

This is an overview of the Traditional Medicine & Local Knowledge Act of 1997, which protects and promotes traditional medicine in Thailand.

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Rationale and Background: The Draft Thai Traditional Medicine and Local Knowledge Protection and Promotion Act.

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Rationale for Legislation

The importance of traditional medicine which is regarded as part of rural culture has gained increasing attention through attempts to find alternatives to modern medicine to cure diseases without accompanying side effects. It also represents a meaningful linkage of the past and the present stemming from the natural resources of the locality and wisdom of the self-reliance of ancestors.

People in Thailand have been relying on traditional medicine through the practice of various groups of traditional medicine practitioners and their efforts to conserve these traditional practices from becoming extinct. At the same time, the government has also tried to frame policies and laws to promote and encourage local knowledge related to traditional medicine which are passed on through the generations. Many of the local knowledge systems are disappearing through government neglect as well as an overdependence on imported medicines and medical technology.

As competition over access to natural resources increases, the industrialized countries of the North with their advanced biotechnology hold the political and technological advantage, and seek to access the natural resources and biological diversity in the countries of the South which are the "raw materials" for their "life industry".

Presently, many local groups have emerged to provide traditional medical service and training courses for the transfer of knowledge on traditional medicine. There are attempts to link scientific knowledge to Thai traditional medicine towards higher standards. As a result, the development of Thai traditional medicine has drawn the attention of government agencies, NGOs and academics to support the recovery of traditional medicine systems for use in public health care services. Under the IV Public Health Development Plan, the Ministry of Public Health plans to support the development of Thai traditional medicine and its application in primary health care. The Ministry has set up a project called "The Thai Traditional Medicine Decade" which will be extended to the VIII Economic and Social Development Plan (1997-2001). The project aims to promote Thai traditional medicine to substitute for high-cost imported medicine and medical equipment as well as promote the exchange of knowledge and resources in the

form of medical herbs, health foods, and other health care items.

For these above mentioned reasons, it is also necessary to have legislation that can better protect the local knowledge systems related to Thai traditional medicine, and its conservation, utilization and development particularly in order to support the various roles of local communities, traditional healers, monks, NGOs and private individuals.

Main Principles and Rationale of the Legislation.

1. The objective of this Act is to protect and promote Thai local knowledge of traditional medicine and medicinal natural resources.

Thai traditional medicinal knowledge means "the knowledge and abilities in examination, diagnosis, treatment, prevention, rehabilitation Midwifery in compliance with tradition, customs and local culture by using Thai medicine, discovering medicinal properties and its application in Thai traditional medicine. These are recorded both as community and individual practices including traditional medicinal preparations. Thai traditional medicine knowledge will be protected and supported as follows:

Medicinal herbs, traditional medicine, local medicinal preparations.

Thai medicinal treatment and diagnosis of illnesses and diseases.

Traditional medicinal technology.

Texts on Thai medicine, medication and medicinal technology.

Rationale

Since there is no legislation to protect such traditional knowledge, corporate monopolies seek and exploit these practices under TRIPs. Thais and other ethnic groups living in Thailand possess local knowledge systems related to medicine, practices and local technology which are compiled by traditional medicine practitioners. This knowledge has been mostly transferred through word of mouth within and among local communities. This could be recorded in the printed form such as textbooks for more effective conservation.

2. Ordinary people, NGOs, private individuals and communities will be protected and supported.

Rationale

If medicinal herbs continue to be lost, it would affect Thai traditional medicinal knowledge which depends on herbal preparations for treatments and remedies as well as

in food.

3. The Public Health Minister who is in charge of the enforcement of the Act is empowered to issue Ministerial Regulations, Regulations, Notifications or other regulations.

Rationale

To promote and support the conservation movement which consists of individuals, NGOs, whether as juridical persons or not, as long as they aim to participate in activities concerning Thai traditional medicine, as well as communities with a significant role in conservation as long as these communities are recognized by law especially other ethnic groups dependent on natural resources.

4. Role and function of the Committee for the Protection and Promotion of Local Knowledge on Traditional Medicine.

The committee has the authorities and functions as follows:

To supervise the policy to promote and protect Thai traditional medicinal knowledge

To advise the Minister in issuing Ministerial Regulations and Notifications

To determine the compensation for, and conditions of, the rights to utilize medicinal herbs or reserve areas for medicinal herbs

To determine measures for cooperation among government agencies, state enterprises, local communities and NGOs,

To consider and approve the applications in using and developing Thai traditional medicine and medicinal herbs as well as to revoke such rights

To approve projects and plans to be financed by the Thai Traditional Medicine Fund. The Committee composed of Permanent Secretary for Public Health Ministry as Chairperson and representatives from 10 government agencies and not less than 8 of those appointed by the Minister from experts practicing medical treatment or from those who have experience on Thai traditional medicine as members. The Director of the National Institute of Thai Traditional Medicine is the Committee Secretary.

Rationale

The Ministry of Public Health is the government agency with the continual major roles to promote and publicize Thai traditional medicine. The National Institute of Thai Traditional Medicine under the Ministry is directly responsible for promotion and publicity.

5. Roles of the National Institute of Thai Traditional Medicine.

The National Institute of Thai Traditional Medicine is a Central Registrar for various activities concerning the conservation, protection and promotion of Thai traditional wisdom, having the director of the Institute as the Central Registrar and all provincial public health offices as provincial public health officers as Provincial Registrar. The Institute will take care of the registration of medical herbs and Thai traditional medicine wisdom having been registered and has the authorities and functions as follows:

to present policy and operation plan of Communities and NGOs

to give suggestion on enacting laws and amending Ministerial Regulations, Regulations and Notifications

to survey, register and record as well as report the situation on bio-resources, medical herbs and Thai traditional medicine wisdom to cooperate with government agencies' other units, NGOs and communities

to be the center for technical publicity and to promote research studies and encourage people to participate in bio-resources and medical herb rehabs.

Rationale

The Committee for the protection and promotion of wisdom on Thai traditional medicine will be a policy and planing supervisor to protect and promote individuals, NGOs and communities participating in plans to coordinate work between government agencies and the people. The Committee, at the same time, will not allow Thai traditional medicine knowledge and medicinal herbs to be exploited by commercial interests for monopoly profits. The Committee has to be composed of government agencies concerned, medicinal experts and those experienced in Thai traditional medicinal practices for cooperation and monitoring between government agencies and the people.

6. Protection of Medicinal Herbs.

The Minister with the consent of the Committee will announce the categories of medical herbs which are divided into three types:

1. Medicinal herbs for research
2. Medicinal herbs with significant economic value
3. Medicinal herbs under threat of disappearance

The various types of medicinal herbs will be classified and administrative guidelines issued concerning the management, research study, use and conservation as well as selling, exporting, and processing of medical herbs.

Rationale

The National Institute of Thai Traditional Medicine is the government agency having been responsible for Thai traditional medicine and to cooperate with provincial public health officers in promoting groups of people to take care, utilize, transfer and develop Thai traditional medicine wisdom. It is a proper agency for this particular purpose, but it is still a small agency depending on cooperation with other agencies such as the provincial public offices. Therefore its personnel needs to be trained to develop its work and management. It is necessary to upgrade it to a division with its own personnel and budget so that it could manage cooperation with communities, private individuals, NGOs and provincial public health offices in registration and compilation of Thai medicinal herbs as well as in encouraging policy and operation plans to take care of, use and develop Thai traditional medicine and medicinal herbs through surveys, research studies and publicity, under the supervision of the Committee.

7. Protection of Areas of Medicinal Herbs.

The Minister with the consent of the Committee is empowered to make an announcement in the Government Gazette of areas which are the origins of the medicinal plants, herbs and animal materials, or those areas where the medicinal varieties are replanted. These areas can come under protection for the following purposes:

1. For the conservation of medicinal herbs that are under threat of disappearance
2. For access to medicinal herbs for utilization without the degradation and disappearance of the natural resources
3. Promote individuals, communities and NGOs to participate with government agencies in management, development and utilization of medicinal herbs in protected areas. The utilization of medicinal herbs in protected areas must follow the regulations such as not impact on the biodiversity and ecosystems of the protected areas, as well as subject to the regulations on sale, distribution, exchange and the export of herbs from the protected areas.

Rationale

There are still many varieties of medical herbs not known to medical science and there are difficulties in collection. However, for increased ease of use, wider research study on medical herbs and use of herbs will be promoted for the development of Thai medicines. At the same time to bring attention to endangered herb varieties, it is necessary to separate these varieties into those to be conserved and those for use.

8. Application to utilize medical herbs

Those wishing to utilize all three categories of medicinal herbs as previously mentioned have to submit an application to the Committee before beginning management and utilization of the herbs. In case of medicinal herbs with economic value, any commercial benefits, exports, processing activities are required to be reported to The National Institute of Thai Traditional Medicine for the purposes of supervision and to determine a fair compensation as well as outline terms of use of the medical herbs.

Besides the three categories of medical herbs mentioned, local people have the right to manage or use medicinal herbs except those that are controlled or in protected areas with no particular individual or organization to take care of prior to this Act coming into force, in which case the right over the protected areas shall reside with the government.

Rationale

For the protection of the existing herbs and those under threat of disappearance, it is also necessary to protect the local origins of these resources. The Minister by consent of the Committee makes an announcement that herbal protected areas which might overlap various types of forest under the supervision of the Royal Forestry Department (RFD) and the areas outside the supervision of the communities will be declared as areas for public use under the supervision of both government agencies as well as the local communities.

9. The protection and promotion of knowledge of Thai traditional medicine.

The right to register shall go to the owners, NGOs and people who discover, improve or develop and use Thai traditional medicine, and this shall be registered. In case there is more than one applicant, the right under this Act will be awarded on a first come first serve basis.

Rationale

The National Institute of Thai Traditional Medicine under supervision, is assigned to assist people in the management or the use of herb protected areas. In case medicinal herbs are required for research study or sale, or endangered species are to be protected, this will be done through a process of approval and issuing permits. The Committee will decide on fair compensation and conditions on the utilization of herbs and if such herbs are for general benefits, it is not necessary to get approval from the Institute; in case medical herbs and protected herbal areas are not taken care of by any particular individual or government agencies, they shall come under government supervision.

10. Private individuals, communities, NGOs who own, conserve, utilize and develop Thai traditional medicine shall obtain life-long protection.

In case of private individuals, the protection shall devolve for another 50 years after the person is deceased irrespective of whether there is registration. If no individual or community can continue conservation of the traditional medicine, the government shall oversee the traditional knowledge.

In case private individuals use their rights on the registered traditional medicine in order to develop another traditional medicine, they shall seek written approval from the Committee; the approval shall be valid for not longer than five years.

Traditional medicine or local knowledge of other countries shall be given protection in Thailand if there is proof that there are laws protecting the knowledge in the relevant country.

Rationale

To facilitate and speed up registration, the provincial public health offices are assigned to oversee the registration along with the Institute. The registration shall be simple, uncomplicated and open to the public for and based on the principle that applicants will be registered on a first come first serve basis. It will welcome objections to prove prior discovery, ownership or conservation; if such proof is difficult, protection will be shared on the principle on equal benefits rather than in terms of profits

11. Revocation of permits.

The Committee is empowered to revoke permits on medical herbs and Thai traditional medicinal knowledge when the person has developed traditional medicine in contravention to the objectives under this Act, or create injustice, or cause unfair advantage, or damage to biological resources, or against tradition, customs and way of life of the local community, or the product is deemed harmful to the public.

Individuals, communities, NGOs who have their rights to utilize, take care of, or possess revoked may appeal for regranting of rights, one year after their rights were revoked.

Rationale

Life-long protection shall be given for ownership for those who possess, inherit or utilize medicinal herbs in case the private individuals have registered their rights. The protection will devolve to the first generation of heirs and will be valid for 50 years, after which it belongs to the government. In case of small-scale production for sale within the community for the purpose of treatment rather than a large-scale business, such activities will be protected under this Act. Registration is not required so that it will not create difficulty in registration of the traditional medicine, but this activity is required to be registered in other forms for the official records as well as for proof of rights.

The government shall have rights over Thai traditional medicinal knowledge that does not belong to, is used by, conserved, developed or inherited by communities, individuals or NGOs in order that this will not be used by any group without collective responsibility.

Rights on a reciprocal basis will be applied for equality for people in other countries with similar laws as Thailand.

In order to control the utilization or development of Thai traditional medicine wisdom in contravention of this Act, there shall be steps taken to curb or revoke such activities or rights by authority of the Committee and Sub-Committee appointed by representatives from communities or from different people proposed to control and to allow those whose

rights have been revoked to appeal within one year.

12. Thai Traditional Medicinal Knowledge Fund.

Thai Traditional Medicine Wisdom Fund is set up as a revolving fund for the expenses for activities concerning the protection and promotion of Thai traditional medicinal knowledge. Acquiring of benefits and spending of the Fund must be in accordance with regulations laid down by the Committee with the consent of the Ministry of Finance.

13. Roles and function of the staffs and the Sub-Committee.

Under this Act, the staff members and the Sub-Committee are the competent officers according the Criminal Code, having authority to control any activities that contravene this Act and also have the duty to promote, advise people on protection, conserve, and utilize Thai traditional medicine and medicinal products.

Rationale

To enable that the protection and promotion of Thai traditional medicine wisdom will be directly financed with its own fund, a revolving fund is needed for spending and generating income besides the government budget which can provide considerable advantage in encouraging people to conserve and use the benefits more efficiently.

The competent officers will have a major role in monitoring and supporting people to conserve and develop Thai traditional medicine, and maintain the continuity of the knowledge system. The officers also have authority to control and inspect all documents concerning the process of consideration of the Sub-Committee, the National Institute of Thai Traditional Medicine, and the Committee