

Chapter I

General Legal Framework Supporting Public Access to Information, Participation and Capacity Building for Public Participation in Environmental Management

Introduction

Rationales of the Indicators

The indicators in Part I of this research emphasize the general legal framework supporting public access to information, participation in decision-making and capacity building for public participation. The set of law indicators is an essential component of the assessment since the legal framework is an important tool to ensure citizen rights and determine roles and responsibilities of concerning parties. Assessing the legal framework will help identify problems and obstacles in the use of the existing legal framework to promote public participation in environmental management.

General Situation

Public participation has been clearly defined in national policies and legislations for over a decade. The Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the highest legislation, contains more than 30 provisions which stipulate the right of public participation through various channels (Office of the Natural Resources and Environment Policy and Planning, 2004). The Enhancement and Conservation of National Environmental Quality Act, B.E. 2535 (1992) provides access to information relating to the enhancement and conservation of environmental quality. The law also provides access to justice, i.e., the right to be remedied or compensated damages resulting from pollutant emissions caused by any activities or projects initiated, supported, or undertaken by a government agencies or state enterprises. Official Information Act, B.E. 2540 (1997) provides people's right to access to official information in which environmental information shall be covered.

Despite the existence of legal framework mentioned above, major problems are with law enforcement. For instance, though the Official Information Act was enacted eight years ago, main problems that caused the law enforcement ineffective are conservative attitudes of government officials toward information dissemination and few awareness raising activities for the public to understand and to exercise their rights given by the Act (Office of the Natural Resources and Environment Policy and Planning, 2004). After reviewing all complaints and appeals related to the denial of rights to access to information, it was found that during the past seven years of the enactment of the Official Information Act, 90 percent of the complaints and appeals were lodged for personal interests such as procurement information, disciplinary investigation process, and adjustment process of governmental salary rates. Only 10 percent of the complaints and appeals were made to protect public interests. It was observed that few civil society organizations, which play an important role in monitoring the performance of the government, exercise their rights promulgated in the Official Information Act¹.

Even though the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) has stipulated legal provisions to promote citizens' rights, freedoms, public participation and decentralization, there is a lack of implementing legislation to realize these principles, particularly rights to participate in environmental management, rights to

¹ A statement of Director of the Institute for Local Community Development in the academic seminar titled "7 Year, Official Information Act, B.E. 2540 (1997) and Transparent Administration" appeared in Krungthep Turakij (Thai language newspaper), 23 December 2004. (http://www.bangkokbiznews.com/2004/12/23/pol/index.php?news=column_15865813.html)

provide inputs and comments on the project at the beginning of decision-making process and rights to live in a clean environment. The provisions related to public participation in the Constitution, therefore, have not yet been fully enforced.

Assessment Method

Since research questions or indicators used in this chapter focus on legal contents written in legal documents, the assessment method is mainly a documentary research. Sources of information include published documents and electronic files available at the Office of the Council of State website (www.krisdika.go.th). With regard to the publication used, the research team relied on a legal review article which is Chapter 3 of the *main report on the project to design mechanism for the participation of stakeholders in the formulation of policies, plans, measures, and laws: rules and guidelines* of the Office of the Natural Resources and Environment Policy and Planning (ONEP). Other documents included an analytical review of Mineral Acts found in an *academic research report on Mining Problems for determining policy recommendation* studied by the Subcommittee to study and examine mining problems, under the National Committee on Human Rights, and other reports and documents related to the Constitution, and other laws.

As for Indicator I.B.3., which measures levels of public participation in decision-making processes treated in provisions of administrative laws relevant to environmental protection, the research guideline determines that the research team should examine three administrative branches that handle decisions important to environmental protection and that are not strictly considered “environmental”. Such sectors include water management, forestry, energy, mining, construction and others. Accordingly, the research team has selected the following three legal provisions for evaluation.

- 1) Factory Act, B.E. 2535 (1992)
- 2) Mineral Act, B.E. 2510 (1967) and
- 3) Reserved Forest Act, B.E. 2507 (1964)

The research team selected the first two legislations as project implementation or activities under these acts may have significant impacts on the environment and quality of life of people, for instance, approvals of tin mining and approvals of heavy industrial facility establishment. The Reserved Forest Act also has significant potential role in promoting public participation in natural resources and environmental management promulgated by the current Constitution.

Category A: General legal framework supporting access to information

Table of Indicators

| Indicators | |
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| I.A.1 Right to access to public interest information* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | Previously enacted Constitutions of the Kingdom of Thailand (1991 and revised 1995) and the current Constitution (1997) mandate the state to allow public access to information. Section 58 in the current Constitution of the Kingdom of Thailand guarantees this right described as follows. |
| (i) Freedom of access to public interest information is prohibited in constitution, bill of rights, court decisions, or equivalent | |
| (ii) Freedom of access to public interest information is not treated in constitution, bill of rights, court decisions, or equivalent | <i>"An individual shall have the right to get access to public information in possession of a State agency, State enterprise or local government organization, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law."</i> |
| (iii) <u>Freedom of access to public interest information is guaranteed in constitution, bill of rights, court decisions, or equivalent, with vague or broad exceptions or restrictions</u> | However, the exceptions in Section 58 of the Constitution are defined broadly. It is not clear to what extent "the security of the State" or "public safety or interests of other persons" can be claimed. The interpretation of such exceptions, therefore, depends on the discretion of government officials |
| (iv) Freedom of access to public interest information is guaranteed in constitution, bill of rights, court decisions, or equivalent, with clearly defined exceptions or restrictions | |
| I.A.2 Freedom of information acts* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | Thailand has the Official Information Act (1997) which was enacted before the Constitution of the Kingdom of Thailand (1997). This act guarantees people's rights to access to official information in accordance with Section 58 and 59 of the current Constitution. |
| (i) Freedom of access to public information is prohibited by law or by court decisions | |
| (ii) Freedom of access to public information is not treated by | Section 9 of the Act provides individual |

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| <p>law or by court decisions</p> <p>(iii) <u>Freedom of access to public information is guaranteed by law or by court decisions, with vague or broad exceptions or restrictions</u></p> <p>(iv) Freedom of access to public interest information is guaranteed by law or by court decisions, with clearly defined exceptions or restrictions</p> | <p>rights to access to "Official Information", regardless of direct stakeholder status. Under Section 4, the official information includes all kinds of information occupied by or under control of governmental agencies, no matter what information is related to implementation of the governmental or private sectors or what form of the record is.</p> <p>In addition to information to be prepared for public review, Section 11 allows the public to request for any official information on the condition that the request statement must specify the information needed in an understandable manner. The responsible agency must provide the requested information within appropriate time frame.</p> <p>According to Section 13, a person shall have the right to lodge appeal to the Official Information Committee when the responsible agency fails to publish information in accordance with Section 7, or fails to provide information for public review in accordance with Section 9, or denied to provide the requested information in accordance with Section 11, or violated or failed to comply with the Act, or delayed in performance of the duties.</p> <p>However, there are some exceptions on information disclosure as stated in Section 15. Governmental agencies are allowed to make their judgment not to disclose the information, for instance, information, when disclosed, will affect national security, or will cause fatal harm or threat to any individual. However, there are no details to what extent information fall under such exceptions. Only "personal information" is clearly defined and confined. The Act, therefore, allows government officials to make arbitrary interpretations to which information falls under exceptions. Moreover, the Act does not set the specific time frame that the government officials must provide the requested information within a certain period from the date of submitting the request.</p> |
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| I.A.3 Provisions for access to "environmental information" in the public domain* | |
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| Values | Explanation and Justification |
| <p>(0) Not applicable/not assessed</p> <p>(i) Access to environmental information is prohibited by law or by court decisions</p> <p>(ii) No special laws or court decisions exist governing access to environmental information</p> <p>(iii) Access to different types of environmental information is treated by separate environmental laws or court decisions (e.g., air, water, hazardous wastes, etc.-please specify)</p> <p>(iv) <u>Access to environmental information is treated by a general environmental protection framework law or by court decisions</u></p> | <p>Section 6(1) under the Enhancement and Conservation of the National Environmental Quality Act (1992), stated that a person "may" have the right to obtain official information, unless such information is regarded as confidentiality related to national security or personal rights, property rights, or commercial rights or any individual enterprise as provided by law.</p> |
| I.A.4 Interpretation of "environmental information" | |
| Values | Explanation and Justification |
| <p>(0) Not applicable/not assessed</p> <p>(i) <u>Interpretation of "environmental information" is not treated by the basic legal framework</u></p> <p>(ii) Interpretation of "environmental information" is limited to elements such as pollution of air, atmosphere, water, soil, land, and/ or factors such as noise, radiation, etc. (please specify)</p> <p>(iii) Interpretation of "environmental information" includes the above elements as well as analyses of secondary effects, administrative or policy measures concerning the</p> | <p>After a thorough review of related legal provisions such as the Enhancement and Conservation of the National Environmental Quality Act (1992) and the Official Information Act (1997), the definition of "environmental information" has not been provided.</p> <p>However, Section 4 of the Official Information Act provides the definition of "information" as the attribute conveying fact, data and something in such a way that the attribute represents facts or data by its own feature, through any process and in the form of documents, files, reports, books, diagrams, map, portraits, photos, video and tape records, records by computers or any methods that make the recorded data appeared.</p> <p>Section 4 of the Enhancement and Conservation of the National Environmental Quality Act (1992) provides the definition of "environment" as objects having physical and</p> |

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| <p>environment, and impacts by sectors such as construction and water management</p> | <p>biotic factors surround human. This covers both natural- and man-made objects.</p> <p>The two definitions can be combined for use as “environmental information”; however, the definition of “environment” is so broad that it may not be a useful term in practice.</p> <p><u>Comments:</u></p> <p>Without clear definition of “environmental information” given in any law, people are facing uncertainty towards types and boundary of information related to the environment that they can have an access. The lack of clear definition could also lead to arbitrary decisions of government officials, for instance, the claim that information on compliance reports on Pollution Emissions of industrial factories is “commercial confidentiality”. Therefore, providing clear definition of this term should be beneficial to the public.</p> <p>The definition can be defined comprehensively in accordance with Section 59 of the current Constitution, which refers to information related to the operation of any project of activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community².</p> |
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² Another example of how to define “environmental information” can be seen in Article 2, paragraph 3, Aarhus Convention (Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters). According to the Aarhus Convention, “Environmental information” means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.

(source: UNECE Website, <http://www.unece.org/env/pp/documents/cep43e.pdf>)

Category B: General Legal Framework Supporting Participation in Decision-making Affecting the Environment

Table of Indicators

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| I.B.1 Freedom of direct participation in public matters* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | <p>According to provisions in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), a person has rights to participate in decision-making through various channels provided in Section 46, 56, 59, 60, 61 and 79. Particularly Section 56 ensures the right of a person to participate in activities performed by the State and communities with regard to the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment. The provision also entitles the right of a person to sue the government agencies and local government organization to perform the duties in protecting the environment and undertaking Environmental Impact Assessment (EIA).</p> <p>In addition, Section 79 stipulates that the State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity.</p> <p><u>Comments:</u></p> <p>Although Section 56 guarantees the right to participate in the government's decision-making processes, up to now, no organic laws or supporting laws have been enacted. No legislation has been issued to establish an independent organization to provide opinions on the EIA report as provided by Section 56.</p> |
| (i) Constitution or equivalent prohibits freedom of direct participation in public matters | |
| (ii) Constitution or equivalent does not treat freedom of direct participation in public matters | |
| (iii) Constitution or equivalent guarantees freedom of direct participation in public matters, with vague or broad exceptions or restrictions (please specify) | |
| (iv) <u>Constitution or equivalent guarantees freedom of direct participation in public matters, with clearly defined exceptions and restrictions</u> | |
| I.B.2 Public participation in drafting legislation* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | <p>The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) adopts a direct democracy principle in drafting legislation providing an opportunity for the public to participate in drafting legislation at the national</p> |
| (i) Public participation in drafting legislation is prohibited by law | |

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| <p>(ii) Public participation in drafting legislation is not treated by law</p> <p>(iii) Public participation in drafting legislation is allowed in selected cases (please specify)</p> <p>(iv) <u>Public participation in drafting legislation is allowed in most or all cases</u></p> | <p>and local levels.</p> <p>At the national level, Section 170 states that the persons having the right to vote of not less than 50,000 in number shall have a right to submit a petition to the President of the National Assembly to consider such law as prescribed in Chapter 3 and Chapter 5 of this Constitution. Based on this provision, one can see that people have the right to draft legislation in most of the cases as the two Chapters contain important issues including rights and liberties of the Thai people (Chapter 3) and directive principles of fundamental state policies (Chapter 5).</p> <p>At the local level, Section 287 allows persons, having the right to vote in any local government organization, of not less than one-half of the total number of the persons having the right to vote in that local government organization to have the right to lodge with the President of the local assembly a request for the issuance by the local assembly of local ordinances.</p> <p>The progress of public participation in drafting legislation can be seen in the enactment of the Petition for Drafting Legislation Act, B.E. 2542 (1999) and the Petition for Drafting Local Ordinance Act, B.E. 2542 (1999).</p> <p><u>Comments:</u></p> <p>The requirement that a draft bill attached to the petition must be complete is difficult to implement since drafting legislation is a technical matter and requires high level of legal knowledge and expertise skills. Moreover, the Constitution only grants people the right to submit a petition with no rules and time frame set for considering the draft Act.</p> <p>It was found in the case of drafting the Community Forest Act that to date, the draft act submitted by the people has not yet passed the review process, even it was submitted to the President of the National Assembly three years ago. The situation was that civil society coalitions had submitted the petition for this bill to the President of the National Assembly in 2000 and the petition received approval by the House of Representatives on November 7, 2001. However, it was voted for a revision by the Senate on March 15, 2002. The draft Act was withheld and returned to the House of Representatives.</p> <p>Since then, the Government Coordinating</p> |
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| | Committee (so-called "whip") did not resubmit the draft Act to get the approval of the House of Representatives until the expiration of the term of the National Assembly. The case of the Draft Community Forest Act, therefore, revealed that the existence of laws is inadequate to address the efficiency of the actual implementation concerning public participation in environmental decision-making. |
| I.B.3.a Public participation rules in administrative laws relevant to environmental protection: Factory Act, B.E. 2535 (1992)* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | The Factory Act, B.E. 2535 (1992) is to control factory operations by allowing the Minister to prescribe the ministerial rules classifying the factory of any type, kind or size into the Factory Group 1, Factory Group 2, or Factory Group 3 by taking into consideration of the necessity for the control, prevention of nuisance, prevention of damage and contamination aiming at minimizing the impact on the environment. |
| (i) Public participation in sectoral decisions affecting the environment is prohibited in provisions of administrative procedural law relevant to environmental protection | A factory classified as Factory Group 2 is such factory of the type, kind, and size as, when engaging in a factory business, must be notified in advance to the Grantor. |
| (ii) <u>Public participation in sectoral decisions affecting the environment is not treated in provisions of administrative procedural law relevant to environmental protection</u> | A factory classified as Factory Group 3 is such factory of the type, kind, and size as to be granted a permit prior to the engagement. |
| (iii) Public participation in sectoral decisions affecting the environment is allowed in provisions of administrative procedural law relevant to environmental protection, with vague or broad exceptions or restrictions (please specify) | This Act allows the Minister to issue ministerial regulations for various issues related to industrial factory operations and environmental protection. For example, the Minister can determine where a factory should be located, its surroundings, types of building, and types of machine. The law also allows the Minister to set the emission standard and emission abatement tools and methods. |
| (iv) Public participation in sectoral decisions affecting the environment is ensured by provisions of administrative procedural law relevant to environmental protection, with clearly defined exceptions or restrictions | Comments: The basic right of the people to participate in pollution controls depends on the assurance by law that a person has the right to live in a healthy and safe environment (as present in Section 56 of the Constitution, B.E. 2540). Therefore, the laws that have provisions dealing with pollution controls including the Factory Act, |

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| | should be revised in accordance with the provisions in the Constitution. If the right to live in clean environment is treated in the laws, people will have the right to share the jurisdiction with officials in controlling pollution, either by participating directly with authorities or indirectly by making use of appeal mechanisms for addressing public interest. |
| I.B.3.b Public participation rules in administrative laws relevant to environmental protection: Mineral Act, B.E. 2510 (1967)* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | According to the Mineral Act, B.E. 2510 (1967) ³ , concessions to explore mineral sources, and to conduct mining and mining related activities will be granted by a committee. Section 18 requires that committee members comprise of 6 persons from relating government agencies and other fields of not more than 3 persons shall be appointed by the Minister. Section 19 grants authority to the committee to approve, extend, transfer ownership, and withdraw mining licenses and concessions. |
| (i) Public participation in sectoral decisions affecting the environment is prohibited in provisions of administrative procedural law relevant to environmental protection | |
| (ii) Public participation in sectoral decisions affecting the environment is not treated in provisions of administrative procedural law relevant to environmental protection | This provision, therefore, allows persons outside government officials to participate in decision-making process when granting concessions (under condition of being appointed by the Minister and not more than 3 persons). An exception is defined in Section 49; however, that guarantee the right to object the concession within 20 days from the date that local mining officials posted the concessionary request notification. |
| (iii) <u>Public participation in sectoral decisions affecting the environment is allowed in provisions of administrative procedural law relevant to environmental protection, with vague or broad exceptions or restrictions (please specify)</u> | After the amendment of the Mineral Act (the 5 th amendment), B.E. 2545 (2002), which aims at legalizing underground mining ⁴ , an effort to introduce the right of stakeholders to participate in decision-making is found. The Act allows stakeholders to participate in initial consultation during underground mining project development (Section 88/9). Public hearings of the stakeholders are to be convened after an environmental impact assessment (EIA) report of |
| (iv) Public participation in sectoral decisions affecting the environment is ensured by provisions of administrative procedural law relevant to environmental protection, with clearly defined | |

³ The Act referred here is the latest version including the amendment in 1973, 1979, 1983, 1985, 1991 and 2002 respectively.

⁴ Rationale of having the amendment (described at the end note of the act) is to revise and add provisions concerning underground mining. The provisions determine the depth of underground mining and broader operating areas to be covered by the concession in which mining permits are not required. The provisions are made with the purpose of facilitating the progress in the development of mining technology and promoting underground mining investment and development.

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| exceptions or restrictions | <p>the underground mining concessionaire is approved (Section 88/7). Stakeholders also have the right to inspect mining operations in accordance with rules as conditions of approving concessions (Section 88/11). However, some observations on public participation principles underlying in the 5th amendment are described as follows:</p> <ol style="list-style-type: none"> 1) The role of public participation comes after the approval of the EIA report⁵ 2) The initial consultation with stakeholders is not mandatory but depends on the consideration of the concessionaire him/herself (Section 88/9). Therefore, mining project owners are likely to disregard such activity to avoid possible confrontation with project opponents. Moreover, the initial consultation process is limited to directly affected people, not the general public. 3) The Act authorizes the Director-General to set rules and criteria to acknowledge stakeholders. Stakeholders are interpreted as groups of people including village and district chiefs, Members of Local Assembly or Administrators of Local Administrative Organization, and persons who have the right over the land or reside in the area of the mining project. Thus, multi-stakeholders according to the Act included only representatives and direct affected people. Additionally given the Director-General having authority to set up selection criteria, a fair selection of representatives is questionable. 4) Even though stakeholders are able to assign persons who has the right to inspect mining |
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⁵ According to Section 46 and Section 47, under the National Environmental Quality Act (NEQA), 1992, state enterprise or private organization, are required to submit and Environmental Impact Assessment (EIA) report to the Office of the Natural Resources and Environmental Policy and Planning (ONEP) and the Expert Review Committee for review and make approval before further proceedings.

In case of private sector projects, ONEP examines the EIA report within 15 days, then reviews and makes preliminary comment on EIA report within 15 days. The EIA report together with the preliminary comment will then be approved by the review committee who will consider the report within 45 days. If the report is not approved, the proponents have to submit the revised or additional reports to meet the committee requirement until the report is approved. The committee will review the revised or additional report within 30 days after receiving date. If the Expert Review Committee can not conclude their decision on the EIA report within 45 days or the revised or additional report within 30 days, the EIA reports will be regarded as being approved and the permitting agency can grant the permit to the projects or activities. These conditions, therefore, set a limited time frame for review. Hence, a question arises on the quality and transparency of the review process.

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| | <p>operations and may hire experts to assist the inspection (Section 8/811), but such inspection right is allowed only in mining period. The inspection right covers neither the whole implementation period as given by the concession, nor the post period when the concession is expired.</p> <p>5) The Ministerial Ordinance (no. 467/2003) ensure the right of representatives of municipalities and Tambon (sub-district) administrative organizations (TAOs) to monitor the compliance of the mining concessionaire to the preventive and mitigation measures to the environment as given in the EIA report. However, such right is not given to representatives from the general public, especially NGOs. There is also a question on transparency of the selection process of representatives from the TAOs.</p> <p>After carefully reviewing public participation principle provided by this Act together with the guideline of the TAI assessment, a value of (iii) is assigned for this indicator. Value (iv) can not be assigned as the guideline has stated clearly that it can be assigned only the types of provisions ensuring public participation include provisions for public notification at the beginning of a decision-making process, opportunities for the general public (not just affected parties) to advise on the decision, and provisions for publication of the decision. Such conditions are not appeared in the Mineral Act.</p> |
| <p>I.B.3.c Public participation rules in administrative laws relevant to environmental protection: Reserved Forest Act, B.E. 2507 (1964)*</p> | |
| <p>Values</p> | <p>Explanation and Justification</p> |
| <p>(0) Not applicable/not assessed</p> <p>(i) Public participation in sectoral decisions affecting the environment is prohibited in provisions of administrative procedural law relevant to environmental protection</p> <p>(ii) <u>Public participation in sectoral decisions affecting the environment is not treated in provisions of administrative procedural law relevant to</u></p> | <p>The Reserved Forest Act, B.E. 2507 (1964) can be regarded as one of command-and-control legislations. This can be seen in many provisions under Division 2, the control and protection of national conserved forests. Section 14 prohibits any individual from possessing, exploiting, and residing in national reserved forest areas. Under this Section, other activities including construction, land clearing, forest burning, logging, and collecting forest products or any other activities that will lead to forest deterioration are prohibited. An exception is in the case that logging or collecting forest products are performed in accordance with Section 15 and</p> |

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| <p><u>environmental protection</u></p> <p>(iii) Public participation in sectoral decisions affecting the environment is allowed in provisions of administrative procedural law relevant to environmental protection, with vague or broad exceptions or restrictions (please specify)</p> <p>(iv) Public participation in sectoral decisions affecting the environment is ensured by provisions of administrative procedural law relevant to environmental protection, with clearly defined exceptions or restrictions</p> | <p>received permits from authorities or in the case that such activities are occasionally announced by authorities at a certain reserved forest area.</p> <p>However, two Ministerial Regulations were promulgated, Ministerial Regulation no. 1106 (B.E. 2528) (1985) and Ministerial Regulation no. 1107 (B.E. 2528) (1985)⁶, which allow the public or communities to have rights to utilize non-wood products. In addition, the Royal Forest Department exercises their authority as provided by Section 19 to introduce various policies including community forest establishment, forest plantations, and the establishment of the National Reserved Forest Improvement Center.</p> <p>Although both Ministerial Regulations mentioned above gave the opportunity for the local people to gain benefits from the reserved forests, the provisions still confine the power of issuing the forest permits to the Director-General and government officials. There has not yet been any law amendment to enable community and people rights to participate in natural resources management as promulgated by the Constitution (Section 46 and 56).</p> |
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⁶ -The Ministerial Regulation no. 1106 (B.E. 2528) (1985) issued in accordance with National Park Act 1961, *Lumbering in National Reserve Forest*, stipulates that those who wish to lumber (non protective lumber) in the National Reserve Forest area must apply for authorization permits from government officials in conformity to appendix of the Ministerial Regulation with the exception of lumbering for their household consumption for given items.

- The Ministerial Regulation no. 1107 (B.E. 2528) (1985) issued in accordance with the National Park Act 1961, *collection of wild resources in National Reserve Forest Area*, stipulate that those who wish to collect wild resources in the National Reserve Forest Area must apply for authorization permits from government officials in conformity to appendix of the Ministerial Regulation with the exception of collection of wild resources in the National Reserve Forest for their household consumption in given cases.

Category C: General Legal Framework Supporting Capacity Building

Table of Indicators

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| I.C.1 Freedom of association* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | <p>The Constitution of the Kingdom of Thailand, B.E. 2540 (1997), Section 45, states that a person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organization or any other group. The restriction on such liberty shall not be imposed except by virtue of the law specifically enacted for protecting the common interest of the public, maintaining public order or good morals or preventing economic monopoly.</p> |
| (i) Freedom of association is prohibited in constitution, bill of rights, court decisions, or equivalent | |
| (ii) Freedom of association is not treated in constitution, bill of rights, court decisions, or equivalent | |
| (iii) Freedom of association is guaranteed in constitution, bill of rights, court decisions, or equivalent, with vague or broad exceptions or restrictions (please specify) | |
| (iv) <u>Freedom of association is guaranteed in constitution, bill of rights, court decisions, or equivalent, with clearly defined exceptions or restrictions</u> | |
| I.C.2 The right to a clean environment* | |
| Values | Explanation and Justification |
| (0) Not applicable/not assessed | <p>The Constitution of the Kingdom of Thailand 1997, Section 56, Paragraph 1, guarantees human rights to live in a clean environment as follows:</p> <p><i>"The right of a person to give to the State and communities participation in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for usual and consistent survival in the environment <u>which is not hazardous to his or her health and sanitary condition, welfare or</u></i></p> |
| (i) The right to a clean environment is explicitly denied in constitution, bill of rights, court decisions, or equivalent | |
| (ii) The right to a clean environment is not treated in constitution, bill of rights, court decisions, or equivalent | |

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| <p>(iii) The right to a clean environment is guaranteed in constitution, bill of rights, court decisions, or equivalent, with vague or broad exceptions or restrictions (please specify)</p> <p>(iv) <u>The right to a clean environment is guaranteed in constitution, bill of rights, courts decisions, or equivalent with clearly defined exceptions or restrictions</u></p> | <p><i>quality of life, shall be protected, as provided by law."</i></p> <p>Comments: Although the right to live in a clean environment is guaranteed in the Constitution, B.E. 2540 (1997), the implementation procedures have not been clearly issued; in addition, there has not been any supporting laws to determine the implementation process of this right.</p> |
| I.C.3 Tax conditions for non-governmental organizations (NGOs)* | |
| Values | Explanation and Justification |
| <p>(0) <u>Not applicable/not assessed</u></p> <p>(i) There are no tax exemptions or reductions for NGOs in the tax codes</p> <p>(ii) Tax codes provide that most or all NGOs pay reduced taxes</p> <p>(iii) Tax codes provide that most or all NGOs are tax-exempt</p> | <p>It was found that there is a tax exemption, i.e., value-added tax (VAT), for NGOs that registered as non-profit organizations or philanthropies.</p> <p>According to the Ministerial Notification of the Ministry of Finance on Income Tax and Value-added Tax (no. 2), B.E. 2535 (1992), NGOs that registered as non-profit organizations or philanthropies in accordance with Section 47(7)(b) of the Revenue Code will be exempted for value-added tax. However, the number of NGOs acknowledged as non-profit organizations or philanthropies is very small when compared to the total number of NGOs in the country.</p> <p>The researcher assigned value (0) as neither value (i) nor value (ii) is applicable to the finding.</p> |
| I.C.4 Legal interpretation of "the public" | |
| Values | Explanation and Justification |
| <p>(0) Not applicable/not assessed</p> <p>(i) <u>No legal interpretation of "the public" is established in the relevant legislation</u></p> <p>(ii) The legal interpretation of "the public" is narrow (includes only those parties with interest, concern, proof of damage, or proof of harm;</p> | <p>After conducting an intensive review of relevant legislation including the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992) and the Official Information Act, B.E. 2540 (1997), it was found that the definition of "the public" is not existed.</p> <p>Comments: The lack of the definition causes ambiguity in determining "who" shall have the right to participate in decision making process. In the</p> |

| Indicators | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>is defined by the number of people in an organization or initiative, etc.)</p> <p>(iii) The legal interpretation of "the public" is defined broadly, encompassing any concerned individual or citizen</p> | <p>past, when it came to sensitive issues, it was found that government officials often used narrow interpretation, which was meant only interest groups or direct stakeholders. Such narrow interpretation has limited rooms for NGOs to provide useful information on the discussed issue.</p> |

Analysis

The use of legal framework to promote good governance or public participation principle in environmental management and in the development of the country relies upon the extent to which legal framework provides rooms for public participation. The indicators presented above demonstrate the progress of legal framework in Thailand relating to public participation in environmental management. The assessment of the existence of laws by using TAI indicators revealed that Thailand has been progressive in providing basis laws that promote public participation in accordance with the Principle 10 of Rio Declaration. However, the existence of laws is inadequate to address the efficiency of the implementation of public access to information and participation in environmental decision-making due to the lack of supporting legislations. It was found that many Sections that ensure public participation have not been enacted including Section 46 and Section 56. It was also found that many laws have not been revised in accordance with the Constitution with regard to public participation; for instance, the National Park Act, B.E. 2504 (1961) and the Reserved Forest Act, B.E. 2510 (1967). When comparing findings of this assessment with the pilot test of three years ago (2001), the progress in amendment of laws relating to promotion of several aspects of public participation is still limited.

In addition, there are problems with the clarity in many provisions, for example, without clear definition of "the public", determining "who" should participate in environmental decision-making became debatable. In the past, it was found that when dealing with sensitive issues, officials tended to use narrow interpretation for "the public" by limiting to interest groups or direct stakeholders. This causes limitation in public participation.

Besides the deficiencies of law enforcement and the ambiguity in legal terms, the lack of awareness raising activities for the public to realize and exercise their rights has retarded the development of an effective public participation system. Also culture and traditional beliefs in many aspects also prevented Thai people from using their rights, for instance, the lack of sense of partnership between government and private sector on an equal basis, beliefs in the rule of Karma, and negative attitude toward lawsuits.

Recommendations

▪ For Thailand

- 1) Legislation supporting provisions in the Constitution of Thailand shall be issued, specifically in Sections concerned with Rights and Public Participation such as Section 46, Section 56 and Section 59. This will create concrete enforcement of provisions in the Constitution.
- 2) The government shall accelerate amendments/revisions of several pieces of legislation to comply with intentions of the Constitution. For example, there shall be a revision of the Mineral Act B.E. 2510 (1967) to establish a committee on this subject, consisting of Ministries, representatives of the public sector, local communities and local administrations in appropriate and fair numbers of persons.
- 3) In cases where the public has the right to propose laws, such as under the Act on Procedure for Proposing of Law by People, B.E. 2542 (1999) and the Act on Procedures for Proposing Local Regulations by People, B.E. 2542 (1999), the government shall define the operational procedures for the proposal as a special case.
- 4) The definitions of "General Public", "Environmental Information", "Confidentiality of Commercial Information", and "Stakeholders" shall be clearly stated in relevant laws such as the Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992) and the Official Information Act B.E. 2540 (1997).
- 5) The Official Information Act B.E. 2540 (1997) shall specify a timeframe to respond to public inquiries, such as within 30 days from the date that a member of the public applied for a copy of such information. In cases where the information cannot be disclosed, a timeframe shall be in place to inform the public as well, such as within 20 days, etc.

▪ For Development of the Indicators

- 1) Additional indicators should be developed to assess comprehensiveness of general legal framework as it is seen in the case of Thailand that though the existence of good Constitution, the absence of supporting laws makes the promulgation of the Constitution inoperative. An indicator can be developed to measure the existence of provisions relating to public participation in decision-making as well as the existence of supporting laws or detailed procedures in accordance with such provisions.
- 2) Besides the indicators that assess the general legal framework including the Constitution, the access to information laws, and the environmental law, additional indicators should be developed to measure specific legal framework that deals with the environment and public participation including regulations on Environmental Impact Assessment (EIA) and public hearing.