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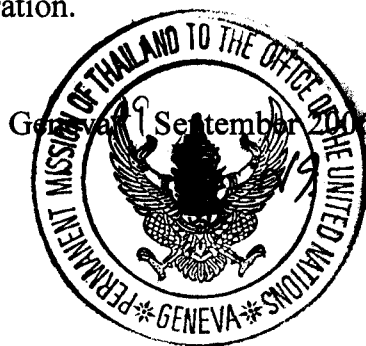
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PERMANENT MISSION OF THAILAND  
GENEVA

The Permanent Mission of Thailand to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (OHCHR) and, has the honour to refer to the former's Note No. 52101/745 of 28 July 2006, requesting the Human Rights Committee (HRC) to extend the deadline for Thailand's submission of information in response to paragraphs 13, 15 and 21 of the HRC's recommendations contained in its Concluding Observations to Thailand's initial report under the International Covenant on Civil and Political Rights (ICCPR) which was presented to the HRC at its 84<sup>th</sup> session in July 2005.

In this connection, the Permanent Mission of Thailand has further the honour to forward to the OHCHR the afore-mentioned information for further transmission to the HRC for its kind consideration.

The Permanent Mission of Thailand to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR) the assurances of its highest consideration.



Office of the United Nations High Commissioner for Human Rights (OHCHR)  
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**OHCHR REGISTRY**

- 2 OCT. 2006

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**Thailand's Additional Country Report in accordance with  
the UN Human Rights Committee's  
Concluding Observations to Thailand's Initial Country Report  
under the 1966 International Covenant on  
Civil and Political Rights**

Following the UN Human Rights Committee's recommendations on Thailand's initial report in accordance with the 1966 International Covenant on Civil and Political Rights (ICCPR) which has been submitted to the Committee at its 84th Session between 19 – 20 July 2005 in Geneva, Switzerland, Thailand submits an additional report within one year after receiving the recommendations (by July 2006) on 3 issues, namely: paragraph 13, concerning the Emergency Decree on Public Administration in Emergency Situation, B.E.2548 (2005); paragraph 15 on the abuse of power conducted by state officials in arrest and detention of suspected persons; and, paragraph 21 on child labour. .

Thailand completed its Additional Country Report as recommended by the UN Human Rights Committee, the details of which are as follows.

**A. Paragraph 13: The Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005)**

1. Rational and necessity behind the enactment of the Decree

1.1 The laws relating to special situations that Thailand has adopted before 2005.

(1) The Martial Law Act B.E. 2457 (1914) is the law empowering military officials to declare the Martial Law in the case where public order and state security have been threatened either from within or outside the country or where the battle or uprising has taken place in jurisdiction of any military division. After the Martial Law has been declared, the military officials have power to enforce or deal with any case in their jurisdiction subject to terms and conditions provided by the Act. The purpose of this Act is to maintain public order and internal security as expressed by the Martial Law Act of various countries. At present, this Act is still in force.

(2) The Act relating to Public Administration in Emergency Situation, B.E. 2495 (1952) was enacted to cope with the situation where public order or state security is threatened but not amounting to the declaration of martial law. The Act empowers public officers especially the Minister of Interior with absolute power to deal with any circumstances as deemed appropriate and under conditions provided by law in order to normalise the situation. The Act has now been replaced by the Emergency Decree on Public Administration in Emergency Situation, B.E.2548 (2005).

(3) Thailand also has other laws in relation to special situations, such as the Act on Civil Defence, B.E. 2522(1979) and the Act on Special Investigation, B.E.2547 (2004).

1.2 Rationale behind the promulgation of the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005)

The Act on Public Administration in Emergency Situation, B.E. 2495 (1952) empowered the government to declare an emergency situation in whole or in a part of the country should there be a situation that may endanger the security or safety of the Thai Kingdom or may introduce a state of crisis, battle, or war. However, since the Act had been in force for a considerable period of time (53 years) before it was repealed, certain provisions were outdated and could not be effectively applied to the wide range of situations which affect the security of State. This fact, coupled with the unrest in southernmost provinces of Thailand, namely, Yala, Pattani, and Narathiwat since the beginning of the year 2000 (B.E.2547), makes it essential for the Thai Government to develop an instrument that would effectively deal with this type of situation and bring back peace as soon as possible. The new enacted law should be enforceable in all places of the country and in any emergency situations, including natural disasters. It should be based on an integrated approach to public administration in order to bring about unified solutions. The adjustment of the use of power or enforcement of the law should be properly screened by the Cabinet and the Courts. However, the intensity of the use of force should be less than that stipulated in the Martial Law Act.

It should be stated that the Prime Minister under the Emergency Decree on Public Administration in Emergency Situation may declare the emergency situation only by the consent of the Cabinet. It is important to note that this is the same for Emergency Decrees in many countries, such as the Internal Security Act of Malaysia, the Internal Security Act of Singapore and the Patriot Act of the United States.

However, the Thai government is well aware of the necessity to provide knowledge and understanding to state officials in carrying out their duty under the Decree. The Southern Border Provinces Peace Building Command is tasked with this responsibility. It has issued rules, procedures and handbooks for state officials concerned to use as guidelines to perform their duty in line with the intent of the laws as follows:

- Guidelines are established for the enforcement officials to perform their duties with least impact on the local population in accordance with religious principles and local culture.

- Guidelines are established for the arrest and detention of a person which must be carried out in accordance with human rights norms. Community and religious leaders should be treated with respect by inviting them to the official's venue instead of making an arrest. Prior to the arrest, consent must be obtained from

three parties, namely, administrative, police and military officers and the arrest should be reported for approval from the commander of the SBPPC before being submitted to the court for permission in order to guarantee that state officials do not perform their duties arbitrarily.

- A search must be conducted with due propriety. The state officials who conduct the search should be a government official from the third rank upward or a commissioned military officer. Such qualification is introduced to guarantee the maturity of the searcher and due propriety of the search.

- Use of force must be abided by the rules as specified by the SBPPC and the law, and it must not be carried out in an arbitrary manner. The use of weapons should be avoided. Additionally, the exercise of power must be within the framework of the law. In the case where the use of force is unavoidable, it must be used as necessary, in proportion with those of the adversary in order to prevent injury to life, body and property of innocent people and with respect to fundamental rights and liberties under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), UN principles relating to human rights and in conformity with the UN Basic Principle on the Use of Force and Firearms by Law Enforcement Officials.

- The establishment of "Coordinating Centre for Peace Building Participants" to receive complaints from the individuals in the four southernmost provinces, namely, Yala, Pattani, Narathiwat, Songkla, in every case they deemed justice has not been delivered in order to protect rights and liberties of the people in the said provinces. The Centre comprises both military and civilian officers and is located in Yaring district of Pattani Province.

In fact, the complaint procedure has been established long before the promulgation of the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) in accordance with Article 75 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which reads :

"The State shall ensure the compliance with the law, protect the rights and liberties of a person, provide efficient administration of justice and serve justice to the people expediently and equally..."

The number of complaints received from people in the four southern border provinces between October 2004 and May 2005 was 28. All of these cases have been speedily scrutinized and appropriate decisions were made and conveyed to every complainant.

In addition to this complaint-receiving mechanism, there are also other mechanisms in place, such as the complaint receiving mechanism under the Ministry of Justice, the Ombudsman, and the National Human Rights Commission.

The Royal Decree to abolish the use of the martial law in certain areas namely, the provinces of Narathiwat, Pattani and Yala was proclaimed on 21 July

2005. Such abolishment indicates the Thai Government's desire to solve problems by peaceful means.

## 2. Identification of "Emergency Situation"

2.1 Article 4 of the Emergency Decree identifies "emergency situation" as " a situation which affects or may affect the public order of the people or endangers the security of the state or may cause the country or any part of the country to fall into a state of difficulty or contains an offence relating to terrorism under the Penal Code, a battle or war, pursuant to which it is necessary to enact emergency measures to preserve the democratic regime with the King as Head of State under the Constitution of the Kingdom of Thailand, independence and territorial integrity, the interest of the nation, compliance with the law, the safety of the people, the normal living of the people, the protection of rights, liberties, and public order or public interest, or the aversion or remedy of damages arising from urgent and serious public calamity."

2.2 Conditions and methods to declare the emergency situation are as follows:

(1) Condition – A situation which the Prime Minister considers appropriate for various government agencies to jointly work to contain the situation.

(2) Method – The Prime Minister upon the approval of the Council of Ministers is empowered to declare an emergency situation applicable to the whole Kingdom or in some areas or locality as necessary. The declaration of emergency situation shall be in force for the period prescribed by the Prime Minister but shall not exceed three months from the date of declaration. In the case that it is necessary to extend such period, the Prime Minister upon the approval of the Council of Ministers shall have the power to declare the extension of duration of the emergency situation provided that each extension shall not exceed three months. (The reason for the duration of three months period for each extension is to enable the cabinet or the agencies concerned to review the measures that have been implemented.) If the emergency situation is terminated prior to the time prescribed, the declaration shall cease to apply.

In the case where the approval of the Council of Ministers cannot be obtained in a timely manner, the Prime Minister may declare the emergency situation immediately and shall subsequently seek the cabinet's approval within three days.

(3) In an area or locality declared as an emergency situation, the Prime Minister temporarily assumes all power and duties under the law in order to remedy the situation in an integrated, expedient and efficient manner.

2.3 If necessary, in order to remedy and promptly resolve a situation or to prevent the worsening of such situation, the Prime Minister shall have the power, under Section 9, to issue the following regulations:

(1) to prohibit any person from departing from a dwelling place during the prescribed period, except with the permission of the Competent Officials or being the exempted person;

(2) to prohibit the assembling or gathering of persons at any place or the committing of any act which may cause unrest;

(3) to prohibit the press release, distribution or dissemination of letters, publications or any means of communications containing texts which may:

(a) instigate fear amongst the people; or,

(b) intend to extort information which misleads understanding of the emergency situation to the extent of affecting the security of state.

The prohibitions in this article are not intended to bar any distribution of news in every case as the presentation of accurate information is still necessary for the public. The Regulation forbids only information presented with the intention to instigate terror amongst people in excess of the real situation or to distort information in order to create misunderstandings with regard to the emergency situation.

Thus, the issuing of this regulation does not prohibit the dissemination of news in general but restricts only selective types of news that should not be distributed. Such prohibition should explain how it can reduce the state of emergency.

(4) to prohibit the use of routes or vehicles;

(5) to prohibit the use of building or entering into and staying in any building;

(6) to evacuate people out of a designated area for their safety.

The issuing of these regulations may have a condition or a timeframe. They also empower state officials to specify additional details deemed appropriate in the situation. The additional details should not add too much burden for the public, for example: a limited curfew in certain areas where people are at risk with exceptions in case of sickness or other urgencies.

The purpose of issuing regulations under Section 9 is to help the authorities gain control of the areas where severe incidents have taken place, especially when in certain situations, the Prime Minister does not have enough time to issue any regulations. If the matter is not immediately dealt with, the incident may become widespread, causing serious damage. Section 10, therefore, provides the Prime Minister with power to designate Chief Officials to oversee the situation with the power to issue a regulation on his behalf and to report to him afterwards. If the Prime Minister does not issue the regulation on the same subject matter within forty-eight hours, the regulation issued by the Chief Officials will cease to be in force. This

allows the Prime minister to ensure that the use of power by local authorities in an emergency situation is appropriate.

#### 2.4 Declaration of serious emergency

In the case where an emergency situation involves an act of terrorism, use of force against life, body or property or there are reasonable grounds to believe that a severe act will be carried out which affects the security of the state or the safety of the public and the existing measures are insufficient and there is a need to rapidly contain the situation, the Prime Minister, with approval of the cabinet, may declare such emergency a serious situation.

The declaration of a serious situation not only empowers the Prime Minister to take charge of implementing laws previously under the responsibility of relevant ministers according to Section 7 and to issue regulations to control the area under an emergency situation under Section 9, but also stipulates other measures that can be taken by the Prime Minister as follows:

1. To declare that the Competent Official shall have the power to arrest and detain a person in accordance with Article 11 (1), the conditions in the use of such power shall consist of:

(1) Such person is suspected to have participated, instigated, propagated or the supported the emergency situation;

(2) Such person conceals relevant information relating to the act which caused the emergency situation;

(3) The arrest and detention of a person should be carried out to the extent necessary to prevent such person from carrying out or participating in misconducts or to foster cooperation in dealing with the problem .

The Competent Official cannot arrest or detain any person arbitrarily but shall proceed under Section 12 , which states:

(1) Prior to the arrest and detention, the Competent Official shall apply for leave of a court of competent jurisdiction or the Criminal Court;

(2) Upon obtaining leave of the court, the Competent Official shall be empowered to arrest and take the suspected person into custody for a period not exceeding seven days. In the case where it is necessary to continue the detention in order to remedy the emergency situation, the Competent Official shall apply for the leave of the court to extend such detention period by seven days at a time, provided that the total period shall not exceed thirty days;

(3) Upon the expiration of such period, if the detention is still required, the Competent Official shall proceed under the Criminal Procedure Code;

(4) In proceeding under paragraph (1), the Competent Official shall file a report on the arrest and detention of such suspected persons for submission to the court issuing the order under paragraph (1). A copy of such report shall be deposited at the office of the Competent Official so that relatives of the suspected person may access such report for the entire duration of such detention;

(5) The suspected person shall be taken into custody at a designated place which is not a police station, detention centre, penal institution or prison and shall not be treated as a convict.

Detention as specified in this Section is not on account of such person having violated criminal law, but it is a measure towards ending the serious emergency situation by separating persons who have been misled or persuaded to carry out misconducts from the instigators or to protect such persons. This kind of detention, therefore, is not equivalent to the detention of persons in criminal cases where further legal proceedings are carried out to punish the culprits. For this reason, strict measures are in place to regulate the exercising of power and duty of officials to guarantee transparency and accountability in their performances without allowing the officials to exercise power by themselves as stipulated in the declaration of Martial Law or the Law on Public Administration in Emergency Situation B.E. 2495 (1952), where full authority is given to officials without the need to apply for leave of a court. However, under this Emergency Decree, the official cannot arrest and detain any person without the court's permission.

2. The Competent Official is empowered to issue a summons to any person to report to the Competent Official or to give an oral statement or to submit any document or evidence relating to the emergency situation;

3. To issue a notification to the effect that a Competent Officials shall have the power to seize or attach arms, goods, chemical products used to commit or support an act which causes an emergency situation;

4. To issue a search warrant as necessary in cases where a delay might render the situation beyond control.

5. To order an alien believed to be a supporter in causing the emergency situation to leave the Kingdom.

6. To control the purchase, sales or possession of arms, goods or any equipment which may be used for causing unrest without the need to report or seek prior permission.

7. To order the use of military force functioning in the area to resume its duty according to this Decree.

The exercise of power as mentioned above shall be recorded for future inspection.



The measures as prescribed in Section 11(2-7) indicate that the Emergency Decree provides appropriate means to deal with the situation, for example: the power of the Competent Official to summon any person to report is not for the purpose of detention. The power to control arms, chemical products and relevant equipment is to prevent any person utilizing these objects to cause unrest. The search and destruction of buildings as necessary in exercising power of the Competent Officials is for the reason that a delay might render the situation beyond control. The monitoring and interception of personal communication under this article must follow the rules under the Special Investigation Law that permission for telephone interception to acquire criminal information must be sought from the court. Furthermore, only relevant parts of the information collected can be used. Other parts not concerning the emergency situation have to be destroyed. The order to prohibit any citizen or alien from leaving the Kingdom is necessary for the Competent Official to control the border. As for the prohibition to carry out any act or order the carrying out of any act is a matter of the cause other than that of the existing measure. Due to the fact that emergency situations cover many types of situations including natural disaster, therefore, there is a need to have different methods used to solve the different types of situation in an expedient manner. However, all measures used must be to the extent necessary to maintain security and public safety. In addition, the use of military force may be ordered to withhold certain situations. It must be noted that the use of force by military officials in this case is in accordance with this Decree and not the Martial Law.

3. Judicial review in the case of arrest and detention under Section 12

Section 12 stipulates, "In arresting and taking suspected persons into custody under section 11(1), the Competent Official shall apply for a leave of the court of competent jurisdiction or the Criminal Court. Upon obtaining the leave of the court, the Competent Official shall be empowered to arrest and take the suspected person into custody."

The Court institution has been recognized by the Constitution of the Kingdom of Thailand B.E., 2540 (1997), which underlines in Section 233 that :

"The trial and adjudication of cases are the power of the courts which must proceed in accordance with the Constitution and the law and in the name of the King."

Thus, the Courts in Thailand maintain impartiality and enjoy full independence in the trial and jurisdiction of cases without pressure or interference and have long been trusted and respected by the Thai people. In considering the application for arresting and detaining a suspect as prescribed in Section 12, the Court strictly reviews the reason and necessity together with relevant evidence in order to protect the rights and liberties of the person to be arrested and detained. If the Competent Official is unable to demonstrate evidence, reasoning and the necessity for the arrest and detention to the Court's satisfaction, the Court will not grant such application.

The chart below demonstrates that not all of the arrest applications for leave of the Court under Section 12 of the Emergency Decree satisfied the Courts.

Court	Number of cases* applied for an arrest warrant	Number of permission	Number of non-permission
Narathiwat Provincial Court	270	259	11
Pattani Provincial Court	241	234	7
Yala Provincial Court	139	123	16

\* As of 31 December 2005.

4. Treatment of the arrested and detained person under Section 12

Section 12 reads :

“In arresting and taking suspected persons into custody under section 11(1), the Competent Official shall apply for leave of court of competent jurisdiction or the Criminal Court. Upon obtaining leave of the court, the Competent Official shall be empowered to arrest and take the suspected person into custody for a period not exceeding seven days. The suspected persons shall be taken into custody at a designated place which is not a police station, detention centre, penal institution or prisons and shall not be treated as a convict. In case where it is necessary to continue the detention in order to remedy the emergency situation, the Competent Official shall apply for the leave of the court to extend such detention period by seven days at a time, provided that the total period shall not exceed thirty days. Upon the expiration of such period, if the detention is still required, the Competent Official shall proceed under the Criminal Procedure Code.

In proceeding under paragraph one, the Competent Officials shall file a report on the arrest and detention of such suspected persons for submission to the court issuing order under paragraph one. A copy of such report shall be deposited at the office of the Competent Official so that relatives of the suspected persons may access such reports for the entire duration of such detention...”

Section 12 demonstrates that the person arrested and detained under this Section shall not be treated as an offender. For this reason, the Southern Border Provinces Peace-Building Command (SBPPC) responsible for this matter has

established procedures for the treatment of the said person differently from ordinary criminal offenders, such as :

4.1 Execution of arrest warrant and the venue of detention

(1) When the Competent Official has arrested the suspected person as indicated in the arrest warrant, the Official must promptly bring the person to the place designated in the arrest warrant, which is not a police station, detention centre, penal institution or prisons, but a place stipulated by state authorities – the Peace Developing Centre attached to the Forward Echelon of the Fourth Regional Army. The Competent Official shall promptly report the arrest to the Court that issued the arrest warrant and submit copies of the report concerning the arrest and detention . There shall be four copies of the report: one to be kept at the office of the official who made the arrest for inspection by the detainee's relatives at all times; one to be kept at the provincial headquarters where such person was arrested; one to be sent to the SBPPC; and the last one to be kept at the SBPPC's branches in the province, district or sub-district where the arrest took place.

In executing the arrest, the Competent Official shall inform the suspected person of the detail of the arrest even though the person does not commit any offense. When possible, the relatives and the religious and community leaders shall be informed of the arrest.

(2) The Competent Official who made the arrest has to bring the arrested person to the detention venue as dictated in the warrant. The original report of arrest and detention together with a copy shall be submitted to the officer at the detention venue. The surrendering and receiving of the arrested person should be recorded in the receiving of person report (SorSorSor.48-1) according to the stipulated form. A copy and the original of the report shall be kept with the sender and the detention center respectively.

(3) The duration of detention shall follow the court's order stated in the leave of the court for arrest and detention. The duration of detention shall begin at the time when the suspected person is arrested. Such duration and the date and time of arrest and detention shall be recorded in the arrest and detention report.

(4) In detaining the person, the Competent Official is prohibited from using fetters or detaining the arrested persons behind bars or transporting the person in a vehicle with bars or carrying out any other acts of violence. The detention at the police station, detention centre, penal institution or prison is also prohibited. The suspected person shall not be treated as a culprit or an alleged offender and shall not be deemed as a culprit.

(5) The treatment of the detained person shall follow the Regulation of the Peace-Developing Centre attached to the Forward Echelon of the Fourth Regional Army on the treatment of the suspected person under the Emergency Decree on Public Administration in Emergency Situation, B.E.2548(2005), while being in the Centre, dated February 20, 2006. According to this Regulation, the suspected person

shall be provided with clothes, three meals in accordance with the religious doctrine, religious preaching books, adequate common venue and accessories to perform religious rites. In addition, the suspect shall have access to medical treatment and reside at an appropriate place with no door shut from the outside. Detainees shall be separated by gender and age. Every suspect has equal status. No threatening, intimidating, forcing or infringing of the rights of other suspects is permitted. The detainee is able to go to bed at any time after supper and finishing various activities.

The permission to visit the detainee by relatives at the detention venue shall follow the regulation of that place. The relatives are permitted to visit the detainee after three days of detention. Before that, the relatives may leave personal belongings or articles with the officers. After three days, the relatives are permitted to visit the detained person once a day from 9 am to 10 am and 2.30 pm to 3.30 pm for thirty minutes. If a face-to-face visit is not convenient, a telephone visit is available.

(6) The Competent Official under this Decree shall arrest the suspected person according to the arrest warrant. However, this arrest warrant does not demonstrate that the person has violated the law. Thus, the same methods used in dealing with the alleged offender or the accused cannot be used in the case of the suspected person under this Decree.

Furthermore, any oral statements given by the suspect prior to becoming an alleged offender under the Criminal Procedure Code may not be used as evidence in Court against that person in other criminal offenses (if any). In this connection, the Revised Criminal Procedure Code B.E. 2548 (2005), reads in Section 134/4 last paragraph, "Any saying, given by the alleged offender to the inquiry official before making the notice of rights to the alleged offender according to Section 134/4, paragraph 1 or before the proceeding under Section 134/1 (the right to have a lawyer during investigation), Section 134/2 (the measure to protect juvenile offender) and Section 134/3 (the right to let the lawyer or the person as trusted to hear interrogation) will not be able to admit as evidence in the proof of such person's offence"

Due to the fact that the suspect under this Decree is not considered an alleged offender in ordinary criminal cases, any of his statement acquired during the arrest shall not be used as evidence to prove his guilt in other criminal cases, if any.

However, if the suspect obstructs, escapes or resists the arrest, it shall be deemed that such person resists or obstructs the official or the person required by law to assist such official in due exercise of the official function, which is an offence under the Penal Code. A criminal allegation could be pressed against the person and the exercise of functions under this Emergency Decree shall be ceased promptly.

(7) The arrest warrant according to the Decree shall be in force until the serious or emergency situation has ended. However, the arrest warrant under the Criminal Procedure Code is extinguished by the lapse of time.

(8) In case that a blockade to search and detect a suspect under this Decree where a leave of court to arrest and detain is yet to be issued, the Competent

Official shall issue an order summoning that person to report himself or to give a statement.

(9) The transfer of detention venues shall be performed in a transparent and accountable manner. The transferring process should be employed in this regard. The detention unit receiving the person arrested and detained shall receive that person together with the documents, namely, the original note of arrest and detention, the original account of properties seized, a copy of arrest warrant and a copy of application to extend the detention period.

(10) The grounds to extend the duration of detention are: preventing serious situations and/or to foster cooperation to suppress or terminate the serious situation; and, extending the detention of the person for the benefits of resolving the emergency situation.

5. Liabilities of the Competent Official arising from performing functions

Section 17 stipulates; "A Competent Official and a person having identical powers and duties as a Competent Official under this Emergency Decree shall not be subject to civil, criminal or disciplinary liabilities arising from the performance of functions for the termination or prevention of an illegal act if such act was performed in a good faith, non-discriminatory, and was not unreasonable in the circumstances or exceed the extent of necessity, but this does not preclude the right of a victim to seek compensation from a government agency under the law on liability for wrongful act of officials."

As the exercising of powers and duties of the Competent Officials to resolve the emergency situation requires expedient and efficient operations to rapidly terminate the problems and to protect public safety and restore people's well-being, certain measures need to be enacted to give the Competent Officials confidence in carrying their duties under the law. Similar measures exist in various Acts to protect officials in carrying out their duties under dangerous circumstances. .

The guaranteeing measures include;

(1) The 'Competent Official' under this Decree has the same power and authority as the 'Official' under the Penal Code. This is on the grounds that the Competent Official should be protected by the law where there is an offence committed against the said official. At the same time, the measures will protect the people from the abuse of power by the Competent Official as stated in the Penal Code.

(2) The 'Competent Official' according to this Decree is an 'Administrative or Police Official' under the Criminal Procedure Code. This is on the grounds that the 'Administrative or Police official' is authorized to make an arrest, search, detain and conduct an inquiry as specified in the Criminal Procedure Code.

Nevertheless, the scope of performance may be limited by the Declaration of the Prime Minister.

(3) The reason why the Administrative Procedure Act and the Act on Establishment of Administrative Courts and Administrative Court Procedure are not applicable is that the order of the Competent Official under this Decree is not an administrative order. The use of the conditions for issuing an order under such Acts cannot resolve the emergency situation, which requires a prompt and rapid response. Therefore, there is a need to exempt the application of such Acts so that the order for the Competent Official to promptly enter into force.

However, the aforementioned exemption does not mean that the performance of duties by the Competent Official cannot be examined or scrutinized since any illegal performance of duties shall constitute a criminal offence under the Penal Code. The injured persons whose rights have been infringed by the malfunctions of duties by a Competent Official can file a criminal charge against that Competent Official.

(4) The provision which states that the Competent Official under this Emergency Decree shall not be subject to civil, criminal or disciplinary liabilities is an ordinary principle of law governing the use of power of state officials that existed before the proclamation of this Decree. The laws were enacted to protect the Competent Official who performs duties in good faith pursuant to the provisions of the laws from civil or criminal liability e.g. the Martial Law Act, B.E.2457, Section 16; the Penitentiary Act, B.E.2479, Section 21; as for the general law, the Tortious Liability of Officials Act, B.E.2539 and the Civil and Commercial Code, Section 449 and 450. In addition, the Criminal Code provides for the protection of any person performing an act in accordance with the order of an official even though such order is unlawful, if the person believes in good faith to have the duty to comply with such order (Section 70), or committing any offence on account of necessity (Section 67), or committing any act for the defense of his right or the right of another person (Section 68), these persons shall not be punished by the law.

Section 17 does not protect the Competent Officials who perform their duties in the emergency area in all cases. The protection is subject to these conditions:

(1) The performance of such duties is for the purpose of suppression or prevention of an illegal act;

(2) The performance of such duties should be in good faith, non-discriminatory and not exceed the extent necessary.

Even though Section 17 of the Emergency Decree provides protection for the Competent Official, it does not prohibit a person to sue the Competent Official for an act or omission which constitutes damages to such person. Section 62 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) states:

“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”

The Competent Official shall be protected under Section 17 when he or she can prove that his or her act meets the conditions under Section 17. If the Court decides that the act does not meet such conditions, the Competent Official is still liable for such act.

However, the injured person is not abridged of the right to claim compensation from the administration according to the Tortous Liability of Officials Act, B.E.2539.

For the reasons above, the Emergency Decree on Public Administration in Emergency Situation, B.E. 2548 (2005) has specified various measures as necessary for dealing with the emergency situation, which shall be effective following the time declared but no longer than three months. During that period, a person in the area where the emergency situation or a serious situation is declared shall enjoy every right prescribed by the Constitution and the law, except where there are reasonable grounds that implicate the person as a conspirator, an employer, a propagandist or a supporter of the emergency situation, accordingly with stringent measures of scrutiny from the judiciary organ. Additionally, there exist other measures to protect the rights and liberties of the suspected persons according to the provision of Article 4 of the Covenant on Civil and Political Rights. This Emergency Decree does not at all evade the commitments under Article 6, 7, 8, 11, 15, 16 and 18 of the Covenant.

#### **B. Paragraph 15: Malpractice of the government official in arrest and detention**

1. The UN Human Rights Committee has concerns about the use of force that exceeds the extent of necessity by the enforcement officer, the malpractice of the official in the arrest and pending the detention as well as mortality pending the detention, the use of a safe-house as an inquiry venue, the process for the punishment of state officials who violate human rights by ordering prosecution and by the court verdict, including the insufficient compensation to the injured person. The Committee also recommends that a State Party should, in practice, guarantee the rights of the suspect or the alleged offender to obtain legal advice; have prompt access to a medical officer after the arrest and during the detention; guarantee the right of relatives to be promptly informed of the arrest and the whereabouts of the detainee; permit the detainee to prove whether the arrest is lawful; bring the arrested person to the court immediately; guarantee that torture, misconduct or undue use of force by police officers be faced full inquiry and those responsible be brought to justice, including appropriate and sufficient compensation should be paid to the injured persons or their families.

2. The Criminal Procedure Code and the Constitution of the Kingdom of Thailand provide excellent measures to protect the rights of the arrested person, the detainee, the alleged offender and the accused in conformity with the ICCPR. All enforcement officials are also committed to strictly abiding by them. However, the implementation of the Code is sometimes neglected. Certain officers may perform their duties exceeding the extent of the law, especially the police officers whose duties are to deal closely with the people and whose functions are to maintain and enforce every Act of punitive character. That kind of behavior has however decreased in recent years due to inspection by superintendents, the public and the media as well as frequent disciplinary and criminal punishment. Furthermore, the Thai Government considers that negligence on the overuse of power or misconducts of enforcement officials would only establish conditions exacerbating the unrest in the three southernmost provinces of Thailand. Moreover, after the amendment of the Criminal Procedure Code entering into force on 24 December 2004, various measures have been enacted to monitor the implementation of the law by enforcement officials and to strictly protect the rights and liberties of the alleged offender and the accused person. These measures result in the enforcement officials both the arresters and the inquiry officers to perform their duties discretely as provided by law to prevent any act that could violate the rights of the people.

For example, when the offence is not a flagrant one, the government or the police official will not be able to make an arrest without an arrest warrant issued by the Court. The arrest warrant shall be presented to the person to be arrested, who will be notified of the charges and details of the grounds for the arrest. The arrester must read the text in the arrest warrant and deliver a copy of the note of arrest to the arrested person (The latest amended Criminal Procedure Code, Section 38, paragraph 2 and Section 84, paragraph 2(1)).

The new doctrines contained in the latest amended Code are;

- 1) The arrest;
- 2) The voluntarily obtained confession .

Since 24 December 2004, when the newly amended Criminal Procedure Code (no.22), B.E. 2547 (2004) entered into force, torture or cruel treatment against the arrested person or the alleged offender by unlawful means to gain confession can no longer be used as evidence against that person in Court. The last paragraph of Section 84 of the Criminal Procedure Code says:

“Any saying, which the arrested person makes to the arresting official, government officials, or police officials at the arrest stage or consigning the arrested person, if such saying are the arrested person’s confession that oneself has committed an offence, such sayings shall be an inadmissible”



The provision in this section serves to prevent the government official to force the arrested person to confess in order to gain benefit from the confession. In fact, torture or cruel or degrading treatment of a person or the detention of a suspected person in the safe-house is prohibited by the law. Section 84 (1) of the Criminal Procedure Code states, "An official or a private person as arrester, must take the arrested person to the office of the inquiry official under Section 83 without delay."

The detention of the arrested person in the safe-house constitutes a wrongful act which is illegal; and, if the enforcement official causes injury to the arrested or detained person, such official commits bodily harm and illegal confinement. The said official may be tried for the offence of wrongfully exercising his function under Section 157 of the Penal Code. In this regard, the National Counter-Corruption Commission is authorized to investigate the case. The NCCC is an independent organ under the Constitution with the mandate to inspect and inquire in every corrupt case. Such power of inquiry is devolved from the Police Bureau to other organizations for transparency so that the misconduct by a police officer is to be scrutinized by an independent agency.

In addition, the Thai legal system allows for a private person who is assaulted or tortured by the government official to file a criminal or civil case against the official. In the civil case, if the government official is deemed by the court to have committed a wrongful act, he or she has to pay compensation. In the criminal case, the court has in the past delivered harsh punishment against officials who were deemed to be acting beyond duty by assaulting or shooting a private person.

### 3) Death whilst in custody of an official

Concerning the death of the arrested person whilst in custody of the official, Section 150 of the Criminal Procedure Code provides that a post-mortem inquest be carried out. Before holding the post-mortem inquest, the inquiry official shall inform at least one of the relatives of the deceased. A physician, a public prosecutor and an administrative official shall carry out the inquest together. When there is a death, the relatives of the deceased and other government officials shall jointly hold the inquest.

After holding the post-mortem inquest, the law provides that the public prosecutor shall apply, by motion to the court where the corpse is, for an examination and order to find out the identification of the deceased, the place, time, cause and circumstances of the death. If death was caused by an act of any person, it shall be stated, as far as it could be ascertained, the identification of the alleged offender. For example, the death of 79 arrested persons whilst being kept in custody on 9 April 2005 in Tak Bai District, Narathiwat Province is being examined by the court.

If the death is caused by an act of another restrained person or an official, whether intentionally or unintentionally, the person shall be prosecuted without exemption. At present, the Royal Thai Government is in the process of amending Section 150 of the Criminal Procedure Code in order to authorize the public

prosecutor to participate in the inquiry in cases where the official, for example a police officer, killed a person and claims to have done so in the cause of his or her official duty, with the aim of protecting the rights and liberties of the people.

4) Right of access to legal counseling and medical care

Regarding the right of the arrested person to gain access to legal counseling and medical care after being arrested and while in custody, the right of the family to be informed of the arrest and the place where the arrested person is being kept, the right to challenge the legality of the arrest, and the right to be promptly taken to court, these rights already exist in the Thai Criminal Procedure Code and are strictly observed by the government officials. For example, Section 7/1 of the Criminal Procedure Code which was amended by the Criminal Procedure Code Amendment Act (No.22), B.E.2547 provides that:

“An arrested person or an alleged offender kept in custody or detained shall be entitled as follows:

- (1) to meet and to talk with a person who shall be his lawyer, as personal;
- (2) to let the lawyer or the trusted person to hear the interrogation of oneself in the inquiry stage;
- (3) to be visited or get in touch with relatives as may be reasonable;
- (4) to be nursed without delay in case of having any sickness.

The administrative or police official who receives the person of an arrestee or an alleged offender, shall have the responsibility to notify such arrestee or alleged offender the rights according to the first paragraph in the first instance”.

The rights mentioned above of the arrested person are also stipulated in Section 84 of the Criminal Procedure Code (which was amended) as follows;

“An official or a private person as arrester, shall take the arrested person to the office of the inquiry official under Section 83 without delay, and having reached that place, the arrested person shall be delivered to the administrative or police official of the office of the inquiry official as aforesaid for the following proceedings :

- (1) in case where the official is the arrester, the arresting official shall notify the allegation and particulars in respect of cause of the arrest to the arrested person. If there is an arrest warrant, it shall be notified to the arrested person, to whom the arrest warrant shall be read and a copy of the note of arrest shall be handed over to the arrested person.

Having proceeded in accordance with paragraph 1, the administrative or police official, to whom the arrested person is brought, shall notify the arrested person of the rights as designated by Section 7/1, including the arrangement for the arrested

person to be able to get in touch with relatives or the trusted person to notify of the arrest and the place of detention at the first instance when the arrested person reach the office of the inquiry official in accordance with paragraph 1. In the case where the arrested person makes a request to the administrative or police official to notify his or her relatives or trusted persons, such request shall be proceeded without delay. This will be recorded by the administrative or police official and the arrested person will not be responsible for any expense.

When necessary, the official or private person who makes an arrest shall manage to nurse the arrested person before delivering such person under this Section.

Especially in the issue of the right of access to legal counseling or to have a lawyer to provide legal aid, Section 134/1 provides that in case of the rate of punishment of death or the age of alleged offender not more than eighteen years on the date when the inquiry official notifies the charge, before commencing the interrogation, the inquiry official shall ask the alleged offender whether he has a lawyer. If not, the State shall provide one for him. Furthermore, the alleged offender is entitled to have his lawyer or a trusted person present during the interrogation.

The consequence of non-notification of such rights or furthering the inquiry despite the alleged offender having no lawyer renders any saying given by the alleged offender not admissible as evidence in proving the alleged offender's offence in Court. (The last paragraph of Section 134/4 of the Criminal Procedure Code).

In the past, the Office of the Attorney General had returned the files asking for permission to prosecute in excess of the time period for prosecution, a large number were the cases the inquiry officials did not act in accordance with Section 134/1 and Section 134/4. In this connection, if the prosecution permitted, not only the damage to the case may be incurred but there will also be an infringement of the alleged offender's rights according to the provision of law.

#### 5) Taking an alleged offender to court without delay

Regarding the taking of an alleged offender to court, the Criminal Procedure Code fixes the time into 2 stages as follows: taking an arrested person to the office of the inquiry official shall be done without delay (Section 84, paragraph 1); taking an arrested person from the office of the inquiry official to court shall be done within forty eight hours (Section 87, paragraph 3). The previous law which provided that an arrested person shall be taken from the inquiry office to court within 72 hours, is amended with the aim to better protect the arrested person's or the alleged offender's rights. The rationale for providing the period of 48 hours is that the offices of the inquiry official may be located in such remote areas as at sea or in the jungle, therefore, taking an alleged offender to court needs a reasonable amount of traveling time.

(6) Paying compensation to the injured persons and their family

Thailand placed a great emphasis on giving compensation to the injured persons and their family. For example, in case of the death and injury from the arrest and detention by the government officials on 9 April 2004 in Tak Bai District, Narathiwat Province, the Committee on Southern Border Provinces Peace-Building Policy, the Southern Border Provinces Peace-Building Command and a Narathiwat Provincial Central Muslim Committee jointly held an event to hand out compensation to 51 injured persons and 294 relatives of the deceased at the Office of Narathiwat Provincial Central Muslim Committee. The compensation was actually given to 44 injured persons and 257 relatives of the deceased. Those who did not come to receive compensation either lived in remote areas or did not have the required documents. However, they could collect their compensation later.

The government also accelerated the consideration process to assist the person affected by the unrest in the three southern border provinces, and the compensation was considered a reasonably large amount. For example, for the Tak Bai event, the government paid 300,000 baht (the exchange rate is 1 US dollar per 38 baht) in compensation for each of the deceased (87 persons), 300,000 baht compensation for each of the missing persons (7 persons), 80,000 baht compensation for each of the 11 disabled, 50,000 baht compensation for continuous treatment of each of the 3 injured persons, 20,000 baht compensation for minor injury of each of the 59 injured persons and 4,500 baht compensation for the loss of property of each of the 100 injured persons .

(7) In addition to compensation paid to the injured persons and their families affected by the unrest in the three southern border provinces, Thailand also proclaimed the Compensation and Expenses for Injured Person and the Accused Act, B.E.2544(2001) in order to provide assistance for persons affected by the infringement of rights by government officials. Since then, there have been six applications for compensation between 3 September and 31 December 2005. Out of the six cases, the government paid compensation to four cases in the amount of 143,188 baht. The other two cases are in being processed.

The above examples indicates that Thailand pays attention to the life, property and rights of the arrested persons according to the law and persons involved shall be fully protected and provided assistance when loss occurs, with a view to fulfil the aim of respecting and protecting human rights for all without discrimination. In addition, at present Thailand is in the process of considering accession to the Convention Against Torture and Cruel, Inhuman and Degrading Treatment and Punishment (CAT) in order to uplift the effective mechanism to protect the right of the arrested persons and alleged offenders.

**C. Paragraph 21 about the significant proportion of children, often stateless or of foreign nationality, in the State Party who engage in labour, who often fall victims to human trafficking.**

(1) Thailand is a State Party to the Convention on the Rights of the Child 1989. Article 35 of the Convention states that "State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale or traffic in children for any purpose or in any form". In addition, Thailand has proclaimed the Prevention and Suppression Trade in Women and Children Act, B.E.2540 (At present, it is under review with an aim to modernize and extend the scope of its provisions). Therefore, Thailand has promoted more effective law enforcement and has concluded a memorandum of agreement among government agencies involved in order to be used as a common guideline for dealing with the care of women and children falling victims of human trafficking. The memorandum specifies steps for providing assistance to women and children who are victims of trafficking both of Thai and foreign nationalities, commencing from preliminary taking of statements to obtain facts and taking testimony beforehand with a view to seeking evidence to prosecute the trafficker, rehabilitating, returning the victims to their country of origin and assisting them to live a normal life in society. Different government agencies are designated to oversee the implementation of each stage of the memorandum. Furthermore, the government also advocated for the concluding the international memorandum of agreement both bilaterally and multilaterally to suppress human trafficking in 6 countries in the Mae-Khong Sub-Region, namely, Cambodia, China, Myanmar, Laos, Vietnam and Thailand in order to be used as guidelines for coordination, conclusion of Action Plan as well as a follow-up and evaluation of work to combat human trafficking problems at the sub-regional level.

(2) The government places emphasis on providing assistance, protection, physical and mental rehabilitation by establishing 93 temporarily primary shelters for injured victims of trafficking of all nationality before further transferring them to 6 Protection Vocational Training Centers which are the principal offices responsible for rehabilitating and providing legal aid to the victims. These centers operate on the basis of providing standard and quality in protection services, providing 4 necessities of life, education, vocational and life skill training and providing consultation and recommendation through telephone line Number 1300 etc.

3) The Thai government coordinates with other countries through government agencies, private organization, international organizations and the Thai embassies to provide assistance to women and children of foreign nationals fallen victims to human trafficking by providing physical and mental rehabilitation. Then, it coordinates systematically and continuously with the relevant agencies of the countries of origin to locate their families and evaluate their readiness for receiving those women and children back. The Thai Government also provides education, vocational skills, as well as conduct a follow-up and evaluation of the returnees in order to prevent them from falling victims to human trafficking again.

4) On 16 February 2001, Thailand ratified the Convention on International Labour No.182 on the Worst Form of Child Labour and succeeded in preparing a national action plan for eliminating the worst forms of child labour, the content of which consists of: Part 1, the child labour situation before and after ratifying the Convention; Part 2, the measures and strategies to prevent, suppress and rehabilitate victims in order to reintegrate them back into the society as well as strengthen the efficiency of the plan; and Part 3, the framework for future operations. On 20 February 2001, the Cabinet approved the establishment of the counselor and the national committee to eliminate the worst forms of child labour.

5) Labour Protection Act B.E.2541 provides protection on working conditions and work safety for both the alien labour and the labour of Thai nationals. In cases where alien workers are found without a work permit, relevant Thai agencies will provide assistance and return them to their countries. The alien labour will receive benefits pursuant to the labour protection law on wages and compensation.. However, in practice, there are still obstacles which impede child workers from receiving these benefits. Language problems cause alien child workers to be unable to lodge a complaint with labour inspector officials. Moreover, their illegal status also causes alien child workers to be afraid of lodging complaints with the officials when they were exploited by their employers not acting in conformity with the labour protection law.

6) The government has established several projects and adopted measures to assist children and child workers, for example: granting scholarships, establishment of education loan funds, vocational training projects, and projects for suspending the use of child labour between the age of 13-15 who completed compulsory education and did not further their study both in formal education and vocational training until they reached the legal working age. The government also has a project in place to promote self employment, job search and complaint-receiving services as well as organization of activities to enhance knowledge and development of children, for example: mobile libraries, youth centers, sport centers, etc.

7) The government has drafted annual action plans to promote and strengthen recognition on the use of labour. At the provincial level, the government has carried out a campaign to disseminate knowledge on the prevention and solution to exploitation of women and child labour (Mobile Unit), a project to prepare children before entering the labour market. The government has also set up provincial women and child labour assistance operation centers which are responsible for policy-making in the areas of inspection, protection, campaigns and public relations in the provinces. In the central region, the government has carried out the projects to disseminate knowledge about rights and duties under labour protection law in academic institutions. It has also used the media to disseminate knowledge about rights and duties of employees, the use of child labour in four foreign languages, namely, Laotian, Khmer, Burmese and English. Moreover, the government has also established a center under the Ministry of Labour to provide counseling and to receive complaints via telephone (Number 1506).

Examples of assistance methods and relevant statistics are as follows.

### **Examples of Cases**

#### **The Provision of Assistance to Children and Women of Foreign Nationality**

##### **Example 1**

On 14 September 2004, officials of the Ministry of Labour, Ministry of Social Development and Human Security and the Royal Thai Police searched a garment factory located at 2007/169-172 Prachasongkroa 38 Road, Dindang District, Bangkok as they were informed of illegal alien employment and conducts of which may constitute the offence of human trafficking. As a result of the search, they found 18 Laotian women workers between the age of 17 – 18. So, they transferred them to Kred Trakarn Protection Vocational Training Center.

On 15 September 2004, the Ministry of Labour authorized labour inspector officials to lodge a complaint against the employer for violating 7 offences of the Labour Protection Act, B.E.2541 (1998) as follows: employing a child under fifteen years of age; failing to notify a labour inspector regarding the employment of children within fifteen days; failing to pay Overtime Pay, Holiday Pay, Holiday Overtime Pay to an employee, failing to pay wages at the specific time; and, paying wages lower than the minimum wage rate. The Ministry of Labour also sought cooperation from the Laotian Embassy to provide an interpreter for the employees and a lawyer to facilitate the prosecution of the employers at the Central Labour Court. At present, the Central Labour Court has passed a judgment ordering the employer to pay the amount according to a plaint.

##### **Example 2**

On 25 August 2002, the Royal Thai Police assisted 8 Laotian children who were lured by a Laotian broker to come to work at K.P. Embroider Limited Partnership, an embroidery factory in Thailand. Working conditions is inappropriate. Employees had to work hard and were physically harmed from spilling liquid chemicals onto their body causing serious injuries.

The employer was charged with the offence of causing bodily harm and was sentenced to four-year imprisonment. The employer was also found guilty on detention and confinement charges and was sentenced to 8-year imprisonment. The employer later appealed against the charges. The children received treatment and surgery at the neck and the right elbow. They also received psychological rehabilitation by joining in the life skill development and vocational training activities at Kred Trakarn Protection Vocational Training Center for 2 years and 7 months. The Ministry of Social Development and Human Security transferred the money belonging to the children in the amount of 50,000 baht at the request of their father in order to be the help with family expense.

On 23 August 2004, The Ministry of Social Development and Human Security transferred the children to Laotian Department of Social Welfare, which later returned them to their domicile in Savannakhet. The children received 732,424 baht in compensation.

### Statistics related to Children

**Table 1: Number of women and child victims of trafficking who were assisted and protected by Thailand and returned to their countries of origin between January 2000 and January 2006**

<b>Country</b>	<b>Number of persons assisted and received protection (persons)</b>	<b>Number of returnees (persons)</b>
<b>Cambodia</b>	1,018	659
<b>Myanmar</b>	628	366
<b>Laos</b>	595	323
<b>China</b>	28	18
<b>Vietnam</b>	15	11
<b>Other nationalities</b>	9	0
<b>Unspecified nationality</b>	7	7
<b>Total</b>	<b>2,297</b>	<b>1,377</b>

**Source:** Ministry of Social Development and Human Security



**Table 2: Number of women and child victims of torture who received counseling and rehabilitation in the years 2003-2005**

Type	2003 (person)	2004 (person)	2005 (person)
Children whose rights were infringed who received rehabilitation	191	193	2,626
Women and children who sought counseling via the telephone service	488	N.A.	N.A.
Woman and children who received rehabilitation assistance	745	N.A.	N.A.

**Source:** 1. Dependable Center, Ministry of Public Health; (2) The Center for the Protection of Children Rights Foundation; (3) Foundation for Women; (4) Emergency Home

**Table 3: Child workers who received assistance in the years 2001-2005**

Type/Number (person)	2001	2002	2003	2004	2005 January - June
Child workers who received assistance	114	116	83	71	85
Prosecution under the labour law, criminal law and other laws	56	26	4	26	2

**Source:** The Foundation for Child Development

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