Environmental Governance in Thailand

Synthesis Report of the Third TAI Assessment

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Preface

This publication is the second edition of *Environmental Governance in Thailand* which presents the synthesis of the environmental governance assessment conducted for the third time in Thailand, from August 2005 to August 2007. The third national assessment on environmental governance in Thailand was conducted by the research team of the TAI Thailand coalition and reviewed by the advisory panel (listed on the last chapter). The first edition, of which Dr. Sujitra Vassanadumrongdee was a co-editor, was published in May 2007. However, The Constitution of Thailand B.E. 2550 (2007) was promulgated in the following August. It was thus deemed appropriate to revisit this report and bring the readers up to date on Thailand's performance with regard to people's access to information, public participation and access to justice under the Constitution (2007).

This was done with the great help and expertise of Mr. Pairoj Polphet, Secretary-General of Union for Civil Liberties, to whom we would like to express our sincere gratitude.

TEI would also like to thank the partners of the TAI coalition in Thailand - King Prajadhipok's Institute (KPI), Sustainable Development Foundation (SDF) and Department of Environmental

Quality Promotion (DEQP), all members of the research team and the advisory panel.

Finally, we would also like to thank all those who provided all the information and recommendations to conduct the third national assessment. We are particularly grateful for the financial support generously provided by UK Government's Global Opportunities Fund for the assessment and the Swedish Environmental Secretariat for Asia (SENSA), for the printing of this second edition.

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Content

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INTRODUCTION

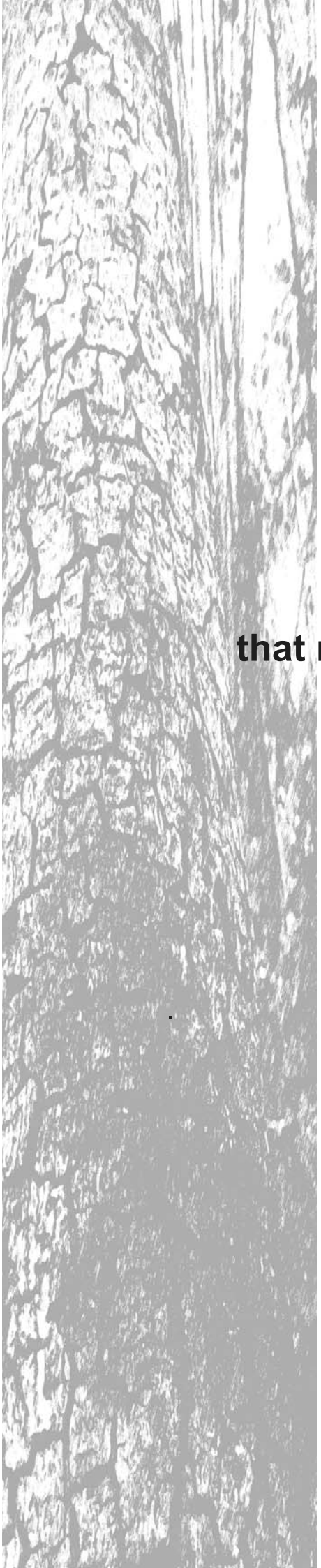
First Edition (2007)

The Synthesis report on “Good Environmental Governance: Public Participation Indicators for Thailand’s Sustainable Development” presents the synthesis of the environmental governance assessment conducted for the third time in Thailand from August 2005 to August 2007. TAI (The Access Initiative) indicators were applied as a tool to assess the Thai government on how well it provided Thai citizen three fundamental accesses: access to information, access to participation in decision-making, and access to justice, with regards to decision making on environment related issues. Indicators also include questions for assessing general law such as constitution and for capacity building the government provided in order to enhance access rights.

Eighteen case studies involving a wide range of sectors, issues, and regions were chosen. Cases include access to bird flu and

Tsunami information, access to participation in Thai-US Free Trade Area (FTA) and water crisis mitigating policy in the Eastern region, and access to justice in the court case of the Electricity Generating Authority of Thailand's privatization policy and on the dispute over Thai-Malaysia Pipeline.

The third national assessment on environmental governance in Thailand was conducted by TAI Thailand coalition comprised of four non-governmental organizations: Thailand Environment Institute (TEI) King Prajadhipok's Institute (KPI), Sustainable Development Foundation (SDF), and Project Policy Strategy on Tropical Resource Base under the National Human Rights Commission of Thailand. The assessment could not have succeeded without financial supports from the United Kingdom Foreign & Commonwealth Office, Ford Foundation and Swedish Environmental Secretariat for Asia (SENSA).



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General legal framework

that recognizes the right to information, to meaningful participation, and to environmental justice

The General Situation

The legal framework used for assessment in this section consists of the Thai Constitution B.E. 2550 (2007), the law ensuring the right to have a good environment and ensuring people's participation with respect to health, laws concerning access to public documents, concerning public participation, and those concerning access to environmental justice.

1. The 2007 Thai constitution

The 2007 Thai constitution has provisions affirming rights and freedoms of the people in the area of participation in the management of natural resources and environment. This constitution has provisions covering 3 dimensions:

1) The right of access to data and information. With regards to right of access to data and information and right of complaint, the constitution states, for example, as follows: the individual has a right to know about and access data and information possessed by state agencies, such access to be in accordance with the law (stated in Section 56). The individual has the right to receive information, elaboration, and explanation from state agencies before they approve or implement a project or other activity that might have an effect on the environment, health, and

quality of life. The people also have the right to express their opinions to relevant agencies, so they can take them into account in their deliberations. Moreover, for the planning of development, urban planning, and the issuance of rules and regulations that might affect the people's interest, comprehensive public hearings must be held before implementation (Section 57). Also, the individual has the right to submit complaints, and receive the results of consideration of such complaints without delay (Section 59). In addition, the constitution provides for protection of rights and freedom of the mass media, by forbidding the closure of mass media businesses (Section 45-46).

2) The right of participation by the people. The constitution contains several provisions regarding this, for example, stating that individuals that form themselves into a community, a local community, or a traditional local community have the right to participate in the management, supervision, maintenance, utilization of natural resources, the environment, and biodiversity, in a manner that is balanced and sustainable. For projects to be implemented or activities to be engaged in that might cause a serious impact on the quality of the environment, on natural resources, and on the health of the people, before they are initiated, a process of hearing out the people and stakeholders

must be instituted; and an independent body must also provide a considered opinion (Section 67).

As for people's participation at the local level, it was found that people in the localities do possess rights to participate on local governmental organizations. They are able to express opinions and engage in referendums before actions of the local governmental organizations (LGA) that have an impact on their lives are carried out (Section 287, paragraph one and two). The local governmental administration must report its work to the people as part of enabling the people to play a participatory role in inspecting and overseeing its administration and management (Section 287 paragraph three). It must also arrange an inspection mechanism of the work and activities of the local governmental administration to be set up, and to be utilized by the people (Section 282 paragraph 2). In addition, a mechanism enabling the local community to participate with the LGA in the work to promote and protect the quality of the environment has to be set up (Section 290).

3) The right of access to the justice system. The constitution has provisions which comprehensively spell out key points concerning the basic rights of the people in the judicial process. In addition, the constitution adds on another principle to ensure access to justice as a way to guarantee such basic rights:

this is contained in Section 40, which states that the individual has the right to access the judicial process with ease and convenience, without delay, and that such rights are equally dispensed to all.

Furthermore, consideration is given to disadvantaged sections of society such as children, youth, the elderly, the crippled, and the handicapped so that they would be appropriately protected during their engagement in the court process. In addition, Section 28 paragraphs 2 and 3 states that those individuals whose rights and freedoms as specified in the constitution are violated, can file their case in court and exercise their right therein to compel the state to act in accordance with such individuals' constitutional rights. Section 212 also acknowledges the right of people to directly file to the constitutional court, to ask the court to adjudicate if a particular law contradicts or opposes the constitution. Also, the community has the right to sue the state bureaucracy, state agencies, state enterprises, local government agencies, and state agencies with the status of juristic person, in order to get them to act in accordance with the rights of the community with regards to environment matters (Section 67 para.3).

However, although the 2007 constitution has, in theory, improved the people's access to the judicial system and made the exercise of the people rights and freedoms more efficient, we will know

whether this will occur in practice only when we see actual implementation of such rights. Such implementation will prove if the people's utilization of the power of state organs—whether it be the government, parliament, the courts, or state agencies-- will really result in the protection of their rights and freedoms.

2. The law ensuring the right to have a good environment and ensuring people participation with respect to health.

It could be said that the National Health Act of 2007 is another law that places importance on affirming the people's right to live in a good environment. It also deems it a duty of the individual to cooperate with state agencies in creating a good environment. Both points are contained in Section 5 paragraph 1 which states that "the individual has the right to live in an environment and surroundings that are conducive to good health", and in Section 5 paragraph 2 which states that "the individual has the duty to work together with state agencies so as to create the type of environment and surroundings as stated in paragraph 1"

Even more importantly, the above mentioned law also affirms that the people are entitled to access data and information on any actions that might affect health. It is thus specified that state agencies have the duty to promptly reveal and provide data and information to the people, as specified in Section 10: "If a case

occurs which affects the people's health, the state agency that has information and data on that case must reveal it and also arrange for the people to know the methods that can protect against damage to their health without delay".

In addition, an individual or juristic body has the right to assess and participate in the evaluation of public policy that impact on their health, as stated in Section 11 paragraph 1: "An individual or juristic body has the right to request for and participate in an evaluation of the health effects of a particular public policy"

Another provision states that the individual or juristic body has the right to receive information and express opinions on a project or activity that might affect his or her health or that of the community, before the state agency in charge of the project or activity approves of it. This is stated in Section 11 paragraph 2: "the individual or juristic body has the right to receive information, elaboration, explanation from the state agency prior to its approval of a project or activity that might affect the individual's health or that of the community, as well as expressing opinions on the matter"

However, even though guarantees concerning rights of the people are in place, such as the right to live in an environment conducive

to health, the right to participate in evaluation of public policies which might have an impact on health, as well as the right to receive information and express opinions on projects or activities which might have an effect on the individual's health or that of the community in accordance with the National Health Act 2007, if the people do not have the opportunity to exercise these rights or there has not been serious utilization of these rights, the law will not have any real practical impact.

3. Laws relating to access to state information

The National Environmental Quality Act B.E. 2535 (1992) has a provision on the access to environmental information in general terms (section 6) but there is no specific prescription that supports access to such information by the public. **What is important is that the Act does not specify a mechanism for the enforcement of environmental laws.** Thus, a request for the disclosure of environmental information would have to be based mainly on the Official Information Act B.E. 2540 (1997).

4. Laws relating to public participation

Public participation in the decision-making process of the state can be divided into 2 levels:

(1) Participation at the level of interacting with local government officials

In general, the decision-making process at the level of officials means that in practice decisions are made by government officials. The Administrative Procedures Act B.E. 2539 (1996) sets out the steps involved in such decision-making and identify the individuals who can participate. However, this Act merely provides general guidance, and officials in their decision processes also have to refer to specific laws that apply to their specific areas or fields of activity to determine who can participate. Examples of this can be seen in the content of the Mineral Act or the Factory Act.

(2) Participation at the level of projects

Office of the Prime Minister Regulations on Public Hearings B.E. 2548 (2005) provide an opportunity for the public to participate in decision making processes involving state projects. The projects to be covered defined as projects of government agencies conducted by themselves, by granting concessions, or by granting permits to entities to carry out a project that have far-reaching effects on the quality of the environment, health, sanitation, or the way of life of the local community. **In any case, the decision whether a particular state agency is to conduct a public hearing, or not, rests with the agency concerned.** Even if the public whose interests are affected had requested a public

hearing, government officials, whether in the central, regional or local government administration, would have the final authority to decide whether or not to authorize the hearing prior to the implementation of the project. Thus, it can be seen that state agencies still at present have the final and complete say in the matter.

5. Laws related to access to the judicial system

The right to take environmental cases to court in Thailand is subject to many existing laws, for example, the Civil Procedure Code, the Act on Establishment of the Administrative Courts and Administrative Court Procedures B.E. 2542 (1999), the National Environmental Quality Act B.E. 2535 (1992), and the Criminal Code in which penalties are prescribed for environment violations.

- For civil cases, persons having the right to take an environmental case to court must have had their individual rights violated, which is the normal case in civil law.
- For criminal cases, the law says that in the case where an act harming the environment is accepted for examination in a civil court is also judged as a crime under criminal law, the injured party can also sue in the criminal court as well.
- For cases handled by the Administrative Court, rights to take an environmental case to court are defined more broadly than

such rights in a civil court. Here, standing to sue is determined by whether the individual is injured or may be injured unavoidably by the defendant. The Administrative Court has also laid down guidelines for legal entities to sue on behalf of their members, to protect their rights.

- For environmental cases, the National Environmental Quality Act B.E. 2535 (1992) accepts that a private organization registered in accordance with the Act could act as a party in a court case and sue for damages suffered.

Key Points and Challenging Issues:

1. Key points

The Administrative Court plays an important role in broadening the definition as to who can participate in decision-making at the government official level, including determining who has suffered or may suffer from decisions made by officials, thus enabling such individuals to take their case to the Administrative Court rather than defining it narrowly to allow only people directly related to Administrative Court directives. In trial courts, definitions of standing to sue are more rigorous and narrow; i.e. limited to those "whose rights have been adversely affected."

Thus, the Administrative Court enables citing a broader base to take an environmental case to court, compared to if one were to

take the case to a civil court and relying on the National Environmental Quality Act B.E. 2535 (1992). That is, the individual who is or may be damaged unavoidably has standing to sue in an Administrative Court

2. Challenging Issues

- Rights according to the Constitution B.E. 2540 (1997) cannot be enforced, although section 46, 59, and 56 clause 1 do have prescriptions recognizing rights of the individual to environmental protection. Moreover, even though section 27 does state that individual rights protected under the Constitution will create binding commitments on the part of state agencies, such rights must be pursued in the first instance by getting a law drafted with the relevant details for the specific kind of case. Thus, when a case is brought to court by a party, the court tends to dismiss the case on grounds that no laws covering such kind of cases have been enacted as yet.

- What is important is the building up of understanding of rights and freedom under the Constitution. That is, there are needs to develop knowledge, understanding, and the acceptance by the courts (both trial and administrative) concerning rights of the individual, of the community, and

the nature of Constitutional provisions, that these provisions in the Constitution are more important than subsidiary laws, and that they can be enforced even though Organic Laws have yet to be developed. It is important to understand that rights as enshrined in the Constitution exist and the courts should accept its existence and use it in their deliberations.

- As to the dimension of access to information and news, it was found that officials have exercised their judgment broadly; that there is the tendency to reject the right of the public to receive information or to reveal it; and that there is a lack of an internal monitoring system on the exercise of such judgment in some agencies. This may lead in the future to an increase in the number of appeals to the Examination of Information Release Committee. Moreover, there is as yet no law protecting state officials who reveal information to expose wrong-doings or to protect the public interest. Those who reveal information as part of performing their duties, especially on cheating or corruption, might face criminal charges, be sued for defamation of character, or face disciplinary action. The relevant prescriptions in these matters are contained in section 120 of the Corruption Prevention Act B.E. 2542

(1999) and section 62 of the Organic Law on State Audit B.E. 2542 (1999).

- On the question of meaningful public participation in decision-making at various levels, **there is currently no law on public participation.** An existing related law is Office of the Prime Minister Regulations on Public Hearings B.E. 2548 (2005), but it is a law with many defects and in many cases such hearings were held as a form of ceremony. Those who may be affected by government measures may not have really participated in the Hearings. This problem has led to severe social division and conflict amongst people in the local community.

- On the topic of environmental justice, the rights of the individual in court according to the 1997 Constitution have certain limitations or are unclear. That is, the right to sue in court according to section 28 clause 2 of the Constitution is defined ambiguously, i.e. the standing to sue by persons whose constitutional rights and freedom are violated is not easily interpreted. Some lawyers and some courts still place importance on laws having a lower status than the Constitution. Moreover, there is a lack of clarity on the right to complain as contained in section 61 of the Constitution.

Such lack extends to the question of informing people of the results of examination of the complaint within a reasonable period of time, because there is no law underpinning this stage of the process. As for the right of private sector environmental organizations to sue in accordance with section 8 (5) of the National Environmental Quality Act B.E. 2535 (1992), the Administrative Court has laid down guidelines which enable juristic persons to sue in court on behalf of its members. However, the Court does not accept taking a case to court by juristic persons to protect the public interest in a general sense. Thus, we have to await developments within the judiciary and academics on this matter.

Suggestions

1. The drafting of the new Constitution should follow provisions in the section on rights and freedoms of the people of the 1997 Constitution as a guide. At the same time, the government should pass without delay Organic Laws of the relevant constitutional provisions.
2. The judiciary and lawyers should have knowledge and understanding of the importance of Constitutional provisions and accept rights and freedoms of persons

related to the environment and natural resources, even though there are not yet organic laws supporting them.

3. Relevant laws, including Organic Act on Counter Corruption, B.E.2542 (1999) and Section 62 of the Organic Act on State Audit, B.E.2542 (1999), should be modified in order to protect state officials or those who reveal information on wrong-doings and corruptions. Also, there should be measures to encourage such disclosure, such as career advancements, honorary commendations, and granting of financial rewards.

4. A law on public participation should be drafted. In addition, advocacy should be done to modify the National Environmental Quality Act B.E. 2535 (1992), to add a detailed provision on people participation, while abrogating the Office of the Prime Minister Regulations on Public Hearings B.E. 2548 (2005). The government should move on these as a matter of urgency.

5. The state should support a mechanism that provides remedies outside court proceedings, that is, the Alternative Dispute Resolution (ADR), which could be in the form of mediation of disputes or dialogues. This is because although court-based remedies are most efficient and effective, many lengthy steps and complex procedures

must be followed, esulting in the damaged party not getting a remedy within a reasonable period of time. Thus, a specific draft law on alternative dispute resolution should be proposed.

3

Enhancing the capacity of the public to access data and information, to have meaningful participation, and to access the environmental justice system

The General Situation

At present, there are attempts to build up the capacity of civil society by developing measures such as constructing infrastructure in the area of education, society, technology, law, and institutions. This is so that the people are better able to access decision-making processes that affect natural resources and the environment, to work in an organizational framework and form networks at the grassroots and the national level, and strengthen civil society's bargaining power *vis a vis* the state. However, it is found that there are many limitations in state provision of opportunities or appropriate channels for civil society to access information and to participate meaningfully in decision-making processes.

Even though many laws that intend to have and place significance on public participation exist, **none clearly gives power or a role to civil society and states clearly the degree of real public participation given**. However, the current environment for state agencies is that they have to act in accordance with the letter of the law, as well as the prevailing social trend favoring a policy on public participation. The result is that state agencies are approaching the people sector more, and forums have been organized to solicit the people's opinions. However, there is still a lack of opportunities for civil society to actually participate in the

decision-making level, to take part in the systematic definition of problems, and to set options to solve them.

The above situation can be characterized as a gradual evolution – rather than a leap forward – in the process by which society understands and learns the idea of public participation. This gradual approach should lay a firm foundation for understanding participation in all sectors in the long run. If state agencies and civil society can work together in an alliance to manage for a sustainable environment, opportunities will be opened up for civil society organizations to practice participation and accumulate knowledge from the experience, thus leading to enhancement of their capacity for sustained participation in environmental issues.

Nonetheless, the question that still needs to be answered is whether the civil sector and the state want to develop their capacity in the participation process on issues of the environment, and if so to what degree. Another question is whether there is a need to add to the knowledge base of both the civil and the government sector so that both would have a congruent understanding on the concept of participation.

This section of the synthesis report presents results of an assessment based on the use of certain indicators. Questions to be answered are:

1. To what extent do environmental laws facilitate the exercise of rights, help promote equality, facilitate funding, and provide opportunities for civil society to participate in the decision-making process concerning the management of the environment?
2. What effort or implementation (such as enhancing capacity or developing mechanisms) does the state make to support capacity building of the civil society?

The assessment selected three organizations that play an important role in publicly advocating issues concerning the environment, and that have sufficient influence to push the state sector into action to solve environmental impact problems. The three organizations are: environmental non-governmental organizations (NGOs), mass-media organizations dealing with environmental issues, and educational institutions.

Research Findings

For **environmental NGOs**, one of the interesting findings is that because some laws recognize the idea of public participation, many government agencies do engage in varied activities to support public participation. However, they are more in the nature of organizational image building and a show of action rather than building and enhancing mechanisms that open up opportunities for public participation in decision-making in a real sense. The study found that although many laws state as an objective of creating or supporting public participation, none actually specifies that such participation is to be at the level of decision-making. For example, the Official Information Act B.E. 2540 (1997) facilitates access by the public to general data and information in the hands of organizations and agencies but if specific information is requested, the procedures in acquiring it are usually very complex, at times involving a long waiting period, and even perhaps requiring a filing in court for release of the desired information. This is particularly the case involving environmental information such as environmental impact assessment reports. The authority and judgment to accept or deny such requests for information rests with the officials concerned.

At present, there are many laws having intent to strengthen civil society by encouraging their assembly to become organizations

that are well-recognized in their roles and work as a coalition between civil society organizations themselves and cooperate with the government sector. However, the reality is that the registering process to become a non-governmental organization in the fields of environmental protection and conservation of natural resources in accordance with the National Environmental Quality Act B.E. 2535 (1992) faces obstacles on the basic qualifications for registration. To elaborate, for a group to be registered as a juristic person wanting to perform not-for-profit activities in the public interest, whether as an association or a foundation, it must firstly receive permission in accordance with the section 14 of the National Culture Act (Issue 2) B.E. 2486 (1943). In addition, prior to establishment it must have a capital fund of not less than 200,000 Baht; this is accordance with the Civil and Commercial Code (modified) B.E. 2535 (1992).

This condition concerning the minimum capital required is an obstacle for registration for many organizations, especially grass-root organizations. Furthermore, there is the prevailing attitude that these organizations are doing things to further the public interest in a selfless way and thus capital or assets are not seen as an important factor in their work. Thus, many active civil society organizations think that the process of getting registered is difficult and complex, and hence are not interested in registering as a

juristic person so that their rights are recognized by the law. The effect of such circumstance is that they are unable to register as a non-governmental organization working in the field of environmental protection and natural resource conservation. What follows is that they are not eligible to apply for budget assistance from the Environmental Fund.

However, certain specific legislations that recognize the legal status of civil society organizations such as the Chamber of Commerce Act B.E. 2509 (1966) and the Industrial Council of Thailand Act B.E. 2530 (1987) exist. These have enabled legal civil society organizations to have a strong and active administrative structure, a publicly clearer role, better opportunity to seek funding, as well as better acceptance and respect gained from the state. Thus, it can be observed that laws which specifically underpin the legal identity of civil society organizations do facilitate their independent activities, including fund-raising efforts. Therefore, deeper study should be conducted to find optimum forms of support to other civil society organizations in the future.

As for fund raising activities of civil society environmental organizations, it was found that conditions do not much favour donations, because of limitations in various regulations. Civil society environmental organizations at the grass-roots level face

more problems in accessing sources of funding compared to those at the national level whose management structure follows the structure of the business sector. As a result, it is easier for the latter to register and find income from doing research and selling souvenirs etc.

The reason why there are still few domestic donations made to civil society environmental organizations is due to tax deduction provisions which are not attractive enough, in addition to the fact that the interpretation of and judgment on criteria for such deductions are still made by tax officials. Thus, most civil society organizations have not benefited as much as it could from the laws on tax deduction.

For mass-media organizations focusing on environment issues, two interesting points can be made. Firstly, the media viewed that the laws on the media are not limiting factors for the provision of independent environmental news to the public. However, the main obstacle limiting the supply of objective news to the public is the state agencies' unwillingness to reveal sources of information (for example due to fear that the information might not be in alignment with information given out by other agencies, lack of confidence in the information at hand, fear of negative consequences resulting

from releasing information etc.). The result is that news is based on only one source which could consequently bias.

As for financial strength of the mass media, it was found that funds available to the media primarily come from selling of advertisement space. The Thai Constitution B.E. 2540 (1997), section 39, refers to provision of financial support for the media stating that the state is forbidden to give money or other assets to support private-owned newspapers or other mass media. This is aimed at giving the mass media full freedom to provide news and information without being influenced by the state. Nonetheless, what has happened is that the state itself is an important customer of the mass media in almost all fields, because of state policy emphasizing public relations and wide dissemination of its achievements. As a result, all government departments use mass media as an advertising tool and seek control of the content of information presented. At the other end of the scale, it has been observed that environmental news is sometimes presented too much from the angle of environmental conservationism, which may have led to the presentation of biased news.

For educational institutions, common problems or weaknesses concerning management of teaching and learning were found in the schools. That is, in the absence of direct policy handed down

from the Ministry of Education, most school administrators and teachers tend to rank environmental studies at the lower end of priorities, thinking that the primary task of the school and teachers is to teach core subjects, and to engage in other activities or projects specified by the Ministry. The traditional solution to this problem has been to add a separate group of environmental studies subjects, which really does not attack the real problem, because **environmental studies is about the learning process rather than forming a body of environmental knowledge to be imparted.**

Therefore, what needs to be urgently done is to develop the capacities of schools and teachers in the management of the learning and teaching process, as well as creating varied forms of incentives for teachers. The latter need not be done by the method of having written teacher evaluations form to be filled as a condition for career advancement. Rather, it should be one of encouraging self-development (through training scholarships or study visits) or social praise of the teacher as a role model, and developing the school as a **learning organization** that emphasizes learning for the future. This development could be done by encouraging the student to think critically on surrounded environmental problems, by challenging him or her to understand value systems, and by giving the student opportunities to learn

through hands-on experience and through participation in processes. The resulting effectiveness of these measures will depend on the teacher's skill in managing teaching and learning processes.

In addition, the teacher should not be too focused on results of activities per se. It is true that the value of this type of teaching and learning might be easily seen in the resultant physical change (such as the atmosphere and general relations of the school) both in the school and its surrounding community. However, what is important to realize is that **these net results are in turn the "instruments for the pursuit of learning" intended to bring about changes in education systems and the culture of learning, not a goal itself.** If understanding on this critical point is created, such approach in environmental studies will increase the value to the school, as it is one of the processes to develop youth to become individuals of quality. Environmental studies itself will be integrated to the fundamental tasks of the school rather than merely an additional subject.

From the evaluation on the **state sector's efforts**, it was found that the state has pursued capacity-building in order to equip civil society with the knowledge, tools, or mechanisms that would facilitate public participation and to access information. Efforts have

been made to support civil society to acquire decision-making rights on environmental management or to rectify negative environmental impacts. For instance, the Official Information Act B.E. 2540 (1997) prescribes operational procedures for state officials so that they can be more confident or are protected when exercising scrutiny on various regulations. Attempts have also been made to enhance the capacities and roles of mass media in reporting environment-related movements to the general public in a way that is based on factual, accurate and impartial information, covering all sources of information. Finally, there has been capacity-building of teachers, community leaders, and youth so that they are equipped with knowledge on the environment, are capable of transferring such knowledge to others, and are able to create local curriculums where teaching and learning are in harmony with the specific natural resources and environmental base of their local communities.

Furthermore, several state agencies have endeavored to disseminate knowledge and lessons learned, to help civil society know how to work with and build alliances with the state sector both in terms of development and solving problems. For instance, the Department of Environmental Quality Promotion, the Department of Water Resources, and other agencies have made efforts to support civil society organizations at the community level

in order to help them understand the process of jointly drafting sustainable community development action plans, to use the dialogue process to resolve environmental disputes by peaceful means, such as that used to solve conflicts on waste management and in the orange orchard case in Kamphang Petch province. Efforts have also been made to provide various river basin network groups with forums to enable exchange of viewpoints and lessons learned in order to scale-up the learning outcomes and networks.

Challenges

1. The state sector's mindset must be adjusted so that the state will accept the rights and roles of civil society in the public policy process by crafting policy directions which foster cooperation between private organizations and state agencies based on mutual confidence and trust so that they can work together to resolve environmental and natural resource management problems with the final goal being to achieve sustainable development.
2. The public media has to be developed so that they can freely convey socially beneficial messages without supervision and regulation by the state sector, and that they can do so without having to search for revenue in order to survive.

3. Environmental education must be promoted as a national strategy for sustainable development.

Recommendations

1. Establish independent environmental organizations as a core driver to promote the role of civil society. This includes non-governmental organizations, philanthropic organizations, mass media, and others. Such bodies should have an autonomous and flexible organizational structure and management, should jointly work with the state sector, and have clear directions.
2. Continuously develop participatory processes, including political and social processes. Knowledge and proper understanding of the full cycle of participatory processes should be enhanced among state officials, civil society, and the general public, particularly on participatory processes in the forms of peaceful means, dialogue, negotiation and reconciliation. This is to avoid confrontational situations.
3. Develop explicit rules and criteria for state officials to use in the exercise of their judgment and interpretation when referring to relevant legal frameworks, such as when referring to legal provisions for information disclosure, on tax

exemption and assessment. Regulations for the protection of officials in the line of duty should also be developed.

4. The Ministry of Education should ensure that every school organizes and develops its environmental studies policy in line with the “Whole School Approach for Environmental Education" theme, and promote an annual exchange of knowledge forums for sharing of learning both at the local and national levels, in the form of an annual academic forum on school-based management of environmental studies and the learning process.

5. Promote environmental education as a strategic target in national and provincial environmental plans. In this respect, local universities have to act as the academic lead, to develop environmental education research that would facilitate the development of learning that emphasizes local issues. Moreover, learning must also be forged between school and community, so that the locality can prepare short and long-term plans on how to develop environmental learning in youth, in both formal and non-formal educational systems. The process will also help in the allocation of a budget from local sources for this endeavor.

4

Accessibility of environmental information

General Situation [1]

Since the Official Information Act B.E. 2540 (1997) was proclaimed, state agencies have gained a better understanding of civil rights as relates to access to information, and have endeavored to disclose information that people are interested in. To a certain extent, people are now also aware of, and have exercised their rights under, this legislation. The state-originated Official Information Commission proposed guidelines endorsed by the cabinet on 28 December 2004 for compliance by state agencies in the handling of public request for information. These stipulated that, for example, people are to receive requested information within 15 days after filing; or in the case where a large amount of information is available or the agency cannot fulfill the request within such time frame, the petitioner will be so informed within 15 days. Other guidelines are: to set up a website to announce purchase and procurement information; and training of state officials in accordance with the Official Information Act B.E. 2540 (1997). In addition, on 11 April 2006, the cabinet resolved to use information disclosure transparency and public participation as

[1] Information extracted from the "2005 Annual Report of the Official Information Commission" (Office of Official Information Commission, Office of Permanent Secretary to the Prime Minister's Office, 2003).

indicators of performance (Key Performance Indicator - KPI) to evaluate performance of all state agencies, beginning in the 2007 fiscal year, with the Official Information Commission and the Office of the Public Sector Development Commission (PDC) being tasked with scrutinizing these KPIs in detail.

The Official Information Act B.E. 2540 (1997) is a core piece of legislation that explicitly prescribes the rights to access official information by specifying three types of information disclosures as follows:

1) Information published in the Royal Gazette (Section 7). These are rules, regulations, provisions, cabinet resolutions and decrees which must be adhered to by the general public.
2) Information disclosed for public perusal (Section 9) are those related to work plans, projects, budgets and annual expenditure of state agencies; decisions and judgments directly affecting private sector entities, policies, concession agreements, exclusive agreements with a monopolistic nature, and joint venture agreements with private entities for the provision of public services.

3) Information disclosed to individuals filing for request on a case-by-case basis (Section 11), that is, other information not described in 1) and 2).

There are many types of environmental information which are handled by many agencies. Some types of environmental information are disseminated widely among the general public such as annual reports on the pollution situation published by the Department of Pollution Control. In some cases, the public faces some awareness and accessibility problems because some types of information affect private businesses, for example, pollution information and environmental management in industrial plant operations, data on health and sanitation of workers in business establishments, and information about environmental pollution caused by human activities. In the 2005 fiscal year, the Office of the Official Information Commission compiled 450 complaint submissions and appeals on concealment of official information, an increase of 10 percent from the 2004 fiscal year. Thirty-one percent of these cases related to purchase and procurement as well as requests to examine state official's conduct.

Research Findings

The Official Information Act B.E. 2540 (1997) allows state agencies to prescribe their own regulations and procedures in applying for access to information requested. But the criteria used by the agencies for cataloguing information in terms of those allowed to be disclosed, and not allowed, is still unclear. In practice, some state agencies do not prescribe detailed procedures and criteria for access and give its official information committee or top executives the authority to determine and interpret matters without giving clear standards to refer to, resulting in overlapping implementation among the various agencies. This predicament is caused by lack of prescribed standards in the Official Information Act B.E. 2540 (1997), resulting in enforcement problems.

Regarding channels for access, it was found that in all eight case studies channels used were different, depending on the category or type of information requested and on the guidelines of each agency. Some state agencies might widely disseminate environmental information among the general public without any concealment and resorted to a variety of dissemination channels, particularly issues keenly followed by the public, for example, in the case of the Regional Environment Office 16 (Songkhla Lake) and the Department of Pollution Control (Mae Moh power plant). However, in case of environmental information which might affect

the image of private business or economic system such as pollution management of industrial plants, bird flu outbreak, lawsuits filed against Mae Moh power plant, and water quality in Kliti Creek, dissemination is still limited. In some cases, information disclosure is constrained because of a lack of knowledge, for example, information regarding earthquake-triggered tsunami for which authorities had been totally unprepared.

As for information not disclosed by state agencies, officials often cite that the provider of information does not want the government to publicly disclose it because it might adversely affect his or her interests as in the case industrial plant owners. However, if it was a case which captures the interests and concern of the general public and which their health is seriously jeopardized based on experience, state agencies would widely disseminate relevant information via a variety of channels accessible by the local populace. An example is the case of air quality around Mae Moh power plant in Lampang province. Still, the problem is that sometimes such information is too technical for local people to understand. Moreover, in the case of Mae Moh power plant, problems still remain in that the villagers do not trust official air quality data provided by the state.

Another point is that migrants, especially migrant workers and ethnic minorities who are not domiciled in Thailand, still do not have rights to access official information under the current law. This is a cause for concern because such rights denial might culminate in public health and safety issues. These migrants are highly prone to contacting communicable diseases because their living quarters are congested and unhygienic. Without information dissemination or promotional campaigns among these people, their health would stay vulnerable and eventually the general public would also be at risk.

Challenges

1. **It takes time to transform attitudes and understanding of state officials regarding disclosure of official information as well as changing organizational culture; and it needs initiatives from the government and senior executives in state agencies.** For example, concealment of information during the initial outbreak of avian influenza occurred because authorities were apprehensive about possible adverse impact on the chicken farm industry and chicken exports. In this case, some government executives and officials might have placed less emphasis on public health and safety than on business sector interests.

2. The Official Information Act B.E. 2540 (1997), a principal law, prescribes rights and criteria used to access official information in a more systematic manner than that contained in the National Environmental Quality B.E. 2535 (1992) (Section 6), the latter which do not in fact lay out any mechanism for its enforcement. But still, **the Official Information Act B.E. 2540 (1997) lacks clarity in some aspects, notably legal definitions.** The law empowers officials to exercise discretion whether to disclose official information (Section 15) after considering three factors impacts on their state agency's ability to conduct work, benefit to the public, and interests of concerned private entities. In practice, however, officials can exercise their discretion rather broadly. In some cases, officials may uphold the interest of the private organizations or companies instead of placing the highest priority on public interest and safety of individuals, as they should. Another limitation is that when officials refuse to release information, the burden falls on the people as they have to lodge an appeal with the Scrutiny Committee on Information Disclosure. In such cases, the average person does not want to exercise this legitimate right because of possible conflicts with state officials that may yield negative more than positive results for him/her.

3. **The law still does not protect state officials who disclose information on corruption.** Even though Section 20 of the Official Information Act B.E. 2540 (1997) provides protection for disclosure of such information (or the types of information addressed in Section 15) in the case that the state official discloses information in good faith and performs his or her duties within the scope of authority in compliance with regulations in Section 16, that official is still required to comply with official state secret provisions. If an official violates this provision, he or she risk facing disciplinary investigation or is no longer protected under Section 20. Moreover, the whistle blower may face libel charges or criminal punishment under applicable laws.

4. **Widespread disclosure of official information may not be beneficial if the information is not accurate, complete, or understandable by the average person,** as shown in the case of air quality data of Mae Moh power plant where as technical data was not easily understood by the average person. Moreover, in this Mae Moh case study, even though air-quality measurement results of the Department of Pollution Control were within the standard there was still a higher prevalence of respiratory diseases among people living near the power plant compared to other areas. This sort of problem should be given attention by the authorities

as it leads to a lack of confidence in state-provided information, resulting in mistrust.

5. **Environmental and public health information of state agencies are not integrated** because the agencies overseeing environment and public health i.e. the Department of Pollution Control, the Ministry of Public Health, agencies overseeing industrial factories and workers' welfare (the Department of Industrial Works, the Industrial Estate Authority of Thailand, and the Department of Labour Welfare and Protection) have not integrated all the data and information that they produce. These departments have not collaborated to create a shared database to analyze possible causes and public health problems and environmental pollution on an on-going basis. They would act gather information on an ad hoc basis and only on specific projects or activities that have serious impact on the public, as can be seen in the case studies on pollution data of industrial plants, and on air quality monitoring systems.

Recommendations

1. On the legal side

- Issue additional notifications from the Official Information Commission regarding principles and methods on providing official information for public perusal in accordance with Section 9 of the Official Information Act B.E. 2540 (1997). It should be specified that official information on environment and natural resources affecting public health must be available for public scrutiny. Moreover, the scope of discretionary judgment to be exercised by the Official Information Commission and by competent officials in relevant state agencies must be defined, especially in the case relevant to confidential state information.

- Amend Section 15 (6) by adding exceptions in cases where information disclosure serves the public interest, that is, on conservation of environment and natural resources, human safety and public health. With respect to information pertaining to these subjects, officials must be mandated to disclose them despite objections raised or consent not given by interested private entities or by the owner of the information.

- Consider amending the Official Information Act B.E. 2540 (1997) and related laws, that is, the Organic Law on Prevention and Suppression of Corruption B.E. 2542 (1999) and the Organic Law on State Audit B.E. 2542 (1999). The objective being to extend protection to officials who disclose information on corruption.

- Issue ministerial regulations to define rights of migrants in accordance with the last paragraph in Section 9 of the Official Information Act B.E. 2540 (1997) regarding legitimate access to official information on the environment in cases where such information affects human lives and public health.

2. Policy aspects and guidelines for state agencies

- Disclosed official information should be in a format that can be easily understood by the average person. The information should not be complicated technical data. In some cases, it should be made available in the local dialect or foreign language(s).

- Official information should be communicated through a variety of dissemination channels and local media that are readily accessible by local community e.g. community radio, village announcement systems, etc. Proactive public

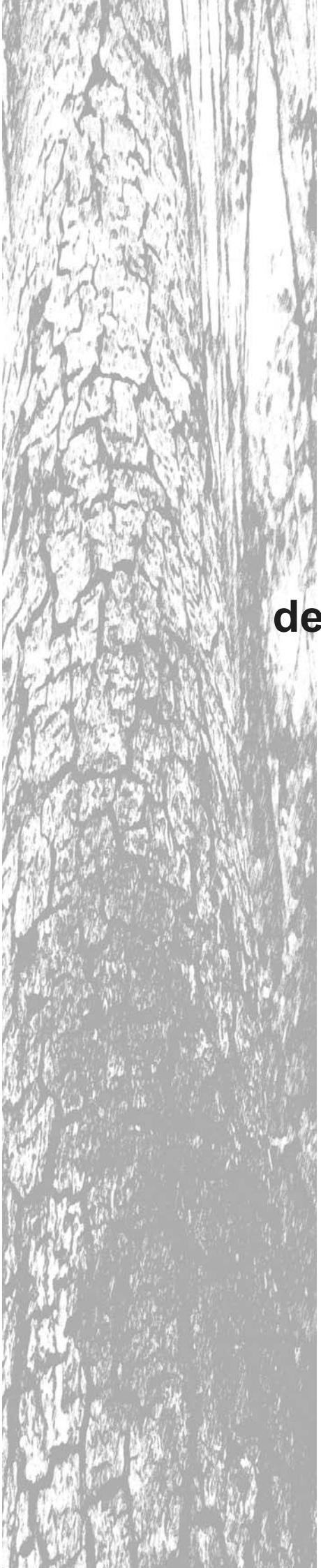
relations plan should be in place and there should be a setting up of communication standards to facilitate public access to information. A system should also be set up for two-way communication with the public, to gather more inputs from them.

- Concerned state agencies should create databases that link environmental data and the public health data of local people, and analyze such information holistically for dissemination among general public. Furthermore, official information conveyed to the general public must be synchronized with the needs at the time i.e. when decisions are going to be made, not just be communicated for acknowledgment. Information accessibility should be aimed at enabling the people to participate in state agencies' decision-making in order to promote the principle of public participation, which should later be developed to become the general public policy.

- State officials and business owners should change their attitudes about disclosure of environmental information. They should recognize that such disclosure is to a worthy cause. The state sector should prepare a staff development plan that orients them to the idea of the people's rights to access information and news. A budget

needs to be allocated for such projects. Activities to uplift this idea should be organized, such as conferring of awards to state agencies that have satisfactorily provided information services to the public.

- The state sector must foster collaboration among the business sector, civil society organizations, and local administrative organizations to work together in the preparation and dissemination of information, as well in the establishment of communication systems in local communities. The aim is to build up knowledge and awareness among the people, thereby enhancing mutual trust and rapport. To achieve this, the state should provide financial support through The Environmental Fund on a continuing basis.



5

Meaningful participation in decisions on issues which have environmental consequences

General situation

Evaluation of various case studies points to the problem of superficial understanding of the state sector regarding the notion of public participation. Participation activities are merely conducted to fulfill legal requirements and the state sector does not really recognize the importance of the participation process. This can be seen in the fact that several agencies conducted participation activities but did not use the results or recommendations to determine or change policies or projects. Furthermore, data collection from public hearings held was not performed systematically and dissemination of public hearings results as stipulated in the Prime Minister's Office Regulation on Public Hearings B.E. 2548 (2005) (Item 12) was also not done.

In most cases, participation activities organized by the state agencies were limited mainly to "public hearings" organized formally in accordance with the prescribed legal prescriptions which accorded the right of the people to be aware of some information and to express opinions. That is the extent of participation – done only to satisfy the law. In many cases, it was found that people achieved only partial and incomplete information, subject to what the state had determined that they should receive and what was appropriate. Examples can be seen in the case of water management in the Eastern provinces, asset capitalization policy,

negotiations on FTA, and development of a special tourism zone on PP Island. The people at present are still not participating at the level of decision-making, operations, monitoring, and implementation of projects. Decisions on government policies and projects are still made by the political authorities or state agencies, which is in contradiction with the principles and intent of the 1997 Constitution.

Furthermore, state agencies do not have evidence to show that opinions and recommendations acquired from public hearings have been used in the decisions made by the government and state agencies. It is crucial to note that most public hearings are held after some major decisions have already been taken e.g. relating to project site, land purchase, design of power plant, etc. Therefore, such organized public participation is of the type “people must work with the state”, that is, to enable the state to continue its mission with an air of legitimacy and also to show that it had followed the law in holding a hearing.

Based on the findings, the key problems in having a useful and meaning public participation are:

- Inequality of information between the state sector, project owner, and civil society resulting in the people being led to follow the government line, as seen in the case of the

negotiation on FTA, the development of a special tourism zone on PP Island, etc.

- State officials do not have the capacity and skills to foster participatory processes. Although they might have good intentions, strengthening participation is both art and science, but officials are not adequately supported and trained.

- In most cases, those who can participate in state-sponsored activities are from the private sector, especially from large businesses. Small farmers, the poor and marginal people that do not have bargaining power have little chance to access state-sponsored activities, as seen in cases of solving water shortage in the Eastern provinces, negotiation on FTAs, and the Songkhla-Satun deep-sea port project, development of special zones on PP island, and privatization of EGAT. What happened in these cases reflect inequality and disparity in state-sponsored participatory process.

Regarding the legal framework which defines the rules for formal participation, it was found that Thailand has a legal framework that recognizes the principle of public participation, enshrined in the 1997 constitution. However, several legal constraints and loopholes

exist on the issue of organizing the relevant activities. For instance, the State Enterprise Capital Policy Committee Regulation on Public Hearing B.E. 2543 (2000), under the State Enterprise Capital Act B.E. 2542 (1999), merely stipulates that public hearings be organized and the Committee is required to submit hearing findings to the Committee to Prepare for Company Establishment for use in forming guidelines or use as supplementary information—but for the task of setting up "the planned company" only (Item 14). The results are not for consideration of other matters.

As for the Prime Minister's Office Regulation on Public Hearing B.E. 2548 (2005), its scope covers "state projects," not "policy." Thus, many policies which seriously affected people were not covered by this regulation, for example, negotiation of FTAs, asset capitalization policy, and coastal area utilized for aquaculture. In addition, the regulation has limitations which prevent it being of maximum benefit to the cause of public participation such as ambiguous criteria for determining which kind of state project would seriously affect people, such as to require a public hearing. Hence it is hard to decide when to convene a public hearing. Another point is that this regulation, if applied, mandates the state to publish project information, organize a public hearing (Item 5) and after the public hearing is conducted, prepare summary findings, and publicly announce such findings within 15 days (Item 12).

However, if the concerned agency does not take any action, the regulation does not prescribe any sanction or punishment. Thus, public hearing results—from the case studies have never been published e.g. in the cases of water shortage in the East, negotiation on FTAs, and EGAT privatization.

In addition, the title and content of this Prime Minister's Office Regulation are limited only to the extent of "hearing out the public". Furthermore, instead of being promulgated as an act to satisfy the intent of the 1997 Constitution (Section 59), it was issued as a regulation and the process of issuing it was done without any public participation. Thus, judging from these facts, the intention was one of "form" rather one of engaging public participation at initiating stage of a project or policy.

In conclusion, the case studies assessed show the existence of many problems, limitations, deficiencies in the state system and structure of the public participation process organized by the state. On the other hand, many cases also show there have been attempts at changing policies which offer grounds for hope. For instance, the Office of Public Sector Development Commission (PDC), responsible for overall development of the public sector, has determined that promotion of public participation constitutes a Key Performance Indicator (KPI). In addition, the Department of

Environmental Quality Promotion (DEQP) has also set up a dedicated unit called the Office of Public Participation, to resolve ongoing conflicts. At the same time, several agencies recognize the importance of public participation in their operations, and have defined a vision and commitment for their organizations and have of arranged for activities with a public participation component even though processes, results and benefits may not have not been as expected. This is due to a host of problems and obstacles in nurturing the participatory process as described earlier. The main obstacle being the state's lack of understanding and failure to recognize true value of participatory process.

Research findings (challenging issues)

Public participation in environmental management is a universally accepted principle and is stated in Agenda 21 and Principle 10 of the Rio Declaration on Environment and Development. As for Thailand, the Kingdom has explicitly endorsed and safeguarded the right for the public to participate as enshrined in several sections of the 1997 Constitution.

After the 1997 Constitution had been promulgated, the government and state agencies tried to amend various operating procedures and regulations to be in accordance with the principles and intent

of the Constitution. However, due to the above mentioned problems in participation activities organized by the state sector, some people perceive state-sponsored participation to be merely a ritual aimed at legitimizing state decision-making and done merely to ensure that decisions do not violate any legal provisions. As this is not meaningful participation, the country wastes substantial funds in organizing participation activities which do not have any effect on state policies or projects. If the problems are not solved, people might lose trust and develop an unfavorable attitude towards state-sponsored participation and refuse to engage in the state-sponsored participatory activities in the future. Eventually, this might contribute to a habit of opposition to state policies and projects.

As regards legal issues, based on the case studies, it can be seen that there are problems arising from a lack of congruence in the legal system and structure. While the civil sector has been more active, demanding civil rights, and wanting to engage in joint environmental management at all levels as recognized by the 1997 Constitution, state agencies still adhered to the original legal framework of their organizations or to 2nd tier regulatory laws which contradict the 1997 constitution on civil participation in that these subordinate laws do not recognize rights to participation. Since the

state and civil sector are using a different legal framework for reference, this has led to, in many cases, conflict between them. Furthermore, sole focus on legal justice i.e. in the letter of the law while neglecting fairness or social justice can create problems. For example, the law might rule that opinions be sought for a project or that a project of a particular size would need an environmental impact study. What happened was that some agencies would not carry out the studies for projects not covered by these legal prescriptions, claiming they were not mandated to do so, even though not doing so would lead to social injustice.

Recommendations

During the present period, as a new constitution is being drafted, we need to place emphasis on improvement and amendment of constitutional provisions on public participation in public policy. Under the previous administration, numerous conflicts in society occurred because of a centralized public policy process. Public policies were directly handed down by government leaders in a way that lacked good governance. If we can find ways to solve such problem, it would mitigate much social conflict.

A vital issue that should be considered whilst drafting the new constitution is how to ensure that constitutional provisions are

really put into effect, thus avoiding recurring problems under the 1997 Constitution. Even though participation of civil society was explicitly prescribed in the 1997 constitutional provisions, it was not truly enforced. There are many ways to approach the issue such as prescribing that such constitutional provisions are enforceable immediately without having to wait for organic laws; or if special laws are required such as the case in the Public Participation Act or the Establishment of Independent Environmental Organization Act, a specific time frame indicating when the task has to be accomplished must be clearly laid out in the Constitution.

However, the research team is well aware that merely prescribing constitutional provisions to recognize and safeguard the right of public participation cannot ensure that it will happen in a real sense, as anticipated. It is imperative also to have a number of supportive structures, systems, and mechanisms as follows:

1. **Establish an "independent environmental organization" tasked with forming opinions and recommendations on public policy and projects. It is to be a mechanism which formally recognizes public participation and has legal status.** In fact, an independent environmental organization was prescribed in Section 56, Paragraph 2 of the 1997 Constitution but such an organization had not been set up

yet, although a study and a draft bill on its establishment have been completed.

2. **Systems and mechanisms for enhancing the capacity of the civil sector to engage in meaningful and truly beneficial participation should be crafted.** Examples of things that can be developed by state agencies include a mechanism to achieve full and complete access to information, a mechanism to enhance the education of the civil sector's on impact of state policies or projects, a mechanism to generate implementation options, and to raise public awareness on legal aspects. These activities could be specified as policies, work plans, or projects to be implemented by individual concerned state agencies.

3. **Systems and mechanisms for promoting capacities, skills, and understanding of state officials on civil society participation should be put in place.** The aim is to develop in them an understanding and realization of the significance and benefits of participation, as well as to develop their skills and expertise on carrying out activities related to public participation efficiently. This undertaking could be designated as one of the tasks of the "independent environmental organization" to be set up, or it could be assigned to a specific agency (e.g. the

Department of Environmental Quality Promotion, King Prajadhipok's Institute, etc.)

4. **Draft a "Public Participation Act"** whose scope covers the complete cycle of policy or project, that is, from the initiation stage of the policy or project, before and when a decision is made, during the implementation phase, and at the stage of monitoring its implementation. The purpose of the Act would be to establish a set of social rules that must be complied by all concerned parties. The scope of state policy or project under this specific public participation law is not to be limited only to the environment but also covers other public policies such as health and education.

5. **Establish a "public fund for public participation" to be an integral part of the process of public participation. This is a necessary factor before any participatory action for a project can begin.** Currently, the state at the central level does not value the importance of public participation. Thus, state agencies that need to initiate public participation for a project lack the necessary budget appropriation. For example, in the process of finding a site for a project, for example a garbage dump, it is necessary to engage with the public so that they can understand the need for the dump before determining a site or buying the

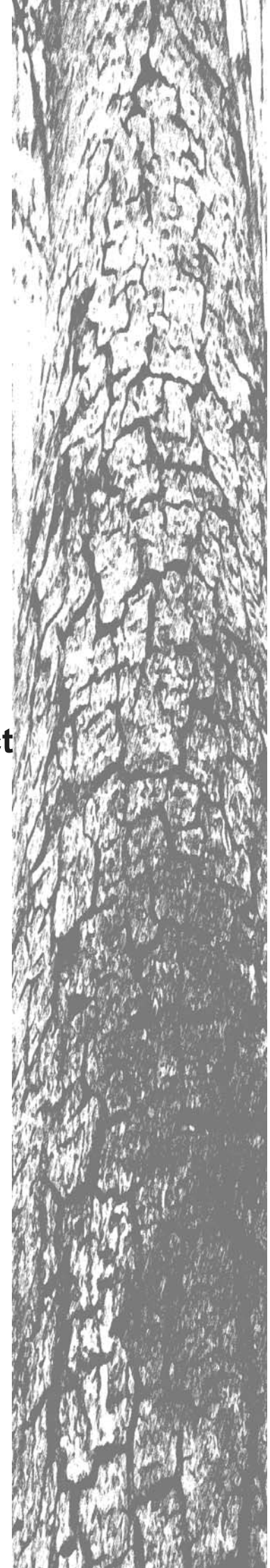
land. In practice, however, the state assigns the local administrative organization to find the land first, and then request a construction budget. The public participation process is seen as an add-on. Therefore, to have a public fund for public participation managed by an independent environmental organization would result in the participation process being managed by the central state agency or a neutral body rather than by the project owner. The result would be an assurance to a certain extent of participation occurring at a more opportune time. The money to put into the fund might come from the budget of the state or agency that is going to initiate a project that poses a risk of damage to the environment. The financial element is something that the state should pay attention to and take concrete action.

The above suggestions aim at creating institutional mechanisms that will cultivate an **environmental governance culture** in the Thai society.

6

Accessibility of the justice system

for matters having environmental impact



General situation

A key intention of the Thai Constitution of 1997 was to enhance rights, freedom, human dignity, and equality of the Thai people. These values were enshrined in several sections and the Constitution also prescribed the formation of pertinent organic laws. Moreover, the Constitution also mandated the establishment of independent bodies to monitor and scrutinize various issues and safeguard civil rights and liberty, such as the Office of National Human Rights Commission and the National Economic and the Social Development Board. Additional judicial bodies were also prescribed, such as the Constitutional Court and Administrative Court. Such provisions seemed to signify a new beginning whereby the Thai people would receive more justice in the area of environmental management than in the past. However, if we look at the aspect of transforming the provisions or aspirations contained in the constitution into reality many problems have been found. For example, there was a delay in the transformation of the Prime Minister's Office Regulation on Public Hearing B.E. 2548 (2005) to the Public Participation Act, the latter which would expand the scope of public participation. Essentially, the Act would provide more opportunities for public participation in the complaint review process as well as being able to take more types of cases to a court. Other issues include transparency in the dissemination of accurate and clear information to the general public on

considerations on complaints and lawsuits equality of access to the justice system and in taking cases to court neutrality and independence of independent bodies and the exercise of judicial power and the problem of integrity of judgments in court. These challenging issues still await solutions that could move us from aspiration to reality.

This part of the research study describes the extent of good governance in terms of access to justice of by the Thai people, especially in environmental matters. The study used following types of indicators:

- **Legal indicators** - to ascertain to what extent legal provisions facilitate the people's access to justice and to what extent these provisions support capacity-building of general public and concerned individuals in terms of accessibility to justice.
- **Effectiveness indicators** - to study legal provisions, how far have there been attempts to maintain a consistent level of justice; whether agencies tasked with handling complaints or appeals have guidelines so they can do their work justly; and have there been attempts to provide equal and widespread opportunities to the people to access the justice system.

- **Efficacy indicators** - to study the results of judgments and rulings, whether they are just and whether there have been fair in matters of compensation and rectification for damages incurred; and whether concerned officials and civil society organizations have widely encouraged people to exercise their rights to access the justice system.

Research findings

This research study used these indicators of environmental good governance to assess four types of lawsuits using four case studies:

1. Lawsuits concerning access to the justice system in order to protect the right to access official information. Case study: The Information Disclosure Scrutiny Committee's ruling on the appeal to challenge an order withholding information on examination of infectious diseases in chicken.
2. Lawsuits concerning access to the justice system in order to protect the right to public participation. Case study: A filing to the Administrative Court on infringement of the rights and freedom to assemble and express opinions regarding the Thai-Malaysian gas pipeline project

3. Lawsuits concerning access to the justice system in order to demand compensation for damages to health and environment. Case study: A filing to the Administrative Court and Civil Court to demand compensation for damages to health caused by air pollution released from Mae Moh power plant in Lampang province.

4. Lawsuits concerning access to the justice system in order to ask for enforcement of the law. Case study: A filing to the Administrative Court to oppose unlawful privatization of the Electricity Generating Authority of Thailand[2]

The results of evaluating the four case reflect the extent of good governance in the area of access to environmental justice as explained below:

On the law

Most of the content of relevant laws does facilitate access to justice of litigants and provide a suitable time frame for judgment of the complaints and appeals. The provisions clearly and thoroughly

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[2] The view of the research team is that there is no need to wait for a lawsuit to be filed before starting to evaluate access to justice using these indicators. Such evaluation should commence at the beginning of the public hearing process and proceed also during court proceedings.

define the scope and responsibilities of agencies and organizations that handle complaints and appeals. Additionally, they also provide extensive and ample opportunities to file petitions or appeals of judgment within the stipulated time frame; categories of information to be treated as confidential are also spelled out quite clearly.

However, such laws require improvement on the determination of time frame for finishing trial proceedings. As well, there are ambiguous definitions of certain provisions in some laws thereby requiring a wide degree of discretion by those involved in deliberation. For instance, in the case study on the appeal filed to challenge the order that withheld information on examination of infectious diseases in chicken, the Official Information Act does not prescribe which type of information can be disclosed to the public and which must be withheld and on what grounds. As a result, disputes arose between officials in charge of the information and people who wanted it. Eventually such disputes led to a lawsuit and appeal.

Regarding enactment of laws for capacity-building of people, local administrative organizations, and personnel handling complaints and appeals on rights to access justice, it was found that there are only some laws that address capacity-building of people such as the Administrative Court Establishment and Procedure Act B.E.

2542 (1999). However, such law does not specify agencies to provide any technical assistance or other supports to develop capacity of local administrative organizations and the general public. In conclusion, it can be discerned that laws in Thailand do not sufficiently recognize the importance of capacity-building of the people, local administrative organizations, and personnel in relevant agencies, to enhance their awareness and understanding of the principle of the people's right to access justice.

On Efforts

Reviewing efforts by committees or organizations handling complaints or appeals, it was found that judicial bodies, notably the Administrative Court, do have laws that clearly prescribe their independence and neutrality, as described in the last paragraph of Section 280 in the Constitution of the Kingdom of Thailand B.E. 2540, which states that "the Office of Administrative Court has independence in overseeing its personnel and in budget administration as well as other conduct in accordance with the laws." In practice, based on interview of some litigants, it was found that Administrative Court judges do conduct themselves appropriately, adjudicate cases impartially and with independence.

In most cases, litigants can access information on the cases with ease. Complaint handling and delivery of judgment procedures are

transparently conducted within a suitable period of time. This can be seen in the following cases: the dispute between state officials and protestors of Thai-Malaysia gas pipeline project; the opposition to the Royal Decree on Rights, Power, and Benefits of EGAT Plc. B.E. 2548 (2005) and the Royal Decree on Stipulation of Time Frame for Nullification of the Law on the Electricity Generating Authority of Thailand B.E. 2548 (2005); and the request to hold back initial public offerings of EGAT shares in the stock market. Those involved in such lawsuits commented that the Administrative Court did have a process in place and progressed through case proceedings quickly compared to other courts. At the same time it also, made efforts to offer temporary relief to injured parties before a trial actually began.

Similarly, in the case study concerning the appeal of the order to withhold information on examination of infectious diseases in chicken, the Information Disclosure Scrutiny Committee judged on this matter with independence and impartially, despite of the only existence of a single section on impartial ruling existed, that is, Section 36, Paragraph 2 in the Official Information Act B.E. 2540 (1997).

However, there are some concerns over future independence of this Committee. For example, it is required that the selection process of scrutiny committee members must be endorsed by the

cabinet. Moreover, the appeal deliberation process is still closed to general public; individuals who want to attend a hearing must be approved by an appeals committee first. Nevertheless, the Official Information Committee has tried to make known its rulings to various agencies and general public.

In conclusion, the Administrative Court does have sufficient provisions which ensure independence and impartiality whereas similar provisions for the work of the Information Disclosure Scrutiny Committee are limited. Since information regulatory bodies are under the supervision of the government, they have less independence than the Administrative Court which is an independent body separate from other powers, having with full authority to manage their mandate. In addition, the researcher views that efforts should be made to increase the transparency in judicial proceedings and in the appeals process for cases that are beneficial for the public to know, so that people can regularly follow up on the progress of the deliberations.

When considering attempts by the committees or organizations in charge of handling complaints and appeals to help ease the financial burden of litigants in accessing the courts, it was found that these bodies do try to help out for some of the expenses incurred, for example, by allowing complaints to be made by post,

facsimiles, or through the website (www.admincourt.go.th) so as to avoid the need to physically lodge a complaint. On the question of fees involved, if it is an appeal made to the Official Information Committee, then the people do not have to pay fees, where as for the Administrative Court the criteria for deciding on fee payments varies from case to case. For example, if the Court determines that the complainant is in poverty, then required fees are waived. Also, for some cases, no court fees are collected and one only has to pay the small duty normally charged. But in the normal situation where one sues another party for damages, the litigant has to put down a court fee at the rate of 2.5 % of the amount claimed for damages but not exceeding 200,000 baht. If this amount is not paid then one cannot exercise the right to sue, and this creates many problems for those not having the amount required[3].

Another obstacle is where a justice dispensing organization or agency does not have a branch in the provinces, the complainant has to pay his/her own travel costs to come to explain charges, which is a financial burden for upcountry people if they have to travel to Bangkok or the provincial capital.

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[3] Presently, the Administrative Court has issued a regulation exempting court fees and even subsidizes travel costs for pauper cases, using the same terms of reference for pauper cases used in trial courts.

On attempts by organizations/agencies accepting complaints and appeals to create a condition of equity and equality, it was found that they have tried to put in place measures to enhance justice and equal treatment for some minorities and disadvantaged groups, meaning women, children, the elderly, the poor, ethnic minorities with non-Thai mother tongue, and illiterate people. But for the disabled and foreigners, they are not given equal treatment as much as they should in terms of accessing the justice system. This is because in some areas of the country, the offices concerned lack facilities and do not have measures in place to cater for the special needs of the disabled. In addition, the current form of public information is not oriented for ease of understanding by disadvantaged sections of the population, especially the disabled and ethnic minorities, who as a result are unable to understand such information well and cannot fully access the Thai justice system.

The right to lodge a complaint or an appeal depends on the judgment/ discretion of the committees or organizations in charge of handling complaints and appeals as to whether the complainant has or may have received unavoidable damages. Once the court has determined that damages have or may have unavoidably occurred, then the injured party has the right to sue or appeal, regardless of sex, age, occupation, and status. The complainant

must be an individual with Thai nationality or if not having Thai nationality must be domiciled in Thailand. All this shows an attempt has been made to recognize the right to make a complaint or appeal, with the court being the final arbiter as to who can exercise such right. However, there is the question whether aliens working in Thailand but not having Thai residence have the right to sue or to appeal under the Thai justice system or not.

On the question of efforts by committees or organizations in charge of handling complaints and appeals to quickly deliberate cases in a timely manner, it was found that all such bodies have made such efforts. But because these bodies are judicial in nature, the deliberation process has to be detailed and dependent on witnesses and solid evidence. Consequently, in some cases where the above are lacking, deliberation and judgment might take a longer period of time than it should. The result is that some of the people in some court cases feel that the whole process to judgment takes too long. Moreover, Thai courts use the continuous method[4] of trial resulting in a large number of cases

[4] This is a method whereby the court fixes the day of trial and deliberates on the case continuously day after day (or in one day) until judgment can be arrived. This makes for in effect a shorter trial period for each case as it is done in a manner of

pending deliberation which might result in people having a negative attitude towards the whole judicial process in delivering justice, an orientation which is encapsulated in the saying "justice delayed is justice denied."

On channels for access to the justice system, it was found that presently (2006), the people are able to file their complaints/appeals through more varied organizations and agencies, which body to direct their complaints to depending on the nature of the complaint. The people are found to be able to lodge complaints directly with the agency concerned or with a member of House of Representative, with the Senate, the relevant parliamentary committee, and independent bodies (such as the Human Rights Committee, Office of the Ombudsman[5]). But these organizations although their specific role is to accept complaints and seek evidence for litigation, they do not have to power to adjudicate. Furthermore, if we look at the courts, we find that each type of court has different sources and scope of power depending

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speaking on an intensive basis, but on the other hand it makes for a large backlog of cases awaiting trial, especially in the higher courts.

[5] The Office of the Ombudsman functions as an agency to receive complaints for forwarding to judicial bodies, and also is tasked with mediation and mitigation of conflict in cases of dispute.

on what was specified for them in the Constitution. This fact becomes a limitation for those wanting to take an environmental case to court because in the main he or she is limited to do this through the Constitutional Court or the Administrative Court. For the four case studies cited, for instance, most litigation was done through the provincial administrative court where the dispute occurred.

As for the development of overall capacity to utilize the environmental justice system, it was found that there have been efforts made to develop the capacity of personnel responsible for receiving complaints/appeals. These were developed on knowledge about accessing data and information, on the concept of public participation, and on environmental issues, by manuals prepared on these topics. The public was also educated in the process of public participation, by arranging for training courses imparting knowledge on its rights to complain and make appeals. However, the obstacles faced are: not sufficient budget for the training, the place of training is far away, and the training is not done regularly (the last point depends on the preparedness and available budget of the training agency), resulting in a lack of continuity in capacity enhancing activities for the civil society. But some agencies do have sufficient budget for developing their staff on a continuous basis.

On effectiveness of access

As to the effectiveness of access to the justice system in Thailand by the people, it was found that the committees or organizations in charge of handling complaints and appeals **do respond effectively to people's request for justice,** that is, the results of adjudication are implemented rigorously. However, because judgment is made only on cases brought up by the damaged party, the results are therefore in the nature of corrective measures specific to the case, and do not create a standard applicable to all cases of the same type, nor does court adjudication lead to sufficient mitigation of negative health and environmental impacts on the people in general. The end result, therefore, is that designs for alleviation of negative environmental impacts have to be done by stakeholders or entities outside of the court system.

On the effectiveness of capacity building activities for staff of state agencies and that of civil society organizations in order to support the people in accessing the justice system properly, it was found that staff in the state agencies and civil society organizations have performed their tasks in supporting the people quite well, in all stages of the judicial process; for example, facilitating their complaints, helping the people to participate by arranging for them to listen to judgment by the court, and dissemination of news and information. Specifically with regards to civil sector entities, even

though they tried to help people access justice, because they are as yet not strong organizationally and are not networked enough, the result is that their staff has not undertaken enough capacity-enhancement training, so their work is not as effective as it should be.

Key Features

In summary, the key features of Thai system of access to environmental management justice are as follows:

1. The existing laws do facilitate access to the justice system by litigants, specifying the scope and authority of the agencies tasked with receiving complaints and appeals in a complete and clear manner, providing sufficient opportunities for damaged parties to file complaints, and setting a case-appropriate time-frame for completion of adjudication.
2. Agencies in charge of handling complaints and appeals do make efforts to alleviate the financial burden of litigants, in terms of providing alternative channels for complaints and lessening litigation costs for the poor. Measures to create equity and equality in access to justice by minorities and the disadvantaged have also been instituted.

3. Agencies in charge of handling complaints and appeals have provided broad opportunities for people to use their rights to complain, and have made efforts to expedite deliberations.

4. There have been attempts to increase the number of agencies or organizations that can accept complaints and appeals, so as to broaden people's access to justice.

5. There have been attempts to develop capacity of staff in agencies accepting complaints and appeals in the areas of access to information, people's participation, and knowledge of environmental issues; this has been done concurrently with developing the people's capacity to be aware of their legitimate rights so they can all utilize the justice system with equality.

6. Results of adjudication by the Committee on Complaints and Appeals have been rigorously implemented.

7. State officials and that of civil society organizations have given good support to the people in their accessing the justice system.

Challenging Issues

The next challenges for Thailand in the development of better access to environmental management justice are:

1. Clear definition of legal terms, their specific meaning, and details on their application are needed in order to have more transparency and develop a standard to guide action (including a clear definition of "environmental cases"), without having to rely on the judgment of those in authority or power. Moreover, temporary provisions should be enacted to strengthen and develop the people's capacity to know how to use their rights so they can access the environmental management justice system efficiently.

2. Laws determining power and responsibilities of committees and agencies receiving complaints and appeals must clearly prescribe independence and impartiality in case deliberation and also open up opportunities for the people to participate at every stage of justice delivery process.

3. Although at present organizations accepting complaints and appeals are trying to lessen the burden of expenses of litigation so as to broaden access to justice among the people, nevertheless there should be establishment of more provincial courts, abolition of the collection of environmental litigation fees, and more action to facilitate

access to the environmental justice system by minorities and disadvantaged people.

4. The case deliberation process should be further developed to help shorten time to judgment or there should be decentralization of the power to dispense justice by assigning cases to branch of agencies to clear the backlog. Another option is that the state should set up dedicated provincial environmental courts, which will take some of the load off the other courts. Whatever the setting, the constant factor must be that judgment of cases is fair and impartial.

5. The development of capacities of officials connected with court deliberation and adjudication is important in order to support the people in exercising their rights to access justice. One important activity is publicity campaigns to let more people know how to use their rights to complain and appeal.

6. In many environmental court cases, it is difficult to find the defendants or perpetrators and often negative impacts arise only after a period of time has passed. Also, deliberation and correct judgment have to rely on specialized knowledge and expertise, and so at times the court-sponsored mediation process is stalled because the

defendant cannot be determined. Thus, the steps to be undertaken in the court inquiry process must be clearly spelled out; capacities of local agencies and local people must be developed, so they would acquire knowledge about laws related to the environment and are able to participate in investigations of violations of such laws.

Recommendations

1. Enact legislation to promote access to justice

In enacting legislation, definitions of terms and details on how to implement must be clear and thorough (including defining the term "environmental cases") in order to foster transparency and a set of standards for implementation. Also, a provisional section in the law should be enacted which specifies the role and tasks of the community and local administrative organizations in promoting participation in managing community natural resources and environment. This is to be done concurrently with generating activities to build capacity of state officials, local organizations, and the general public to utilize their legitimate rights. Moreover, Organic Laws that are in accord with the intention of the Constitution should be enacted, specifying the power and responsibilities of committees and organizations charged with receiving complaints and appeals, as well as stipulating their

independence and impartiality in adjudication. Opportunities for the people to participate in local management of community environment should be broadened to the fullest extent, to cover participation in all relevant judicial processes available.

2. Publicize rights that are available to the people including legal rights. Publicize the process of accessing the justice system to exercise these rights

At present, the communication of news and information by bodies adjudicating cases is limited to litigants, damaged parties, and interested persons. Thus, there should wider dissemination of information on rights to litigation and access to justice that people possess (including to disadvantaged and marginal groups, and non-Thai language speakers). This could be done through more varied dissemination channels. A policy should be set whereby related agencies, whether they are state agencies, judicial bodies, or civil society organizations, cooperate on a sustained basis to do publicity work and create understanding among the people as to their rights to access environmental justice.

3. Create opportunities for minority groups and the disadvantaged to better access the justice system

A policy should be set to assist and facilitate disabled people and minority groups in litigation matters and help them to attend case examination hearings, this being to create more opportunities for them to access the justice system and give them confidence that they have the same rights, freedom, and equality as the mainstream population.

4. Increase channels for complaints and appeals in order to achieve a higher level of equality and comprehensiveness. Decrease the delay in case examination and adjudication, while at the same time ensure transparency and thoroughness in information provision

Although at present, organizations accepting complaints or appeals try to lessen the burden of expenses incurred by complainants, to facilitate even greater access to justice, the following measures should be taken: cancel court fees for litigating environmental cases, and set up a special organization or an environmental court to specifically adjudicate on environmental cases, thereby lessening the burden on other courts. This specialized court should utilize the specialized knowledge of experts in the field of environment in its case examination. In addition, to prevent delay

in the case deliberation or appeal process, measures should be drawn up or a time limit set for quick completion of adjudication. The time period allowed for deciding on appeals should also be specified in organic laws of the relevant constitutional provisions.

5. Devise a policy on developing capacities of people involved in environment matters

A policy directing concerned agencies to work together in an integrated manner should be devised; the objective being to ensure that agencies accepting complaints and appeals, local administrative organizations, and civil society are able to work together to develop capacities in the agencies and among the general public. The final goal is for these entities to have sufficient knowledge on the environment, on environmental law, on potential impacts from the implementation of projects or policies, both of the public and private sector; and that the entities are able to utilize the law correctly and can jointly and continuously detect violations of the law.

6. Create values which encourage the use of peaceful means to handle and decrease environmental disputes in environmental management

Up until now, adjudication in every court case results in one party winning and the other party in the dispute losing out. Currently the trend that is more widely accepted is one in which tries to create a new value, one of using peaceful means in order to prevent disputes; that is trying to get parties to end disputes peacefully without going to court and in a way which both gain benefit and satisfaction from the outcome. This method has still to adhere to the principle of the law covering the subject and is conducted with the provision of correct and equal information to both parties. In addition to creating this value, efforts should be made to promptly push for enactment of an alternative resolution act or ADR act.

7. Build a litigation process that covers solving the problem at the source

Presently, judicial examination of environmental cases remains one of rectifying damages done to the environment on a case by case basis, lacking the perspective of solving general environmental problems systematically, which in essence means going to the source of the problem and preventing it from occurring, or after it has occurred find measures to prevent it from happening again. To

achieve this goal using the justice system, we should broaden the definition of “the damaged party” and open up opportunities for the public to file cases in court in cases where damage to natural resources or the environment is anticipated or expected, in other words without having to wait for damages to occur first before filing.

8. Consider setting up an Environmental Court

Because the trend now is one of more disputes arising from a growing number of natural resources and environmental conflicts, and to adjudicate on environmental court cases requires staff and judges to understand environmental affairs in order to respond effectively, one way to meet the growing volume of work is to establish a specialized environmental court so that damaged parties can access justice in a timely manner.

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