requested by the courts or the State Audit Commission.

The President of the National Counter Corruption Commission shall convene a meeting of the Commission to inspect the accuracy and the actual existence of assets and liabilities without delay.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Citizens can access the asset disclosure records of the heads of state and government through the Internet:

1. <http://www.nccc.thaigov.net/nccc/1.php> ->
<http://www.nccc.go.th/asset/shownewgov/main.html>

2. <http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9490000148176>
(December 1, 2006) -> Only Member.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Citizens can access the asset disclosure records of the heads of state and government through the following Web sites (free of charge):

1. <http://www.nccc.thaigov.net/nccc/1.php> ->
<http://www.nccc.go.th/asset/shownewgov/main.html>

2. <http://www.manager.co.th/Politics/ViewNews.aspx?NewsID=9490000148176>
(December 6, 2006) -> Only Member.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms..Kratib, a political journalist from The Post Today Newspaper, .Sept. 13, 2007

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

100

29a. In law, the judiciary can review laws passed by the legislature.

YES

NO

References:

Constitution of Thailand 1997, Section 262 states that:

After any bill or organic law bill has been approved by the National Assembly under section 93 or has been reaffirmed by the National Assembly under section 94, before the Prime Minister presents it to the King for signature:

(1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of the said bill are contrary to or inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;

(2) if not less than twenty members of the House of Representatives, senators or members of both Houses are of the opinion that the provisions of the said organic law bill are contrary to or inconsistent with this Constitution or such organic law bill is enacted contrary to this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;

(3) if the Prime Minister is of the opinion that the provisions of the said bill or organic law bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution, the Prime Minister shall refer such opinion to the Constitutional Court for decision and, without delay, inform the President of the House of Representatives and the President of the Senate thereof.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

At present, the constitution court is reviewing whether certain laws are against the Constitution of Thailand or not.

References:

www.ratchakitcha.soc.go.th

www.concourt.or.th

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

Constitution of Thailand 1997, Section 157 states that:

At a sitting of the House of Representatives or the Senate or at a joint sitting of the National Assembly, words expressed in giving statements of fact or opinions or in casting the vote by any member are absolutely privileged. No charge or action in any manner whatsoever shall be brought against such member. The privilege under paragraph one does not extend to a member who expresses words at a sitting which is broadcast through radio or television if such words appear out of the precinct of the National Assembly and the expression of such words constitutes a criminal offence or a wrongful act against any other person, who is not a Minister or member of that House.

In the case of paragraph two, if the words expressed by the member cause damage to other person who is not a Minister or member of that House, the President of that House shall cause explanations to be published as requested by that person in accordance with procedure and within such period of time as prescribed in the rules of the procedure of that House, without prejudice to the person's right to bring the case before the Court.

*** Section 158. The privilege provided in section 157 extends to printers and publishers of the minutes of sittings in accordance with the rules of procedure of the House of Representatives, the Senate or the National Assembly, as the case may be, and to persons permitted by the presiding member to give statements of fact or opinions at such sitting as well as to persons who broadcasts the sitting through radio or television with the permission of the President of such House *mutatis mutandis*.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

54

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES

NO

References:

Constitution of Thailand 1997, Section 291 states that:

Persons holding the following political positions shall submit an account showing particulars of assets and liabilities of themselves, their spouses and children who have not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking or vacating office:

- (1) Prime Minister;
- (2) Ministers;
- (3) members of the House of Representatives;
- (4) senators;
- (5) other political officials;
- (6) local administrators and members of a local assembly as provided by law.

The account under paragraph one shall be submitted together with the supporting documents evidencing the actual existence of such assets and liabilities as well as a copy of the personal income tax return of the previous fiscal year. The declarer shall certify the accuracy of the account and copies of the submitted documents by affixing his or her signature on every page thereof.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

Constitution of Thailand 1997, Section 110 states that:

A member of the House of Representatives shall not:

(1) hold any position or have any duty in any State agency or State enterprise, or hold a position of member of a local assembly, local administrator or local government official except other political official other than Minister;

(2) receive any concession from the State, a State agency or State enterprise, or become a party to a contract of the nature of economic monopoly with the State, a State agency or State enterprise, or a become partner or shareholder in a partnership or company receiving such concession or becoming a party to the contract of that nature;

(3) receive any special money or benefit from any State agency or State enterprise apart from that given by the State agency or State enterprise to other persons in the ordinary course of business.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

According to Notification of the N.C.C. Commission Concerning the provisions of the acceptance of property or any other benefit on ethical basis by State officials 2000, section 4 refers that any State officials shall not receive property or any other benefit from any person other than legitimate property or benefit derived under the law, rules or regulations issued by virtue of the provision of law, with the exception of the acceptance of the property or any other benefit on the ethical basis in accordance with this Notification.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

Organic Act On Counter Corruption 1999, Section 32 states that:

Persons holding political positions shall, on each occasion of taking or vacating office, submit to the N.C.C. Commission an account showing particulars of their assets and liabilities and those of their spouses and children who have not yet become sui juris as they actually exist on the date of the submission, in accordance with the form prescribed by the N.C.C. Commission. The assets and liabilities which are subject to the declaration requirement shall include assets and liabilities in foreign countries and those which are not in possession of the declarers, their spouses and children who have not become sui juris. In the case where any person holding a political position under paragraph one hold more than one political position, such person shall submit separate accounts showing particulars of assets and liabilities for every position in accordance with the time prescribed for the submission of the account in respect of such position.

Section 4 in this Organic Act states:

Person holding a political position means: (1

- (1) Prime Minister;
- (2) Minister;
- (3) member of the House of Representatives;
- (4) senator;
- (5) political official other than (1) and (2) under the law on political officials;
- (6) political parliamentary official under the law on parliamentary officials;
- (7) Governor of Bangkok Metropolitan, Deputy Governor of Bangkok Metropolitan and member of the Bangkok Metropolitan Assembly;
- (8) executive member and member of a Nakhon Municipality 1 Council;
- (9) local administrator or member of a local assembly of a local government organisation the income or budget of which is not lower than that prescribed in the Government Gazette by the National Counter Corruption Commission.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulations restricting post-government private sector employment for national legislators.”

References:

Interview with Ms.Nattha Pimkawe, a government official of the Secretariat of the House of Representatives on Sept. 18, 2007

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | **25** | 0

References:

Telephone interview with government official of the Office of the National Counter Corruption Commission, Sept. 7, 2007

Telephone interview with academics of the Office of the National Counter Corruption Commission, Sept. 7, 2007

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | **50** | 25 | 0

References:

1. Interview with Ms. Nattha Pimkawe, a government official of the Secretariat of the House of Representatives on Sept. 18, 2007

2. www.senate.go.th

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES

NO

References:

Constitution of Thailand 1997, Section 293 states that:

When the account showing the particulars of assets and liabilities and its supporting documents have been received, the President of the National Counter Corruption Commission or the member of the National Counter Corruption Commission as entrusted by the President shall affix his or her signature on every page of the account.

The account and supporting documents under paragraph one submitted by the Prime Minister and Ministers shall be disclosed to public without delay but not later than thirty days as from the date of the expiration of the time limit for the submission of such account. The account of the persons holding other positions shall not be disclosed to any person unless the disclosure will be useful for the trial and adjudication of cases or for the making of a decision and is requested by the courts or the State Audit Commission.

The President of the National Counter Corruption Commission shall convene a meeting of the Commission to inspect the accuracy and the actual existence of assets and liabilities without delay.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100

75

50

25

0

Comments:

Actually, the law permits disclosing asset records only of the Prime Minister and Ministers.

References:

Interview with Ms. Nattha Pimkawe, the government official of the Secretariat of the House of Representatives, Sept. 18, 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Actually, the law permits disclosing asset records only of the Prime Minister and Ministers.

References:

Interview with Ms. Nattha Pimkawe, a government official of the Secretariat of the House Representatives on Sept. 18, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

83

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Constitution of Thailand 1997, Section 156 states that:

A resolution on any issue shall be made by a majority of votes, unless it is otherwise provided in this Constitution.

In casting a vote, each member has one vote. In case of an equality of votes, the presiding member shall have an additional vote as a casting vote.

The President of the National Assembly, the President of the House of Representatives and the President of the Senate shall cause the voting of each member to be recorded and disclose such record in a place where the public entry for its inspection is possible, except for the case of the voting by secret ballot.

The casting of votes to elect or give approval to a person for holding office shall be secret, unless otherwise provided in this Constitution, and members shall have autonomy and shall not be bound by resolutions of their political parties or any other mandate.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can access records of legislative processes and documents within 20 minutes.

Citizens can access records of legislative processes and documents through:

1. http://www.parliament.go.th/parcy/sapa_db/e_service/gennews_index.php

2. At the Office of the Official Information Commission, the Secretariat of the House Representatives, Pradipat Rd., Samsennai, Phayathai, BKK

3. Telephone: (662) 244 1565, (662) 244 1726 and Fax: (662) 224 15565

Parliamentary sessions are published and sometimes televised. Information about parliamentary sub-committees and personnel matters are more difficult to access.

References:

Interview with a government official of the Office of the Official Information Commission, the Secretariat of the House Representatives, Sept. 18, 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The duplicated documents are 1 baht (US\$0.03) per page and 5 baht (US\$0.15) per page in case of recognized documents.

References:

Telephone Interview with a government official of the Official Information Commission, the Secretariat of the House Representatives, Sept. 18, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

59
III-3. Judicial Accountability

33. Are judges appointed fairly?

100

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

The Judiciary Act of B.E. 2000, section 14 and Regulations on the Screening Test for Judges
<http://www.ratchakitcha.soc.go.th/DATA/PDF/2548/00175241.PDF>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

References:

Judges Act of B.E. 2000, section 26 – 28
<http://www.ratchakitcha.soc.go.th/DATA/PDF/00019047.PDF>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

References:

Judges Act of B.E. 2000, section 14, 16, 36 and 47 http://www.ratchakitcha.soc.go.th/RKJ/announce/search_result.jsp?SID=1B9A7E10DD63CA6A17BFF8C961645BB4

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

92

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES

NO

References:

The Constitution of the Kingdom of Thailand of 1997, chapter 4 section 311 states that:

An adjudication of a case shall be made by a majority of votes; provided that every judge constituting the quorum shall prepare his or her written opinion and make oral statements to the meeting prior to the passing of a resolution.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100

75

50

25

0

References:

Constitution Court judges and Administrative Court judges are required to write their own reasons for their verdicts. These documents must be published in the Royal Government Gazette.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES

NO

Comments:

The name is The Office of The Judiciary Commission.”

References:

Judges Act of B.E. 2543, chapter 3 section 36 and 47

http://www.judiciary.go.th/ojc/duty_kt.htm

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES

NO

References:

Judges Act of B.E. 2543, section 39 and 59

<http://www.ratchakitcha.soc.go.th/DATA/PDF/2548/00175241.PDF>

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Yes. Although the appellant does not have to give his name, the Committee of the Judiciary can investigate the judiciary if they have evidence. The Committee of the Judiciary has authority to make appeals and complaints.

References:

Interviews with officials from the Disciplinary Unit in The Committee of The Judiciary on Oct. 15, 2007

http://www.parliament.go.th/news/news_detail.php?prid=14309

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

First source: Yes. The officer stated that they must impose penalties on offenders according to the law.

Second source: The Committee of The Judiciary must appoint a sub-committee that has the authority to select, to suggest, to promote and to punish.

References:

Yes. Interviews with officials from the Disciplinary Unit in The Committee of The Judiciary on October 15, 2007

Act of Parliament on Order of Judiciary, B.E. 2543, section 47

www.ratchakitcha.soc.go.th/DATA/PDF/2548/00175241.PDF

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

57

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES

NO

References:

Organic Act on Counter Corruption of B.E. 2542 (1999), section 4 and 39

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES

NO

References:

According to Notification of the N.C.C. Commission Concerning the provisions of the acceptance of property or any other benefit on ethical basis by State officials 2000, section 4 states that any State official shall not receive property or any other benefit from any person other than legitimate property or benefit derived under the law, rules or regulations issued by virtue of the provision of law, with the exception of the acceptance of the property or any other benefit on the ethical basis in accordance with this Notification.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

1. Organic Act on Counter Corruption, B.E. 2542 (1999), section 4 and 39

2. The Auditor General Act of B.E. 2542, section 4 and 15

<http://www.local.moi.go.th/law8.htm>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

The first source stated that the law is not specific about judges entering the private sector after leaving the government.

The second source is specific that judges must not be on committees, or become a manager or adviser in private partnership.

References:

Interview with official of the academic administration in The Committee of The Judiciary

Judges Act of B.E. 2543, section 59

<http://www.ratchakitcha.soc.go.th/DATA/PDF/2548/00175241.PDF>

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

The source states that the law is not specific nor does it prohibit the judiciary from entering the private sector after leaving the government. A judge can work with the private sector when he or she leaves the government. Furthermore, there is no law to hinder them.

References:

Interview with the academic administration in The Committee of The Judiciary

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Mr. Sarawut Benjaku, Deputy Secretary General of Court of Justice, was informed that Mr. Panya Thanomrod, Head of The Supreme Court, set up the investigative committee to prove the corruption case brought against the judge who judged the action regarding the dissolved political party.

References:

The Nation News, They Informed That Although There Are Regulations, We Cannot Solve This Problem, June 9, 2007
<http://www.oknation.net/blog/print.php?id=57316>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | **50** | 25 | 0

Comments:

The first source states that not every level of judiciary assets must be disclosed. The three levels of the judiciary who must disclose are the president of the Supreme Court, the deputy of the Supreme Court and the judiciary in Supreme Court.

The second source is not specific regarding whether every level of judiciary asset disclosures is audited.

References:

Interview with officer in the office of asset auditor 1. Tel. 02-2070763-70

The Organic Act on Counter Corruption, B.E. 2542

http://www.parliament.go.th/news/news_detail.php?prid=72612

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

Judges must disclose their assets to the Office of The National Counter Corruption Commission (NCCC). But the NCCC shall not reveal this information to any person.

References:

Constitution of the Kingdom of Thailand B.E. 2540, section 293 and 303

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

No, the Constitution of 1997 did not specific that citizens can access judicial asset disclosure records.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The 1997 Constitution did not specific that citizens can access asset disclosure records of judges.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

50

37a. In law, the legislature can amend the budget.

YES

NO

Comments:

The legislature has a limited power to amend the budget.

References:

Thai constitution 1997, Section 180 paragraph 5 states that:

In the consideration of the annual appropriations bill, the supplementary appropriations bill and the transfer of appropriations bill, a member of the House of Representatives shall not submit a motion adding any item or amount to the bill, but may submit a motion reducing or abridging the expenditures which are not expenditures according to any of the following obligations:

- (1) money for payment of the principal of a loan;
- (2) interest on a loan;
- (3) money payable in accordance with the law.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

From Bangkokbiznews June 20, 2006, Acting Deputy Finance Minister Explained That the National Annual Budget of 2006 Must Be Approved by the Legislature

http://www.bangkokbiznews.com/2006/05/20/w001_105486.php?news_id=105486

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with an official from the Government Information Center, Secretariat Office of the House of Representatives

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Source states that Dr. Wijit Srisaarn, the Minister of Education, directed his subordinates to prepare themselves to defend the proposed national budget of the ministry.

References:

From daily newspaper, Dec 5, 2006

http://news.sanook.com/education/education_61082.php

<http://klang.cgd.go.th/plk/newcqd/sep50/6.9.50.pdf>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

There is no formal channel for citizens to participate in the budgeting process. Budget-making is a top-down process, dominated by bureaucrats and politicians.

References:

Telephone interview with an official from the Government Information Center, Secretariat Office of the House of Representatives

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

An official from the Government Information Center, Secretariat Office of the House of Representatives

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

There is a committee appointed by the National Legislative Council that monitors the use of budget money by ministries and state enterprises.

There is a committee called Committee on Following Up the Budget Administration, Resolutions of the Assembly and Checking the Minutes of the Sitzings.

References:

Interview with an official from the Secretariat Office of the House Representatives, Oct. 30, 2007

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

13

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Each agency submits an annual report to the Bureau of the Budget. This committee can inspect the reports through the GFMIS system.

References:

Interview with an official from the Secretariat Office of the House Representatives, Oct. 30, 2007

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

The committee is appointed by the National Security Council (under martial law).

References:

http://www.senate.go.th/nla2/committee/index.php?committee_id=45

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The committee members are appointed by the military (the National Security Council). The military appoints members of the National Legislative Council.

References:

Telephone interview with Ms.Kratib, a Thai Post journalist on Nov. 1, 2007

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The committee can only make suggestions for improvement. The Office of the Auditor-General of Thailand has the power to investigate the irregularities that are found.

References:

Interview with an official from the Secretariat Office of the House Representatives on Oct. 30, 2007

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ⁶⁴Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES

| NO

Comments:

Although there is a law that requires impartiality, the Civil Service Board is chaired by the Prime Minister.

References:

The Civil Service Act of 1992, section 94 and section 97

<http://www.ocsc.go.th/ocsccmsen/View1/view.jsp?categoryID=CAT0000037>

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

In practice, nepotism and patronage are widespread.

References:

The Civil Service Act of 1992, Chapter 2, Instatement and Appointment (Section 46-70)

<http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

There is also an internal redress mechanism which in practice may vary in terms of independence.

References:

The Administrative Court of Thailand, Act on Establishment of Administrative Courts and Administrative Court Procedure of 1999

http://www.admincourt.go.th/amc_eng/02-LAW/laws/Act-01-04-47.pdf

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

The Civil Service Act of 1992, Section 30

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

53

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, political bosses have substantial power over the subordinate bureaucrats. Transfers and promotions of civil servants can be dictated by politicians.

References:

1. Nation Integrity System (NIS), Thailand 2006, Transparency International, www.transparency.org
2. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007
3. MSN interview by authors with Noppadol Themmatha, police officer at Bang-Yeekan police station, Aug. 21, 2007

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Police and armed forces are highly political. Appointments are based on partisanship and patronage. Politics manifests itself more in the appointments of administrative posts rather than professional positions.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007
2. http://www.bangkokbiznews.com/2006/09/02/news_21491579.php?news_id=21491579 and http://www.bangkokbiznews.com/2006/09/20/u001_138658.php?news_id=138658.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

Nepotism, cronyism and patronage are characteristics of the Thai Bureaucracy.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007
2. Bidhya Bowornwathana, "The Thai Model of Rewards for High Public Office," in Daniel H. Unger and Clark D. Neher, *Bureaucracy and National Security in Southeast Asia*, Department of Political Science, Northern Illinois University, 2006, 33-56.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

The last clause on all job descriptions of civil servants states that the subordinate bureaucrat must follow the commands of superiors.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | **25** | 0

Comments:

There is a large and growing gap between the bonuses of high bureaucrats and the rest.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

2. Unofficial interview with Bidhya Bowornwatthana, associate professor, Chulalongkorn University, Sept. 14, 2007

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Qualifications on posted jobs sometimes match the ones superior bureaucrats want to recruit.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007
2. Jiraporn Damjuntr, instructor, Suratthani Rajabhat University, Aug. 31, 2007, Chulalongkorn University

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

The most effective independent redress mechanism for the civil service is the Administrative Court. But you cannot redress matters beyond the jurisdiction of this court.

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

2. Jiraporn Damjuntr, instructor, Surattani Rajabhat University, Aug. 31, 2007, Chulalongkorn University

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

it is true that convictions are rare involving a long legal process. However, once convicted, there are prohibited from future government employment.

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

54

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES

NO

References:

Organic Act on Counter Corruption, B.E. 2542 (1999), Section 100 for PM and Deputy PMs.

The Civil Service Act of 1992, Section 82 prohibits officials from abusing their authorities.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES

NO

Comments:

In practice, there is widespread violation of this regulation.

References:

Organic Act on Counter Corruption, B.E. 2542 (1999), Section 10:

Prohibits officials who left office within 2 years from holding more than 5 percent of ownership of a company, and also from accepting jobs in the private sector.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

In practice, enforcement is impossible.

References:

According to Organic Act on Counter Corruption of 1999, Section 103 authorizing National Counter Corruption Commission (NCCC)

NCCC announcement of Regulation of Honorably Earning Benefits of Officials, B.E. 2543 (2000) and The Civil Service Act of 1992, Section 82

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is not a common practice for officials to refrain from being involved in decisions in which they are a stakeholder.

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

References:

Organic Act on Counter Corruption of 1999, Section 35, stipulates that the National Counter Corruption Commission must investigate and disclose accounting records and relevant documents belonging to the PM and Cabinet members. The records of other senior civil servants cannot be formally disclosed without a court order.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Information can be accessed through the NCCC website. PM and Cabinet members' asset records are available online at the NCCC Web site at <http://nccc.thaigov.net/>. A Court Order is required to disclose the assets records of senior civil servants.

References:

1. National Integrity System (NIS), Transparency International, Thailand 2006, www.transparency.org
2. Chairat Khanittabutr, Senior Legal Officer of NCCC, interview by authors, Oct. 18, 2006 (in Thai)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no fee charged for the information. PM and Cabinet members' asset records are available online for free on NCCC website, <http://nccc.thaigov.net/>.

References:

1. National Integrity System (NIS), Transparency International, Thailand 2006, www.transparency.org
2. Chairat Khanittabutr, Senior Legal Officer of NCCC, interview by authors, 18 Oct, 2006 (in Thai)
3. Authors access on NCCC website

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

44

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES

NO

Comments:

However, there is no specific law or regulation about civil servants who report cases of corruption as whistle-blowers.

References:

The Witness Protection in Criminal Case Act of 2003

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

Witness protection by the police must be requested.

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 2007

2. Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

However, whistle-blowers can informally hire police for protection per the Witness Protection in Criminal Case Act 2003 only in criminal cases.

References:

No law.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | **25** | 0

Comments:

Private sector employee can hire police for protection.

References:

1. Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

Cabinet Resolution of December 26, 2004, Thai Clean Public Service Affairs Project

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Sources states In the annual budget.

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The process takes approximately 90 to 125 days.

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 5, 2007

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 5, 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

69
IV-3. Procurement

48. Is the public procurement process effective?

45

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Organic Act on Counter Corruption of 1999, Section 100 gives power to the NCCC to determine which positions should avoid conflicts of interest. The NCCC has identified only two of these positions: the Prime Minister and cabinet members.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

1. Telephone interview with Sune Kasisareewong, academic official of Rice Department, Ministry of Agriculture and Cooperatives, Aug. 24, 2007

2. Chonticha Narabua, financial official, Chulalongkorn University, Aug. 5, 2007, Bangkok

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

1. Telephone interview with an official in the Office of Administrative Court, Sept. 5, 2007

2. <http://www.bangkokbiznews.com/2005/special/ctx/news.php?news=140205.html>: accessed Sept. 1, 2006

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

Chonticha Narabua, financial official, Chulalongkorn University, Aug. 5, 2007, Bangkok

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

The Office of Prime Minister's Regulation on Parceling of 1992 states that a project which costs more than 1 billion baht (US\$33,000,000) has to submit to competitive bidding.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

Sole sourcing is common practice and it is allowed by law. But, in law, there are strict formal requirements limiting the extent of sole sourcing. In practice, however, loopholes are used to support sole sourcing.

References:

The Office of Prime Minister Regulation on Parceling of 1992, Nos. 51 and 97

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

Unsuccessful bidders can appeal to the Administrative Court for review.

References:

Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), Section 5 states that:

All rules, regulations or notifications issued by the general assembly of the judges of the Supreme Administrative Court or by the J.C.A.C. or by the J.C.A.C. with the approval of the general assembly of the judges of the Supreme Administrative Court shall

come into force upon their publication in the Government Gazette and at http://www.gprocurement.go.th/04_law/rb_ruleperform21.html

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES

NO

Comments:

However, the parties can create nominee companies” This refers to parties who use other persons to act as owners of companies, while, in actual fact, the companies belong to them.

References:

The Office of Prime Minister Regulation on Parceling of 1992, No. 15 and 148 state that the guilty companies will be prohibited from participating in future procurement bids.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100

75

50

25

0

Comments:

However, the parties can create nominee companies” This refers to parties who use other persons to act as owners of companies, while, in actual fact, the companies belong to them.

References:

Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

75

49a. In law, citizens can access public procurement regulations.

YES

NO

References:

The Official Information Act of 1997 and the Office of Prime Minister Regulations on procurement of 1992.

<http://www.gprocurement.go.th/>

<http://www.oic.thaigov.go.th/ginfo/>

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES

NO

References:

According to the Official Information Act of 1997.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can buy copies of the regulations from an official. and access them at <http://www.oic.thaigov.go.th/ginfo/>.

References:

Telephone interview with Suporn Depan, analyst, real estate team, the Bank of Thailand, Sept. 4, 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The regulations cost 1,000 baht (US\$30)

References:

Telephone interview with Suporn Depan, analyst, real estate team, the Bank of Thailand, Sept. 4, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Most procurement advertisements are not widely publicized.

References:

Telephone interview with Suporn Depan, Analyst-real estate team, the Bank of Thailand, Sept. 4, 2007

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

http://www.gprocurement.go.th/01_procure/index_4.php

Telephone interview with Suporn Depan, analyst, real estate team, the Bank of Thailand, Sept. 4, 2007

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

75

50a. In law, all businesses are eligible to compete for privatized state assets.

YES

NO

References:

Ministry of Finance Regulation on Trade and Buy in Assets of Public Organization of 1992, No. 8 stipulates that trading of privatized government assets must take place at the Stock Exchange Market.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES

NO

References:

The State Enterprise Asset Policy Commission Regulation on Public Hearing of 2000, No.4 states that committee members appointed to manage the privatization process must not be stakeholders.

<http://www.kodmhai.com/Kfp/New/N1.html#t2> (in Thai)

http://www.sepo.go.th/main/WEB_Law.php (in Thai)

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Privatization of PTT during the Taksin Government was based on patronage that benefited several government politicians close to the PM.

References:

Telephone interview with Suporn Depan, analyst, real estate team, the Bank of Thailand, Sept. 4, 2007

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

75

51a. In law, citizens can access privatization regulations.

YES | NO

References:

The State Enterprises Assets Act of 1999, Section 19 states that privatization information must be disclosed to the public.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

Advertisement regarding privatization is done when there is a need to attract capital. However, when stocks of good state enterprises are sold, there is little advertisement.

References:

Telephone interview with Suporn Depan, analyst, real estate team, the Bank of Thailand, Sept. 4, 2007

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

An Announcement of the Stock Exchange of Thailand states that companies that are limited and public companies must announce the results of privatization.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

General privatization regulations and information are accessible through the internet within a reasonable time. However, the cost

of obtaining the privatization regulations (travelling, buying forms..) is a financial burden for the majority poor. In addition, obtaining project-specific information related to particular privatizations requires the filing of a freedom of information requests, which adds time and cost to the process.

References:

Telephone interview with official, Securities and Exchange Commission Call Center 02-229-2222, Securities and Exchange Commission, Sept. 5, 2007

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

While generalized privatization regulations are available online, obtaining details related to individual privatizations requires the filing of a freedom of information request. In practice, this is difficult for citizens and adds time and cost.

References:

<http://www.sepo.go.th/>

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-1. National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

The Office of the Ombudsman was created by the Constitution.

References:

Constitution of Thailand 1997, Section 197

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

55

53a. In law, the ombudsman is protected from political interference.

YES

NO

Comments:

The ombudsman is created as an independent body.

References:

Ombudsman Act 1999, Section 11

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

There have been no indications of political interference.

References:

Interview, official, Human Resource Unit, the Ombudsman of Thailand, Oct. 24, 2007

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

None of the ombudsmen have been removed from office so far.

References:

Interview, official, Human Resource Unit, The Ombudsman of Thailand, Oct, 24, 2007

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Under the Constitution of 1997, the number of staff was sufficient. But under the new Constitution of 2007 the number of officials are insufficient for the expanded task.

References:

Interview with official, Human Resource Unit, The Ombudsman of Thailand, Oct, 24, 2007

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It is hard to say whether the present ombudsmen do not have informal political affiliations because they were chosen by the elected Senate, which was accused of being pro-Thaksin government.

References:

Parliamentary Act of 1999, chapter 1, section 5-8

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the ombudsmen receive funding from the annual budget.

References:

<http://www.bb.go.th/FILEROOM/CABBBIWEBFORM/DRAWER29/GENERAL/DATA0000/00000029.PDF>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

Citizens can access to reports through the Internet.

The publicized information covers:

1. statistics of complaint handling
2. monthly reports
3. annual reports

http://www.ombudsman.go.th/annual_main.asp

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

According to the Constitution 1997, the Ombudsman cannot initiate investigations. However, the Constitution 2007 allows it to.

Interview with official, Human Resource Unit , the Ombudsman of Thailand, Oct., 24 2007

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman is called a paper tiger" by a report from the parliamentary news. The Ombudsman can only report its findings to Parliament. The cabinet has authority to decide whether to take action and punish the accused official.

References:

http://www.parliament.go.th/news/news_detail.php?prid=16515

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The government will process the case to respective agencies. However, only minor actions are taken.

References:

<http://www.ombudsman.go.th/DataFile/annual%20th%202547.pdf>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are delays in processing cases. Only 1,907 cases were considered out of 14,762 cases. The ratio is about 1 to 9.

References:

http://www.ombudsman.go.th/annual_year.asp

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

67

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Constitution of Thailand 1997, Section 38 states that Information obtained in the enforcement of this legislation shall not be divulged except with the consent of the Ombudsmen or when it is necessary to further an investigation, fulfill official duties or reporting procedures, or enforce compliance with this legislation.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No, the information that is available is not up-to-date. They have an 2004 annual report. The citizens cannot review the latest cases.

References:

http://www.ombudsman.go.th/annual_year.asp
http://www.ombudsman.go.th/annual_year_view.asp?gyear=2007

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The citizen can access the agency report through http://www.ombudsman.go.th/annual_main.asp and get the photocopying in 1 baht (US\$0.03) per page. In addition, they can access information about the ombudsman in general news.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Parliamentary Act 1999, section 4 was promulgated in accordance with the Constitution of 1997. The name is The Office of The Auditor General of Thailand.”

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

66

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Parliamentary Act 1999, section 7 states that:

(1) the person nominated to be a member of the supreme audit institution must not be a member of parliament , a senator, a government political official and a member of local council.

According to Section 10, the committee must be independent and neutral.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

During the Thaksin Government, the auditor-general, Ms. Jaruwan, was temporarily removed from office on grounds that her nomination was invalid. However, it is common knowledge that the Thaksin Government interfered to stall the work of the auditor general who was known to be a straightforward person and ready to investigate the wrongdoings of the Thaksin government.

References:

Bangkok Post Newspaper

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | **25** | 0

Comments:

The Office of The Auditor General of Thailand consists of a committee auditor, auditor general and executives. In conclusion, they have 13 full-time civil servant staff members. But after the coup d'état of September 19, 2007, only the auditor general was left, and there was no longer a national audit commission.

References:

http://www.oag.go.th/AboutOAG/auditor_th.jsp

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the senate nominates ombudsmen. In the Constitution of 2007, the majority of senators are popularly elected. Thus, the political factor may play an important role.

References:

Parliamentary Act 1999, Chapter 1, Section 9 states that the auditor committee must not be (1) government officials that receive a salary; (2) an adviser or employee of a public enterprise or a government agency.

Section 11 states that the Auditor General must not be a former Auditor General; or be a member of parliament, senator, political bureaucracy, or a member of local parliament or an administrator.

<http://www.oag.go.th/AboutOAG/RuleOfLand2542.jsp>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the audit agency receives funding from the annual budget.

References:

Government Gazette, Jan. 9, B. E. 2550 section 26.

<http://www.ratchakitcha.soc.go.th/DATA/PDF/2550/A/003/1.PDF>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

The Office of The Auditor General of Thailand posted many reports on <http://www.oag.go.th/News/NewsServlet>. The latest report is an evaluation of the integration administrative system in the province, posted on Feb. 6, 2006. In conclusion they posted 42 reports on the Website. It's not up-to- date.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Yes. Even in small cases, such as the Aubotoe (Sub-District Administrative Organization) Khonoi, which was accused of corruption regarding the purchase of garbage disposals. Major cases involving ministers were also investigated.

References:

<http://www.oag.go.th/AboutOAG/history.jsp>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

Parliamentary Act 1999, section 15, 19 and 42

<http://www.local.moi.go.th/law8.htm>

telephone interview with an official from the state audit office (December 11, 2007). He refused to give his name.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

83

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

In Rules of Procedure of Auditor Committee Dealing with Information of Bureaucracy, B. E. 2002, Chapter 4, section 13, 15 and 16

www.internal-audit.chula.ac.th/link_t.htm

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The citizens can access audit reports according to the In Rules of Procedure of Auditor Committee Dealing with Information of Bureaucracy, B. E. 2002, Chapter 4, section 13, 15 and 16.

www.internal-audit.chula.ac.th/link_t.htm

References:

The agency report posted is rather up to date and citizens can gain access to data through <http://www.sao.go.th/internet/News/NewsServlet>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Yes, a citizen can also access the reports through <http://www.sao.go.th/internet/News/NewsServlet> and via fax and photocopy.

References:

<http://www.kodmhai.com/Rbk/New2/N82.html#t6>

Citizens can access audit reports by the rules of procedure of the audit committee dealing with information of the bureaucracy: B.E. 2002 Chapter 4, section 13, 15, 16, see http://www.internal-audit.chula.ac.th/link_t.htm

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

83 V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES

NO

References:

Ministry, Bureau and Department Act of 2002
Chapter 3, Ministry of Public Finance
section 11 (7)

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

100

59a. In practice, the tax collection agency has a professional, full-time staff.

100

75

50

25

0

Comments:

Cabinet Resolution of Wednesday January 3, 2007 appointed civil servant level 10: Mr. Sanit Rangnoi to be the Director-General of the Revenue Department. In conclusion, the Revenue Department has 1,219 Tax Economists and 3,177 Revenue Technical Officers.

References:

<http://www.rd.go.th/publish/8501.0.html>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the agency receives funding from the annual budget.

References:

Government Gazette, Jan. 9, B.E. 2007, section 7, term 6 (1)

<http://www.ratchakitcha.soc.go.th/DATA/PDF/2550/A/003/1.PDF>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

50

60. In practice, are tax laws enforced uniformly and without discrimination?

References:

The December 27, 2006 issue of Than SetThakit Newspaper reported that the Chair of the NCCC (Office of The National Counter Corruption Commission) charged five revenue officials of favoritism. One case is in regard to the collection of taxes from Thaksin's Shin Corporation.

<http://www.thannews.th.com/detailnews.php?id=T1421773&issue=2177>

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES

NO

References:

In the Ministry, Bureau and Department Act of 2002, Chapter 3, Ministry of Public Finance, section 11 (5)

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

88

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Customs Department has a professional full-time staff. The executive staff consists of the director-general and 4 deputies of the director-general. In addition, the Customs Department has many working units at import and export stations.

References:

<http://www.mof.go.th/mofleader/chaoval.htm>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the agency received funding from the annual budget.

References:

Government Gazette, Jan. 9, January, section 7, term 4 (1)
<http://www.ratchakitcha.soc.go.th/DATA/PDF/2550/A/003/1.PDF>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

Comments:

They have 155 cases under investigation.

References:

Bangkok Business News, The Ministry of Finance Try to Clear Corruption Allegations in the Custom Department, Jun. 22, 2006
http://www.bangkokbiznews.com/2006/05/22/e001_105835.php?news_id=105835

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

Ministry, Bureau and Department Act of B.E. 2545,

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

30

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

<http://www.ratchakitcha.soc.go.th/DATA/PDF/00118914.PDF>

State enterprises are under the supervision of the Prime Minister and cabinet members. The Prime Minister is the chair of the Committee that oversees state enterprise policies (see Office of the Prime Minister Order on Follow-up of the Development of State Enterprises B. E. 2548).

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The number of officials in the State Enterprise Policy Office is insufficient. There is a plan to increase the number of officials.

References:

Interview, Human Resource Unit, State Enterprise Policy Office, Oct. 24, 2007

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Yes, the agency received funding from the annual budget.

References:

Government Gazette, Jan. 9, B.E. 2550 section 7, term 7 (1)
<http://www.ratchakitcha.soc.go.th/DATA/PDF/2550/A/003/1.PDF>

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The official said that the authority to investigate belongs to the Office of The Auditor General of Thailand.

References:

Interview with an official, Legal Unit in the State Enterprise Policy Office

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The official stated that the authority to impose penalties on offenders belongs to police officers and the Office of The Auditor General of Thailand.

References:

Interview with official, Legal Unit in the State Enterprise Policy Office

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

85

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

In an Order of the Office of The Under-Secretary of the Ministry of Finance Dealing with Information for Citizen, B.E. 2542, chapter 2, section 12 and chapter 3, section 14.
www.mof.go.th/public/menu1.htm

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

Yes, and citizens can access these records through the Web site. The last financial record is dated Dec. 31, 2006. It's rather up-to-date.

References:

http://dwfoc.mof.go.th/foc_eng/menu5.htm

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The official stated that the financial records of state-owned companies are audited according to international accounting standards practiced by the Office of The Auditor General of Thailand.

References:

Interview, the Legal Unit in the State Enterprise Policy Office.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Yes, citizens can access the information through the Web site. The latest financial record is dated Dec. 3, 2006 . It's rather up to date.

References:

http://dwfoc.mof.go.th/foc_eng/menu5.htm.

They have 5 financial titles:

1. The Top 10 Highest Profit
2. The Top 10 Highest Loss
3. The Top 10 Highest Revenue
4. The Top 10 Highest Assets
5. The Top 10 Highest Liabilities

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Yes, citizens can access this information through the Web site. The latest financial record is Dec. 31, 2006 .

References:

http://dwfoc.mof.go.th/foc_eng/menu5.htm

Order of the Office of the Permanent Secretary of the Ministry of Finance B.E. 2542 ,chapter 4, term 17

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

72 V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

88

67a. In law, anyone may apply for a business license.

YES

NO

References:

Business License Act of 1946, chapter 1, section 5 (4) and chapter 2, section 8

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

A citizen can petition to the director or the chief of office that they want to apply for a business license. The official must explain the reasons for denying a license.

References:

Telephone interview with official from the Business Consulting Center, 0-2547-5995-6

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens who apply for a business license through the Internet will receive it in 1-2 days (official time). The IFC's (World Bank) Doing Business survey ranks Thailand 12th in the world when it comes to dealing with licenses.

References:

Telephone interview with official from the Business License Center, Department of Business Development, 0-2547-5155-4

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

Comments:

The minimum fee for the limited partnership license is 1,000 baht (US\$30). For a limited company the fee is 5,000 baht (\$US150). A citizen can request the license at many business office centers.

References:

<http://www.dbd.go.th/thai/onlinepayment.phtml>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Public Health Act of 1992, section 4

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Factory Act of 1992, section 32

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

Labour Protection Act of 1998, section 8, 100-103 and 107

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The article reports that 45 factories in Mabthabudh were noted as primary sources of pollution. A group of citizens in eastern Thailand decided to charge Mr. Kosit Panpiemratt, chairman of the Committee of National Environment, for failing to exercise the functions referred to in the Act of Parliament to Support and Protect the Environment 1992, section 59.

References:

Article, Than Set Thakit News, Aug. 16, 2007

Act of Parliament to Support and Protect Environment 1992, section 59

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The article reports that 45 factories in Mabthabudh were noted as primary sources of pollution. A group of citizens in eastern Thailand decided to charge Mr. Kosit Panpiemratt, chairman of the Committee of National Environment, for failing to exercise the functions referred to in the Act of Parliament to Support and Protect the Environment 1992, section 59.

References:

Article, Than Set Thakit News, Aug. 16, 2007

Act of Parliament to Support and Protect Environment 1992, section 59

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The article reports on a small fireworks factory in Ayudhaya province that experienced a series of explosions but was allowed to continue to conduct its business.

References:

Article, The Hazard Material Management, Associate Professor Suchata Chinajit and Associate Professor Dr. Warapan Danautra www.chemtrack.org/News-Detail.asp?TID=3&ID=3

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁸Anti-Corruption Law

70. Is there legislation criminalizing corruption?

89

70a. In law, attempted corruption is illegal.

YES | NO

Comments:

The act covers only the implementing officials, not the policy-makers at high levels.

References:

The Act of Penal Code, B.E. 2502, Section 150

Office of the Council of State

<http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES

NO

References:

The Act of Penal Code B.E. 2499, Section 139

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES

NO

References:

The Act of Penal Code, B.E. 2499, Section 144, Office of the Council of State <http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES

NO

References:

The Act of Penal Code , Section 143 and 149, Office of the Council of State <http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES

NO

Comments:

Thailand has signed but not yet ratified the UN Convention Against Corruption (which would theoretically cover this issue once Thailand's domestic laws were brought into line with the Convention's requirements). Thailand is in the process of revising its laws along the lines of the Convention. The revised laws will have to be passed by the new Parliament.

References:

Information based on an interview with a policeman.and NCCC official.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES

NO

References:

The Act of Penal Code, B.E. 2502, Section 147, Office of the Council of State <http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES

NO

References:

The Act of Penal Code, B.E. 2499, Section 152 and 164, Office of the Council of State
<http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES

NO

References:

1. Anti-Money Laundering Act of B.E. 2542
2. Anti-Money Laundering Office (AMLO), [http://www.amlo.go.th/amlo_new/template.php?lang=TH&id=60&nvar_l3=true].

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES

NO

References:

The Act of Penal Code B.E. 2499, Section 135 Office of the Council of State
<http://www.krisdika.go.th/lawHeadPDF.jsp?formatFile=pdf&hID=0>

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES

NO

Comments:

There is one main anti-corruption agency, the National Counter Corruption Commission (NCCC). Another agency with a lesser role and less independent from politics is the Anti-Money Laundering Office (AMLO).

References:

Organic Act on Counter Corruption 1999
The Anti-Money Laundering Act 1999

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

50

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES

NO

Comments:

First source: The Anti-Money Laundering Office (AMLO) is not a politically independent agency, because the board is selected directly by the Prime Minister and his cabinet members.

Second source: Representatives of political parties make up 33.33 percent of all the National Counter Corruption Commission recruits.

References:

1. The Anti-Money Laundering Act 1999)
- 2.Organic Act on Counter Corruption 1999, Section 7

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The National Counter Corruption Commission, appointed by the Council for Democratic Reform, consists of enemies” of former PM Thaksin.

References:

http://www.cns.go.th/readnews_all.asp?cid=3

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The Council for Democratic Reform can always remove the NCCC members.

References:

Announcement by the Council for Democratic Reform, No. 19, dated Sept. 22, 2006, B.E. 2549

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Each National Counter Corruption Committee member is an expert in combating corruption but there are others as well who are experts but are not chosen.

References:

<http://www.nccc.thaigov.net/nccc/refee/subrefee.php>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Staff is full-time. Board members are part-time.

References:

http://www.cns.go.th/readnews_all.asp?cid=3

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

The National Annual Budget Act of B.E. 2550

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

First source: Reports of 2004 and 2006 are currently being processed. There is a delay in publishing annual reports. The one currently available is for the year 2005.

Second source: The Anti-Money Laundering Office (AMLO) reports go directly to the Prime Minister. The AMLO publishes its annual performance report on its Web site, but the 2006 report is not available.

References:

1. NCCC annual performance reports, <http://nccc.thaigov.net>. accessed Sept. 21, 2007
2. http://www.amlo.go.th/amlo_new/template.php?lang=TH&id=233&nvar_l23=true], accessed Sept. 21, 2007

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

1. <http://breakingnews.nationchannel.com/read.php?newsid=263831&lang=T>
2. <http://www.cns.go.th/>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

<http://www.cns.go.th/>

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

38

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

<http://www.nccc.thaigov.net/nccc/board/showquestion.php> accessed Aug. 21, 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

Citizens who file complaints are required to give their citizen's ID.

References:

<http://www.nccc.thaigov.net/nccc/advice.php/>, accessed Aug. 21, 2007.

http://www.amlo.go.th/amlo_new/web_complain.php/, accessed Aug. 21, 2007

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

63
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

50

74a. In law, there is a general right of appeal.

YES

NO

References:

http://www.thailaw.com/thailaw2_3.pdf

<http://www.kodmhai.com/m2/m2-5/thailaw2-5.html>

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Appeals are resolved in 10-15 years for criminal cases and 5-10 years for civil cases.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Most of expenses involve hiring an attorney. 20,000 baht (\$US600) is the lowest rate for filing an appeal.

References:

Telephone interview with Kirkrith Choapannanont, Law Consultant, Aug. 24, 2007

Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Judges have discretionary power to determine the sentence.

References:

Telephone interview with Kirkrith Choapannanont, Law Consultant, Aug. 24, 2007

Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

75

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

The principle of judicial decisions is to maintain the peace and harmony of the state.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

63

77a. In law, the independence of the judiciary is guaranteed.

YES

NO

References:

The Thai Provisional Constitution of 2006, Section 18

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100

75

50

25

0

Comments:

Personal relationships, such as those with old friends and relatives, matter a lot.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Thai Constitution 1997, according the Thai Provisional Constitution of 2006.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

Transfers of judges are an internal matter decided by the judges' personnel body.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

Telephone interview with Kirkriith Choapannanont, law consultant, Aug. 24, 2007

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Telephone interview with Kirkriith Choapannanont, law consultant, Aug. 24, 2007

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Kirkrith Choapannanont, Law consultant, Aug. 24, 2007

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

There are some provisions that are gender-biased. There are several things for which a married woman must ask permission from her husband such as filing a law suit in criminal cases.

Though several legal revisions were made such as specifying that it is not necessary for the wife to ask permission from the husband," the language used is still gender-biased.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

The Penal Code, Section 173

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

There is a system of volunteer judges.

References:

Telephone interview with Kirkrith Choapannanont, Law consultant, Aug. 24, 2007

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The major costs are hiring an attorney. The fees charged by an attorney varies from millions baht to free (in cases of free legal services provided by the court).

References:

Telephone interview with Naichon Tatong, attorney, Professional Alliance Legal Advisory Ltd., Aug. 27, 2007

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Especially in a civil case.

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 24, 2007

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Telephone interview with Kirkrith Choapannanont, law consultant, Aug. 26, 2007

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

33

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There are loopholes. Patronage is the key for promotion in the police department.

References:

Telephone interview with Wuthikai Jaturongsereekul, an investigator at Bang Plad Police station, Sept. 23, 2007

Telephone interview with Noppadol Themmatha, a police officer at Bang Yeekan Police station, Sept. 12, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The budget is not sufficient. Not only does the agency have a limited budget, but it also has to find the sponsors to fulfill its basic mandate. (This information given by a policeman).

References:

Telephone interview with Wuthikai Jaturongsereekul, an investigator at Bang Plad Police station, Sept. 23, 2007

Telephone interview with Noppadol Themmatha, a police officer at Bang Yeekan Police station, Sept. 12, 2007

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

A political executive has the power to appoint law enforcement officials.

References:

Telephone interview with Wuthikai Jaturongsereekul, an investigator at Bang Plad Police station, Sept. 23, 2007

Noppadol Themmatha, a police officer at Bang Yeekan Police station, Sept. 12, 2007

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

67

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES

NO

References:

The National Counter Corruption Commission of Thailand
The Administrative Court of Thailand
The Court of Justice

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100

75

50

25

0

Comments:

It varies from case to case. Cases that receive publicity will be dealt with more promptly than others. Cases involving powerful figures will also be given special attention by the law enforcement officials.

References:

Telephone interview with Wuthikai Jaturongsereekul, an investigator at Bang Plad Police station, Sept. 23 2007

Telephone interview with Noppadol Themmatha, a police officer at Bang Yeekan Police station, Sept. 12, 2007

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES

NO

References:

The Nation Counter Corruption Commission of Thailand.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100

75

50

25

0

Comments:

See Thailand's Procedural Penal Code.

References:

Telephone interview with Wuthikai Jaturongsereekul, an investigator at Bang Plad Police station, Sept. 23, 2007

Noppadol Themmatha, a police officer at Bang Yeekan Police station, Sept. 12, 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

The Procedural Penal Code, Section 157

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

An ordinary person will be reluctant to sue a law enforcement official.

References:

Telephone interview with Noppadol Themmatha, a police officer at Bang Yeekan Police station. Nov. 5 2007

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of

duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
