

## Privacy rights and protection: foreign values in modern Thai context

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**Abstract.** The concept of privacy as a basic human right which has to be protected by law is a recently adopted concept in Thailand, as the protection of human rights was only legally recognized by the National Human Rights Act in 1999. Moreover, along with other drafted legislation on computer crime, the law on privacy protection has not yet been enacted. The political reform and the influences of globalization have speeded up the process of westernization of the urban, educated middle-class professionals. However, the strength of traditional Thai culture means that a mass awareness of the concept of privacy rights remains scarce. This paper explicates the Thai cultural perspective on privacy and discusses the influence of Buddhism on privacy rights, including the impacts of globalization and the influence of Western values on the country's political and legal developments. The paper also discusses the legal provisions regarding privacy protection, and the debates on the smart ID cards policy and SIM cards registration for national security.

**Key words:** Buddhism, data protection, human rights, privacy protection, privacy rights, smart ID cards, Thai culture

### Introduction

The concepts of liberal Western values dramatically entered into Thai consciousness and culture as a result of the 1932 coup with the abolition of absolute monarchy and the introduction of a parliamentary system under a Constitution based on liberty, equality and freedom. However, the democratic development was short-lived and Thailand went through a series of coups and military regimes. After the Cold War, the influences of economic expansion, globalization and subsequent political struggles have changed Thailand into a country with a modern, industrialized and cosmopolitan outlook. But the traditional Thai values and culture are not conducive to the assimilation of the concepts of human rights, privacy rights and protection, as Thai culture is based on collectivism and non-confrontation. For the new generations, changes are taking place in the new cultural space. By observing various web-board discussions, the issue of privacy protection is fast becoming one of the hot topics among the educated, urban middle-class and Internet surfers or netizens, especially regarding the issues of 'smart' ID cards (that would contain personal and medical information) and the enforced registration of prepaid SIM cards for mobile phones. The first part of this paper discusses the Thai conception of privacy and the influences of Buddhism on privacy rights and the background to the development of privacy legislation. The second part discusses the

legal provision on privacy rights and the debates on the smart ID cards project and the control of SIM cards for national security.

### Thai perspectives on 'privacy'

Most writers on the concept of Thai privacy agree that the western concept of 'privacy' is not applicable to Thai social reality. But this may be changing in the age of the Internet, insofar as culture is forever dynamic and as some argue, a desire for privacy is a panhuman trait.<sup>1</sup> According to Thais, the first connotation of privacy is negative in the sense that the loss of privacy would bring shame, disrespect or loss of face in public. The word 'private' was assimilated into Thai culture around the reign of King Rama V (1868–1910) as the Thai word '*pri-vade*' (modified from 'private') was used for '*shud-pri-vade*' which means casual clothes vis-à-vis military uniforms; '*shud-pri-vade*' are clothes people would wear at home, which could range from pyjamas, dressing gowns or old tatty clothes to informal attire. Normally, these clothes would be quite casual or 'unrespectable' so that one would be embarrassed if caught wearing them at formal occasions or in public. During the period of Kings Rama IV and V (1851–1868),

<sup>1</sup> B. Moore. *Privacy: Studies in Social and Cultural History*. Almonde, New York, 1984.

Western military uniforms, costumes and royal regalia were much admired and assimilated into Thai culture. So, this meaning corresponds to the concept of 'privacy' in Thai language of 'being private' or 'living privately' (*khwam pen yu suan tua*).

It is important to further notice that this conception of privacy is basically *collectivistic* – not, as Westerners tend to assume, *individual*. That is, as Ramasoota makes clear, 'being private' in traditional Thailand applies primarily to the shared family space in which family members undertake a wide range of activities – including rituals, cooking and eating, and sleeping – as demarcated from the world outside: "It is the kind of privacy that is shared by *intimate members of the same household*. By this token, individualistic privacy is said to have no place in traditional Thai culture."<sup>2</sup>

Niels Mudler likewise points out that privacy and individualism are Western concepts that are not applicable to Thai society, for Thai life is played out in public.<sup>3</sup> However, a person's private affairs should be kept private which implies that a Thai has both a right and obligation in the sense that he has to hide his own psychological problems within the bounds of expected behavior; this includes the right to expect other people to respect his private affairs which would cause him to lose face if made public.

The second meaning of 'privacy' in Thai culture connotes the right to be left alone or non-interference which can be equated to 'private affairs' or 'my private affairs' or 'my business' (*'rueng-suan-tua'* or *'rueng-suan-tua-khong-chan'* or *'tu-ra-khong-chan'*). Personal or private businesses or affairs should not be interfered with in Thai culture, e.g., quarrels within the family, the punishment of a child by his parents, and so forth. This notion is the legacy of the feudal heritage of Thai society where the master or lord of the household owned and commanded the lives and destinies of all his subordinates under his autocratic rule.

The lack of a Thai word for 'privacy' reflects the traditional Thai village life and the heritage of the feudalistic values in Thai history. The traditional Thai village house consists of a large room which is used as kitchen, living room, dining room and bedroom. This one-room house is where all members of the immediate extended family share their social lives. For this lifestyle to be kept in order and harmony, necessary cultural values and norms had been established, evolved and shared among people for

generations. According to Holmes and Tangtongtavy, the two cornerstones of Thai culture are conflict avoidance and the hierarchical society.<sup>4</sup> In order to create strong relationships and to maintain them, conflict avoidance or non-confrontation is diligently observed, because the result of a confrontation can be disastrous as it results in 'losing-face' (*'siar-na'*) by either side of the conflict. 'Face' represents one's social and professional position, reputation and self image, so that a loss of face is to be prevented or avoided at all costs – which further means that face-saving or *'koo-na'* has to be instigated at critical junctures. This intense need for gaining, and not losing, face has been explained in terms of cultural collectivism from which members are afraid of being excluded.<sup>5</sup> Consequently, power and status within a group depend on respect and admiration accumulated through gaining 'face'. The more 'face' a person has, the higher his credit rating – so much so that he can buy goods from local shops on credit and exert substantial influence in a group's decision-making.

The second cornerstone, the hierarchical society, is the product of Thai feudalism or *Sakdi-nar* which was established during the 15th century and abolished by King Rama V less than 300 years ago. *Sakdi-nar* was a system of ranking each individual according to the size of allocated land or rice-field; therefore a person's power and rank depended on his level of *Sakdi-nar* (*Sakdi* = power, ranking; *nar* = rice field). The patronage system existing within the vertical networks of relationship helped in maintaining the flexible and interdependent structure of Thai society. Several values and norms for supporting this hierarchy includes 'to know who's high, who's low' (*'roojak thee soong, thee tum'*), 'to give respect or show honor' (*'hai-kiad'*) to high-ranking superiors, while the high ranking *Sakdi-na* shows benevolence (*'parame'*) and gives favor (*'boon-khun'*) to those under their patronage. Thai society can be perceived as an affiliation society whose members depend upon each other and seek security in dependence and patronage.<sup>6</sup> Therefore, a low ranking person's behavior would be very polite and submissive in order to avoid any transgression which could be construed as showing disrespect and lead to 'losing face'.

Asian countries generally stress the importance of abiding by the rules of politeness protocols, including the face-saving rituals of bowing (*'wai'* for Thais),

<sup>2</sup> P. Ramasoota. Privacy: A Philosophical Sketch and a Search for a Thai Perception. *MANUSYA: Journal of Humanities*, 4 (2: September 2001), 89–107, p. 98.

<sup>3</sup> N. Mudler. *Inside Thai Society*. Silkworm Books, Chiangmai, 2000.

<sup>4</sup> H. Holmes and S. Tangtongtavy. *Working with the Thais*. White Lotus Press, Bangkok, 1997.

<sup>5</sup> H. Irwin. *Communicating With Asia: Understanding People and Customs*. Allen & Unwin, Malaysia, 1996.

<sup>6</sup> S. Piker. *The Psychological Study of Theravada Societies*. Contributions to Asian Studies 8. Brill, Leiden, 1997.

profuse apologies, formal turn-taking during negotiations and other deferential yet obligatory protocols.<sup>7</sup>

In Thai culture, there is a whole series of protocols ranging from body language, spoken and written communications, and prescribed manners – all aiming at ‘showing respect’ or ‘saving face’. Therefore, the notion of privacy in traditional Thai society could be close to ‘saving face’ (*raksa-na*) in which *hai-kiad* (to give honor or respect) represents the valuable currency. The more *kiad* and *na* (honor and face) a person receives, the higher the status, power and social credit the person has acquired in that society.

The combination of privacy as ‘private affairs’ (*rueng-suan-tua*) and the right of ‘non-interference’ works in support of ‘saving face’ – and hence, interference by outsiders is interpreted as a ‘disrespect’ that is dangerous insofar as it can lead to ‘losing face’. In this light, the Thai Prime Minister’s reactions of outrage against the US Congressional report on human rights violations during the country’s ‘war on drugs’ was perceived by most Thais as quite justifiable.<sup>8</sup> Paradoxically, the interference in ‘private affairs’ is welcome and acceptable when conducted with ‘saving face’ (*raksa-na*) motivation. Frequently, a third party (who has a lot of ‘face’) may be asked to help in reconciling a high level of confrontational negotiation which, if not properly managed so as to ‘saving face’ on both sides, may slide into an aggressive and violent conclusion, e.g. the disputes between neighboring countries over frontiers and claims to natural resources in Asia.

### Buddhist perspectives on privacy rights

According to Buddhism, human beings have no rights in the sense that we are not born with automatically endowed human rights such as privacy rights and protection. In Buddhism, the rights of ownership of land, water, lake, trees, natural resources and even our own bodies are all illusory, but which we accept as necessary for operating at this realm of existence. They are social conventions for getting on with life and the pursuit of personal development, self-improvement and ultimately enlightenment. So, the concepts of human rights and privacy rights are perceived as man-made, whereby the corresponding

social and legal norms have been developed to enable the achievement of personal and societal objectives. But this does not mean that Buddhism ignores the sanctity of life, animals, other living beings or the whole of nature. Indeed, Buddhist texts are full of teachings on moral and respectful conduct towards all sentient beings and the law of karma warns the transgressors of the results of bad karma (actions).

The Buddhist precaution reflects the fact that man-made rules and laws would inevitably be in conflict within themselves as these are created to serve human avarice; so these mechanisms are fragmented and reflect the prevailing force in the society. This would lead to further competition and aggressive posturing for protecting and furthering the interests among various groups. Phra Dhammapitaka points out the underlying flaw of Western approaches by the example of the concept of ‘equality’.<sup>9</sup> This concept should be democratically interpreted as sharing together in times of *suk-lae-duk* (happiness and sorrow), that is, in times of plenty and poverty. But – in what to Buddhists appears to be a central contradiction or paradox – the general application of ‘equality’ in the capitalistic world implies the competition or struggle for an equal share in the stake. By contrast, the Thai concept of equality is reflected in *ruam-duk-ruam-suk* (sharing-suffering-sharing-happiness) which has the same spirit of ‘in sickness and in health; for richer, for poorer’. Thus, Phra Dhammapitaka stresses the importance of educating people to respect other people’s rights while being aware that all these rights are the means for human development and that they are not ends in themselves, lest we would become so attached to the concepts of rights that we would forget the purpose of Life.

Thus the Buddhist approach to human rights which includes privacy rights is more practical and spiritual at the same time. The Buddha’s teaching, which is especially conducive to the protection of human rights, includes the teaching on the Ideal person, the Virtuous Person, the Social Benefactor and the King’s Duties.<sup>10</sup> These teachings cover all aspects of righteous bodily conduct, righteous speech and mentality with comprehensive details so that the practice of these teachings can significantly contribute towards human rights protection. Instead of creating and assigning rights, Buddhism prescribes the ground rules for conducting a moral and virtuous

<sup>7</sup> C. Engholm. *When Business East Meets Business West: The Guide to Practice and Protocol in the Pacific Rim*. John Wiley & Sons, New York, 1991.

<sup>8</sup> *The Nation*. Thaksin Dismisses Concerns, May 8, 2003. <<http://www.nationalmultimedia.com/search/page.acr-view.php?clid=2 &clid=78393&usrss=>>

<sup>9</sup> Phra Dhammapitaka (P.A. Payutto). *Buddhist Approach to Law*. Buddha-Dhamma Foundation, Bangkok, 1998.

<sup>10</sup> Phra Dhammapitaka (P.A. Payutto). *A Constitution for Living: A Handbook for Living*. Buddha-Dhamma Foundation, Bangkok, 2004.

livelihood in which all types of transgressions and bad karma are forbidden and subject to the law of karma.

The influence of Buddhism in Thai culture is amply reflected in the elements of *kreng-jai*, *nam-jai*, *hen-jai* and *sam-ruam*, including the law of karma. The quality of *kreng-jai* refers to an attitude of having consideration for others and being thoughtful in maintaining a smooth social atmosphere. So, *kreng-jai* facilitates avoiding unpleasantness and interpersonal confrontation. Holmes and Tangtongtavy observe that the manifestation of *kreng-jai* can range from complying with others' requests to the avoidance of asserting one's opinion or needs in order to maintain a cooperative relationship.<sup>11</sup> *Nam-jai* (water-heart), one of the most admired values in Thai culture, means 'water from the heart' – that is, genuine kindness and generosity without expecting anything in return. This reflects the Buddhist teaching on kindness (*Metta*) and compassion (*Karuna*). On the other hand, *hen-jai* (see into the heart), which means understanding, sympathy and empathy, which can be practically expressed by being willing to listen, being flexible and forgiving, and accommodating towards one's fellow human beings in time of distress.

The term *sam-ruam* refers to moderation in expressions and conduct which is based on the Buddhist teaching on equanimity (*Upekkha*) and appreciative gladness (*Mudita*). When a person is *sam-ruam*, he would restrain his emotions, whether being elated or in grief or in anger so as to avoid excessive display of emotions which could cause embarrassment and discomfort to others. The law of karma ensures that Thais are generally very motivated towards righteous conduct, for fear of the results of bad karma and for counting on the benefits of good karma as well. Therefore, the major task for practicing Buddhists is to encourage more inactive Buddhists to become diligent practitioners, thereby increasing the level of human rights protection in Thailand and in pursuit of spiritual liberation.

### Background to the development of privacy legislation

The legal recognition of the 'right to know' and the 'right to privacy' in Thailand was the result of turbulent political struggles for democracy. The first seed of democracy was planted by the coup in 1932 after which the People's Party replaced absolute

monarchy with a parliamentary system and National Constitution based on democratic principles.<sup>12</sup> The old social framework and networks of power depended upon *Sakdi-nar* and corvee were destroyed and replaced by a democratic ideology of equality, liberty and bureaucratic State.<sup>13</sup> However, the development of political rights in the modernized Thai state was short-lived and the country became plagued with a long series of coups and military regimes.<sup>14</sup>

After the Second World War, Thailand started to open up for foreign investments as economic development became top priority in which the most powerful influences affecting Thai society were the US involvement in Vietnam.<sup>15</sup> Consequently, the spectacular growth of Thai economy since the 1960s brought about the expansion in urbanization, industrialization, an explosion in the demand for education, and an increase in professional and middle-class city dwellers, including the rapid growth of consumer culture.<sup>16</sup>

A major socio-political trend of the 1990s was the opening of political space after the end of the Cold War and the collapse of military rule; political movements for democracy have come of age, through the bloody experiences in 1973, 1976 and the successful overthrow of military dictatorship in 1992.<sup>17</sup> The financial crisis in 1997 motivated the big businesses to control the state in order to protect themselves from the impacts of globalization while civil society pushed for more democratization. The strength of the democratic movement and the results of the financial collapse helped in clinching the passage of the National Constitution in 1997. The Constitution allows more public participation in government policy-making, provides mechanisms for good governance and introduces more radical changes to the political structures that may lead to

<sup>12</sup> E. Murashima, N. Mektrairat and S. Wanthana. *The Making of Thai Political Parties*. Joint Research Programme Series No. 86, Institute of Developing Economics, Tokyo, 1991.

<sup>13</sup> The key members of the People's Party responsible for the coup were educated in Europe at the expense of the King, some of whom did the planning of the coup while studying in Paris.

<sup>14</sup> S. Prasertkul. *The Development of the Relationship between State and Society in Thailand*. In A. Laothammatad, editor, *The Reform of Political Economy*, pp. 87–151. Amarin Printing, Bangkok, 1995.

<sup>15</sup> N. Mudler. *Inside Thai Society*. Silkworm Books, Chiangmai, 2000.

<sup>16</sup> J. Ungpakorn. *The Struggle for Democracy and Social Justice in Thailand*. Arom Pongpangan Foundation, Bangkok, 1997.

<sup>17</sup> P. Pongpaichit and C. Baker. *Thaksin: The Business of Politics in Thailand*. Silkworm Books, Chiangmai, 2004.

<sup>11</sup> In their book *Working With the Thais* [see note 4], variations of *kreng-jai* can be differentiated in terms of *kreng-jai* towards junior people and towards government officials.

future political crisis.<sup>18</sup> This is the first Constitution in Thailand that guarantees fundamental rights and liberties, human dignity and human rights. A point of interest: the Official Information Act, motivated by the need to limit the power of state officials and government, was enacted in September 1997, one month ahead of the Constitution.

### The Official Information Act 2540 (1997)

The Official Information Act (1997) guarantees all citizens the 'right to know' and 'right to privacy' and protection under Article 58 which states: "A person shall have the right of access to public information in possession of a State agency, State enterprise or local government offices."<sup>19</sup> But there is the usual exception, i.e. when the disclosure of official information shall affect the security of the State. The 'right to privacy' is recognized in Article 34 which states: "A person's family, rights, dignity, reputation and the right of privacy shall be protected." However the law is applicable to only public sector entities and official information in their charge. The Privacy protection in the private sector is partly recognized in the law of torts as a part of the rights to one's personality. Therefore, personal data protection provided by the Official Information Act does not extend to those data collected by businesses, financial institutions and other private organizations.

The Act protects individuals from violations of privacy by State agencies whereby 'personal information' is defined as information relating to all particular private matters of a person which further contain indicators that can be used to identify that person; thus the concept of 'personal information' is taken to be synonymous with 'privacy'. The protected personal information includes financial status, health records, criminal records, employment records, fingerprints, photographs, recorded sounds and all the personal particulars. The rights to access and correct personal data held by State agencies are protected under Sections 7, 9, 11 and 12 of the Act. The Act provides for the protection of personal data in official databases under Section 23: "A State agency has to provide an appropriate security system for personal information system in order to prevent improper use or any use to the prejudice of the person."

The underlying motivation of the Official Information Act was to ensure the accountability and transparency of public sector organizations and to transform representative democracy into participatory democracy.<sup>20</sup> The Official Information Act 1997 which encompasses the freedom of access to official information runs counter to traditional bureaucratic practice, that is, Thai officials who would normally keep 'official information' secret have to make transparent such 'secret official information'. On the other hand, the 'right to privacy' is a strange concept to the majority of Thai people in the agricultural sector, whose culture and lifestyle are largely played out in the public. Moreover, Thai officials still exhibit the *Sakdi-nar* attitude of being in a 'high place' (*tee-soong*), so that they have a 'superior right' to access or make use of all official supplies or instruments, including personal data in the databases within their range of command. So, to demand an official record to be disclosed is declaring a confrontational stance and causing the official to 'lose face'. Although there are several successful test-cases in disclosing official information, most Thai people are reluctant to engage in confrontational legal wrangling with State officials which can result in adverse consequences.

### The demand for data protection in modern Thailand

The younger generations in Thailand – especially teenagers and university students – have become aware of privacy rights as altered photos of their favorite film stars and singers, as well as private video clips, have been circulated via the Internet and details of public figures' lives have been posted on web-boards. The exposure of these sensitive pictures in newspapers gave rise to debate that spilled over onto TV talk shows and heated discussions in popular chat-rooms. On the other hand, some ordinary middle-class taxpayers have experienced the horror of having their credit cards details published on various web-pages and their email accounts inundated with spams. The government's desire to benefit from globalization has been translated into a huge budget for national infrastructure for ICT, policies on e-Government, e-Citizen, e-Commerce, and the smart ID cards project.

As the brave new world of electronic transactions gathers pace in Thailand, more and more

<sup>18</sup> K. Kaewtep and N. Trirat. *2540 (1997) Turning Point for Thailand*. Friedrich Ebert Stiftung, Bangkok, 2001.

<sup>19</sup> The Official Information Act B.E. 2540. House of Parliament, Bangkok, 1997.

<sup>20</sup> K. Prokati. Information Access and Privacy Protection in Thailand. In *Proceedings of the Conference of Freedom of Information and Civil Society in Asia*, 13–14 April 2001. Information Clearing House, Japan, 2001.

people have realized that information technology is like a double-edged sword: whatever its benefits, obviously IT can also be dangerous in the hands of corrupt officials and computer hackers. Among civil society activists, academics and professionals, human rights workers and concerned citizens, the implementation of the smart ID cards project, especially *without* the prior enactment of the drafted Data Protection Law, means a big blow to the 'right to privacy' – especially to those who have health conditions (i.e. HIV/Aids and chronic diseases), and to those with criminal records and/or bad driving records.<sup>21</sup> The delay in passing the relevant computer laws also hampers the progress in electronic commerce and diminishes the private sector's confidence in the government's commitment to protecting privacy rights.

A survey of websites' privacy policies was conducted in February 2003 by the ICT Laws Development Project.<sup>22</sup> The result indicated a very low level of awareness in privacy protection: among government agencies, only 3 out of 159 official websites had a published privacy policy. About 10% of the total 759 websites contained a privacy policy; 26% of financial institution websites and free services portals adopted some kind of privacy policy. The explanation for the results were the low 10% of Internet penetration and 22% teledensity in Thailand.

### The data protection legislation

A powerful driver of the development of privacy law among developing countries is the desire to engage in global e-Commerce and the recognition of trust as being a fundamental component of the new economy.<sup>23</sup> Privacy and data protection legislation have been the important components of public policy discussions and internal economic forums, such as the Asia Pacific Economic Cooperation (APEC)'s con-

<sup>21</sup> An Attorney-at-Law for the International Legal Counselors Thailand pointed out that the drafted legislation did not address the data controllers and processors who are government officials. See also Asina Pornvasin. *The Nation*, November 20, 2003 and Pennapa Hongthong. E-Citizen cards: doctors: data open to abuse. *The Nation*. Mar 10, 2004.

<sup>22</sup> T. Koanatakool. Thailand Perspective Toward Self-Regulation and Government Enforcement on Privacy Issues, APEC Electronic Commerce Steering Committee, 23 May 2003. Bangkok. <[http://www.export.gov//apeccommerce/privacy/2003workshop/Thanweesak\\_paper.html](http://www.export.gov//apeccommerce/privacy/2003workshop/Thanweesak_paper.html)>

<sup>23</sup> J. Demsey, P. Anderson and A. Schwartz. *Privacy and e-Government*, a Report to the United Nations Department of Economic and Social Affairs. Center for Democracy and Technology. Washington D.C. May 23, 2003.

ference in Thailand, February 13, 2003, entitled "Addressing Privacy Protection: Charting a Path for APEC."

Thailand's Data Protection Law has been drafted by the National Electronic and Computer Technology Center (NECTEC) in accordance with the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data and the European Union Directives 95/46/EC on the protection of individuals with regards to the privacy of personal data. The drafted law has been ready for the Cabinet's approval but some technical delay has kept passage of the law in abeyance. With the beginning of the full implementation of smart ID cards project by mid-2005, questions were raised among the public whether the enactment of the Data Protection Act should come before the start of government's distribution of smart ID cards.

### Debates on smart ID cards in Thailand

The smart ID cards project was approved by the Cabinet in September 2002. The Ministry of ICT (Information and Communication Technology) is in charge of the production of the cards with the initial budget of 1.82 billion Thai Baht (Bt.) for 33,198 card reader-writer machines, Bt. 132.79 million for 33,198 fingerprint reading machines, and Bt. 126 million for card lamination.<sup>24</sup> The three-year project of producing over 64 million cards has a total budget of Bt. 7910 billion. The information on these cards will gradually be expanded to include information from at least six official agencies, i.e. the population registration bureau, the social security department, the health and welfare department, the drivers license bureau, the civil servants commission, and the farmers' financial units. The personal data to be on the cards consists of name, address(es), date of birth, religion, blood group, marital status, social security details, health insurance, driving license, taxation data, the Bt.30 healthcare scheme, and whether or not the cardholder is one of the officially registered poor people.

The initial target groups are the people in the three provinces in the South (where insurgency and acts of sabotage have become normal over the past two years), the three IT cities of Phuket, Chiangmai and Khonkaen, and officially poor people. Moreover, new legislation will require newborn babies to be issued smart ID cards within 60 days and children under 15

<sup>24</sup> P. Srivalo. Big budget sought for 22 million cards. *The Nation*. December 12, 2003. <<http://www.nationmultimedia.com/search/page.arcview.php?clid=90397&usrsess>>

would have to apply for the ID cards within one year.<sup>25</sup>

The debates on smart ID cards cover three main themes, namely, the planning of the project, the lack of data protection legislation, and the negative repercussions of privacy violations. Gartner's analyst has expressed concern over the inadequate planning, complex funding structure of the project and the lack of proper consultations with experts and non-existence of any pilot schemes.<sup>26</sup> Civil rights groups and legal experts have pointed out that Data Protection Law has not been enacted so there is inadequate legal protection against unauthorized access and misuse of personal data which lead to the 'loss of control' over personal data. The civil rights groups' utmost fear is that personal data could be accessed by unauthorized persons and government agencies.<sup>27</sup> The repercussions could be disastrous in financial terms and personal security in cases where data of credit cards and bank accounts and over 60 million people's fingerprints got into the wrong hands. Voices from a chat-room reflected the fear of having their fingerprints stolen and left at the crime scene while others were concerned about identity theft as there is already a brisk business in selling false ID papers to illegal immigrants. One sophisticated netizen was worried about the possibility of a false positive matching of his fingerprints by the police, thus rendering him a potential suspect. The other anxiety reflected among concerned citizens is the slide towards a Big Brother State whereby the centralized control of personal data can lead to the erosion of liberty and freedom.

Still more interesting opinions were articulated at the seminar on 'Smart Cards and Society' at Chulalongkorn University, November 11, 2004. A National Human Rights Commissioner questioned whether the smart ID cards project was against the National Constitution (1997) and whether the government should obtain people's consent before collecting their personal data. Furthermore, the existence of a national register or database meant that personal data are no longer protected. On the other hand, the Deputy Secretary to the Ministry of ICT pointed out that even without the smart cards project, personal data were at risk of being violated

as personal details have already been scattered among various agencies. The Head of the ICT Laws Development Project, a NECTEC representative, commented that the drafted Data Protection Law would take a long time to be enacted by Parliament. Therefore, the reporter concluded that Thai citizens would continue to be at risk for privacy violations.<sup>28</sup>

Questions were also raised by a philosopher at the seminar whether the government had given people in the South accurate and relevant information before issuing them smart ID cards, and whether the scheme would increase the State power beyond expectations. Representatives from civil society groups were concerned with the accuracy of the recorded data and impacts on people in the countryside – especially the impacts on the hill tribe people and ethnic minority people whose proofs of nationalities can be problematic. The Director of the Office of the Population Registration Bureau responded to doubts over the security of computer systems by giving technical details of the 11 steps of the registration process and of the security system.<sup>29</sup> The seminar on 'Smart Cards and Society'<sup>30</sup> was unexpectedly well attended by senior government officials, academics, researchers and private sector professionals, civil rights activists and NGOs, and ordinary taxpayers, including ten journalists, indicating a growing awareness of the importance of privacy rights and data privacy protection among the educated urban, middle-class professionals.

### Debates on the registration of SIM cards

The latest government measures in combating insurgency in the four provinces in the South include the registration of SIM cards for prepaid mobile phones – because the majority of bombs in the insurgents' attacks have been set off by mobile phones.<sup>31</sup> Over 22

<sup>28</sup> N. Tongbaiyai. Smart Cards and Society: Blind Spot of Privacy Violations. *Thairat*, November 24, 2004.

<sup>29</sup> Hi-tech Dictator. *Consumerthai.org*. December, 9, 2004. <[http://www.consumerthai.org/careful\\_board/view.php?id=217](http://www.consumerthai.org/careful_board/view.php?id=217)>

<sup>30</sup> The Round-Table Seminar on 'Smart Cards and Society' was co-sponsored by the Faculty of Political Science, Chulalongkorn University and the British Council in Bangkok. The keynote speaker was Prof. Jim Norton, a senior policy adviser on e-business and e-government for the United Kingdom Institute of Directors. The three panels consisted of the panel on public management and services, the panel on ethics and human rights and the panel on impacts on society. There were about 150 people in the audience.

<sup>31</sup> *Bangkok Post*. Consumer law to cover SIM. April 26, 2005. <<http://www.bangkokpost.net/news/26Apr2005-news13.php>>

<sup>25</sup> *The Nation*. Smart Cards: Children to get their ID card at birth. May 8, 2004. <<http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=98467&date=2004/05/08>>

<sup>26</sup> CNETNews.Com, October 16, 2003. <<http://www.zdnet.co.uk/>>

<sup>27</sup> *The Nation*. First Smart ID Cards to be delivered in June. May 3, 2005. <<http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=11528&usrsess>>

million prepaid mobile phone users have had to register and provide personal information to mobile phone operators from May 10, 2005, at the cost of having their mobile phone signals terminated temporarily; these measures would also apply to foreigners going to the South. Serious objections to the government plan include the questions regarding the effectiveness of the measures in increasing national security and the fear of the misuse of personal data.<sup>32</sup> Furthermore, the government registration scheme of initial enforcement in the Southern provinces has irked local people. The vice-president of the national Muslim Youth Council pointed out that the insurgents could switch to using remote controls or timers.<sup>33</sup> Insurgents would also likely opt for Malaysian SIM cards, as the black markets on both sides of the Thai–Malaysia border continue to do a brisk business and contraband mobile phones have been smuggled through check-points.<sup>34</sup>

On the other hand, the National Human Rights Commission has warned against the scheme on the grounds of human rights violations. The Upper House of Parliament's Select Committee on Justice and Human Rights has expressed the concern that owners of stolen mobile phones would become potential suspects during the first 7 days of arrest and police investigation. However, the Deputy Prime Minister insisted that the government could proceed with the scheme for safety and security reasons.<sup>35</sup> The registration of SIM cards for prepaid mobile phones has significantly raised public awareness of privacy rights, as the 22 million users come from all cross-sections of the society, i.e. farmers, fishermen, laborers, housewives, traders, bar-girls and dancers, hair dressers and masseurs, and so on. The debates on this topic in the press and some web-boards have been somewhat divided between those who see that 'security is worth the cost of inconvenience' and those who think that 'the government has done it again'. Some overseas telecommunications experts and

expatriates living in Thailand have also joined in the debate and contributed some policy and technical recommendations.<sup>36</sup> There was also a hint of some cynicism in the sense that the scheme was designed as a ploy to make the mobile phone markets less competitive and to drive out small operators who could not bear the costs of creating and managing databases of mobile phone users.

The delay of the enactment of Data Protection Law has discredited the government's intention regarding the protection of human rights. Had the Law been enacted, the smart ID cards project would have faced serious legal hurdles and been subject to several modifications with regards to privacy protection for both the public and private sectors. This would have allayed the criticisms against the registration of SIM cards, which has no legal basis for enforcement.<sup>37</sup> This fact has made small operators fearful of legal actions by consumers and they have urged the government to put the order in writing instead of verbal announcement. After the 'September 11' tragedy, the government's measures for combating terrorism would likely infringe upon basic human rights and civil liberties in the name of national security and public security.<sup>38</sup>

## Conclusion

Thailand's four Southern provinces had been relatively peaceful until the government volunteered Thai troops to Iraq upon the request of the US – for humanitarian purposes, but without waiting for the UN General Secretary's deliberation on the matter. Many findings on the problems in the South stressed the root causes as cultural factors – specifically, as the actions of government officials, police, and military showed blatant disrespect for Muslim religion and culture. The consequences of misunderstanding another culture and the gross insensitivity of policy-makers, high-ranking executives and administrators led to fatal clashes and inevitably to insurgency. So, understanding culture is vital to promoting a peaceful atmosphere and harmony in society.

<sup>32</sup> U. Mongkolporn and P. Srivalo. Anti-Terror Measures: Mobile ID Plan Flawed, say experts. *The Nation*. April 19, 2005. <<http://www.nationmultimedia.com/search/page.arcview/php?clid=2&id=114624&usrssess>>

<sup>33</sup> *The Nation*. Muslim irked about plans for all phones. April 20, 2005. <<http://www.nationmultimedia.com/search/page.arcview/php?clid=3&id=114683&usrssess>>

<sup>34</sup> *Bangkok Post*. Targeting the bombers. April 21, 2005. <<http://www.bangkokpost.net/education/site2005/wnap2605.htm>>

<sup>35</sup> *Prachathai*, April 28, 2005. <<http://www.prachathai.com/news/>> See also: P. Srivalo. Law allows registration of SIM cards, *The Nation*, April 21, 2005. <<http://www.nationmultimedia.com/search/page.arcview.php?clid=3&id=114740&date=2005/21/03>>

<sup>36</sup> The section of 'Letters to the Editor' in *The Nation* often includes witty and lively letters on the topic. For example: on April 22, 24 and 25, 2005. <<http://www.nationmultimedia.comsearch/page.arcview.php?clid=13&id=114907&usrssess>>

<sup>37</sup> *Prachathai*, April 27, 2005. <<http://www.prachathai.com/news/>>

<sup>38</sup> National Human Rights Commission. *National Human Rights Commission Strategic Plan*. Bangkok, 2002. <<http://www.nhrc.co.th>>



Fortunately, on the other side of the coin, the ethnic Chinese living in Thailand share very similar cultural values with Thai people – in part, because they have been influenced by Buddhism. The Thai values of patronage, ‘saving face’, and reverence for elders and people in ‘high’ places, are similar to Confucian values of ancestor reverence, respect for ‘face’, responsibility, loyalty, modesty and humility. Both cultures seek to avoid confrontation and would strive to ‘save face’ by showing respect or *kiad* to elders and people of high rank (*tee-soong*) – all in order to create harmony and balance in society. The Chinese and Thais also have elaborate ceremonies and social rituals to ‘give face’ or honor others and to ‘save face’ in order to maintain social relationships.

An example of how important ‘face’ is among Thai politicians can be seen on their birthdays. The number and ranks of well-wishers would be noted by other guests and members of the press. It is not uncommon for a politician to receive between 500 and 1000 guests for the day: the VIPs would include members of the Cabinet, top civil servants, policemen and military commanders, businessmen and political parties’ leaders. But the most important guest is the Prime Minister. His absence would generate political gossip and speculation on the relationship between the host and the PM. A third party, i.e. the spokesman or secretary, would provide probable excuses in order to soften the apparent loss of face, and to ensure a smooth working atmosphere in Parliament.

A recent national example of ‘saving face’ is the airport scandal in which one US-based company was involved in an allegation of bribery surrounding the deal on the purchase of explosive-detection machines for the new international airport.<sup>39</sup> This has been considered as such a grave loss of face by the government that the government was ready for a legal battle as a result of contract termination in order to protect the country’s reputation and national honor.

These examples show the continued strength and importance of Thai cultural traditions and values – and they suggest that the existence of the Official Information Act, the National Constitution (1997), or the National Human Rights Commission (1999), by no means guarantees that privacy rights, even if seen as a basic human right, will be protected or easily assimilated into Thai culture and norms. As Pirongrong Ramasoota commented, while privacy has been a major area of debate in industrialized countries since the 1960s, Thais have less than ten years’ experience of participatory democratic val-

ues.<sup>40</sup> However, the political reform and dynamics of globalization have brought significant changes in the socio-political structures, whereby urban, educated middle-class professionals continue to increase. The process of westernization has been quickening since the period of Western colonization.

Modern Thailand (previously known as Siam) and Thais (Siamese) are nowadays very westernized and exhibit Western values, from consumerism, to capitalism and democratic aspirations. However, old habits die hard, which means that those who seek confrontation with government officials (people in high places) are perceived as either black sheep or heroes (whether crazy or radical and revolutionary). The stakes are high, and the consequences can be costly. The advocates of privacy rights, human rights, and justice travel a lonely path. As the climate of fear and insecurity continues to spread locally and globally, the government can easily justify various repressive and autocratic policies in contradiction to the protection of human rights, liberty and freedom enshrined in the Constitution and Laws. As power tends to corrupt and information is power, therefore absolute information-control tends to corrupt absolutely. The contention between imported liberal democratic values and traditional Thai values has been creating rifts, cracks and powerful social forces that have dramatically changed Thai social and political structure in the past. The tendency of changes will continue towards the liberal democratic values whose seeds have been planted in Thai history. The consequences, directions and costs of this process lie in the hands of those in high places (*tee soong*) with powerful face.

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<sup>39</sup> P. Srivalo and S. Viriyapanpongsa. Airport Scandal: GEInVision faces govt ban if it fails to clarify claims. *The Nation*, May 7, 2005, Headlines.

<sup>40</sup> Pirongrong Ramasoota. Privacy: A Philosophical Sketch and a Search for a Thai Perception. *MANUSYA: Journal of Humanities* 4 (2: September, 2001), p. 91.

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