

# Summary of Thailand's State of Environmental Governance Report 2005 (2<sup>nd</sup> Assessment)

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## Introduction

"Sustainable Development" has become increasingly important in the country's development. Past economic growth, which lacked careful planning regarding usage and protection of the environment, triggered problems regarding the use of natural resources. These problems have created social conflict arising from the unequal possession of natural resources. Accumulated inappropriate production and consumption behaviors (which damage the environment and generate pollution) have pushed the Thai lifestyle out of balance with the environment. Such behaviors have affected the quality of life of the current population and will affect the quality of life of generations to come. They have also made development unsustainable.

Findings based on sustainable development indexes developed and evaluated by the National Economic and Social Development Board (NESDB) confirm this conclusion. They indicate that in Thailand, past development lacked balance between economic and social development on the one hand and conservation of natural resources and the environment on the other. Though economic and social development has enjoyed upward trends, environmental development has always been at critical levels, lower than that of economic and social development. (NESDB, 2005)

Lack of sufficient management in environmental development has created conflicts in terms of natural resource usage and allocation, for example, the conflict between water users in the agricultural sector and those in the industrial and service sectors. Mega-infrastructure projects initiated to promote economic development not only affect the quality of the environment adversely but also cause serious conflicts in resource allocation, as witnessed by confrontations over dam construction, coal-fired power plant, and gas-pipeline projects. It might be said that conflicts between project owners (usually public agencies and private companies) and those affected (independent organizations, members of the public concerned about environmental impacts and society) are the result of project proposals and operations without Good Governance and Public Participation.

Good governance, or good management, is an important global principle. Increasingly, commitments to good governance are enshrined in international political statements and agreements. Generally, good governance can be understood as a set of six main characteristics: 1) rule of law; 2) transparency, including public access to information; 3) public participation; 4) accountability; 5) predictability; and 6) justice, resulting from public accountability. In this regard, public participation is the most important underlying principle enabling good governance. Public participation in environmental management, in accordance with Principle 10 of the Rio Declaration, is composed of three key characteristics of "good governance": access to information (transparency), participation in decision-making, and access to justice.

In this study "Environmental Governance" is defined as good practices with transparency, justice and public participation in the management of natural resources and the environment. Public participation is also an important factor in generating good governance, through strengthening society, which drives appropriate decisions

at the policy level. Good practices in solving natural and environmental problems will eventually lead to sustainable development.

Trends in good governance or public participation in environmental management are not new to Thai society. The Constitution of the Kingdom of Thailand B.E. 2540 (1997) is regarded as "the People's Constitution" because of the participation of the public in its drafting process. The Constitution itself also allows public participation in decision-making. The demand for increased public participation in environmental management was strengthened during the environmental forum (Environment '93). More than 130 civil society organizations encouraged the public to take on an additional role and to exercise their rights in equal management of natural resources and the environment.

At present, Thai society has structures promoting additional public participation in environmental management, as witnessed by the provisions in the current Constitution, which ensures the right to access official information (Section 58). The Official Information Act B.E. 2540 (1997), which existed before the enforcement of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), provides for the right to access information as an indicator of public participation linked with other aspects of participation.

The current Constitution also promotes equal opportunity for all members of society in environmental management including local administrations (Section 290), traditional communities (Section 46), independent organizations including private environmental organizations, institutes of higher education (Section 56), and the general public (Section 59). The right to participation under these Sections has legitimized public participation in the environmental management process with the Government. Such provisions are new concepts for the government since it previously held direct authority over natural resources and environmental conservation and management. Public participation is also a condition for good practices, which the government must execute under the provisions of the Constitution (Section 79, Chapter V: Directive Principles of Fundamental State Policies).

Even though the current Constitution emphasizes public participation, the Thai bureaucratic system has not fully adjusted itself in accordance with the intention of the Constitution. Consequently, the Office of the Public Sector Development Commission has determined strategies stressing the necessity of democratization through the acceptance of public participation, to work jointly with the government and to evaluate outcomes of governmental operations. These are among the strategies of the Strategic Plan for Thai Public Sector Development (2003-2007).

Nevertheless, understanding of the concept of public participation is still unclear. For example, many people or even some government officials perceive "Public Hearing" as "Public Opinion". Some think that the public participation process is to manage or solve conflicts, while the aim of public participation, in fact, is to prevent or avoid conflicts that might arise without participation.

Therefore, the most important problem in creating public participation in environmental management is not the acceptance or rejection of such a principle but the lack of basic understanding by several parties of the perspectives, goals, and procedures to establish genuine public participation. The question arises: **How can we create common understanding of good governance or public participation in environmental management?**

One mechanism that the study team applied in response to this question is an internationally-recognized set of indicators developed by **"The Access Initiative**

**(TAI)**", a global coalition of public interest groups collaborating to promote national-level implementation of commitments for information access, participation, and justice in environmental decision-making. At present, TAI is led by six organizations in five continents:

1. Advocates Coalition for Development and Environment (Uganda, Africa)
2. Corporacion Participa (Chile, South America)
3. Iniciativa de Acceso-México (IA-Mex) (Mexico, South America)
4. Environmental Management and Law Association (Hungary, Europe)
5. World Resources Institute (United States, North America); and
6. Thailand Environment Institute (Thailand, Asia)

The set of indicators jointly developed by these six partners assesses the degree of actual government implementation of Principle 10 of the Rio Declaration, that environmental management will be meaningful when the general public can access information, participate in the decision-making process, and have reasonable expectations of justice.

The TAI indicators aim to assess, in qualitative terms, the "process" to access of the three principles, not to evaluate or comment on operations of governmental agencies in the case studies selected. They aim to create common understanding of the good governance principle by opening opportunities for all sectors in society to discuss and share opinions, to improve government operations and good governance in the environmental management of the country.

TAI indicators have been tested and improved, starting from a pilot testing in 2000-2001 in nine countries of five continents including Hungary, Chile, Mexico, the United States, Uganda, South Africa, India, Indonesia, and Thailand. At present, national TAI coalitions (led by civil society organizations) of more than 20 countries worldwide have evaluated or are currently assessing the degree of public participation by using TAI indicators. Additional details can be found on the website [www.accessinitiative.org](http://www.accessinitiative.org). In Thailand, the Thailand Environment Institute (TEI), King Prajadhipok's Institute (KPI), the NGO Coordination on Development (NGO-COD) and independent experts jointly established a Research Team for a pilot testing of such indicators in the second half of 2001, with other experts in related issues forming a Review Panel to give opinions and recommendations on the findings.

Results of pilot tests in the nine countries found that, in general, though laws and legislation have been amended to ascertain rights in public participation, in practice, such rights cannot be wholly assured. The outcome of the pilot testing indicated "gaps" between the legal structure promoting public participation and actual implementation.

In Thailand, the pilot test of TAI indicators with several case studies showed the following situation of environmental governance in Thailand in 2000-2001:

1. Even though legislation provides for the right of people to access official information, there is no attempt to issue or amend existing laws to promote public participation in decision-making.
2. Most of government agencies provide the public with Environmental Information in a passive manner. In many cases, the lack of disclosure of information to the public can put people in danger. Information disclosure lacks promptness, and information is not up to date.

3. The government continues to avoid promoting public participation in every decision-making process, including in policy-making, planning and project implementation. Even when a public hearing is conducted, such as for the Hin Krud Power Plan Project, the public hearing was arranged two and half years after the project had been approved, and it was carried out under legal conditions rather than as an attempt to achieve the intentions of a Public Hearing.

The results conform to opinions of experts who monitored and analyzed public participation in environmental management during a similar period.<sup>1</sup> TAI indicators are, consequently, mechanisms providing a concrete and systematic analysis of the degree of public participation in Thailand. These indicators also stimulate interest, provide understanding and create awareness of environmental governance for the general public and government officials.

Efforts, however, to pressure the government to open opportunities for public participation in environmental management cannot be successful without a regular monitoring and evaluation of government operations. There should also be continuous pressure on several parties to create changes to promote various levels of public participation.

To monitor the progress of government implementation to promote public participation in environmental management three years after the pilot testing was conducted in 2001, the Thailand Environment Institute, together with King Prajadhipok's Institute, the Foundation for Sustainable Development, Project Policy Strategy on Tropical Resource Base and experts from various organizations jointly established "**Thailand's Coalition for Good Environmental Governance**" and conducted a project on Good Environmental Governance: Public Participation Indicators for Thailand's Sustainable Development (2<sup>nd</sup> Assessment), with funding support from the British Embassy (UK Government's Global Opportunities Fund). In this second assessment, the coalition invited the public sector to join the assessment to create coordination between the government and civil society organizations in promoting meaningful public participation.

**Thailand's State of Environmental Governance Report 2005 (2<sup>nd</sup> Assessment)** is the result of the implementation of the project and of the "Seminar on Good Environmental Governance: Public Participation Indicators for Thailand's Sustainable Development (2<sup>nd</sup> Assessment)" on 25 July 2005. This seminar, which was supported by the Canadian International Development Agency (CIDA), the Development Cooperation Foundation (DCF) and King Prajadhipok's Institute (KPI), included more than 200 participants from government agencies, private enterprises, local administrations, non-governmental organizations focussing on environmental and legal issues, local community organizations, public networks, experts, the press, and the general public.

The Research Team hopes that this report will stimulate interest, create understanding and enhance the awareness of the general public and government officials on good governance and public participation, as well as stimulate support for the civil society organizations in regular and systematic assessments. Furthermore, it is expected that findings of the 2<sup>nd</sup> assessment will assist policy makers to see benefits in applying good governance principles in determining policies, measures, plans and legislation. This will further promote the decision-making process in

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<sup>1</sup> To cite the article in the seminar on "Good governance on Public Participation and environmental processes" (Suthawan Sathirathai , 2001)

environmental issues with transparency, balance, and fairness in society, concretely responding to the intentions of the People's Constitution and Principle 10 of Rio Declaration.

## **1. Assessment Framework**

### **1.1. Methodology**

The Access Initiative (TAI) has established a comprehensive set of indicators to assess three aspects of public participation in environmental management under Principle 10 of the "Rio Declaration", including 1) access to information, 2) access to decision-making processes, and 3) access to justice as well as indicators in comprehensiveness and the quality of capacity-building efforts to encourage informed and meaningful public participation and public decision-making processes. Indicators in this 2nd Assessment do not cover access to justice since it is still being developed and tested.

A total of 125 indicators were used in this 2<sup>nd</sup> Assessment covering 1) law indicators on promotion of public participation and 2) practice indicators. Where the study team faced limited budget and time constraints, they assessed only "**priority indicators**", which are compulsory for all countries. In addition, the research team may include other indicators (which might already exist in this set of indicators, or they may create new ones), which are beneficial for the selected case studies.

Structure of TAI indicators can be classified into several groups under four chapters, including 1) Legal Framework; 2) Access to Information; 3) Degree of public participation in decision-making processes; and 4) Capacity building efforts for public participation. In each chapter, indicators were grouped into categories, and the Research Team selected case studies under each category as shown in Table 1.

**Table 1: Relationship between Chapters and Topics**

| <b>Chapter I General Legal Framework Supporting Public Access to Information, Participation and Capacity Building for Public Participation in Environmental Management</b>   |   |   |
|--|---|---|
| Category I.A. General legal framework supporting access to information   | Category I.B. General legal framework supporting participation in decision-making affecting the environment   | Category I.C. General legal framework supporting capacity building  |
| <b>Chapter II Access to Information</b>  | <b>Chapter III Public Participation</b>   | <b>Chapter IV Capacity Building</b>   |
| Category II.A. Information about environmental emergencies   | Category III.A. Participation in national or sub-national decision-making on policies, strategies, plans, programs, or legislation  | Category IV.A. Efforts of the government to build its own capacity to provide information, utilize public participation and ensure justice  |
| Case Study: <ul style="list-style-type: none"> <li>■ Bird flu outbreaks</li> <li>■ Accident of a truck containing Nitric Acid on Bang Na-Trad Road</li> <li>■ Illegal landfill of hazardous waste at Pak Chong district, Nakhon Ratchasima province</li> </ul> | Case Study: <ul style="list-style-type: none"> <li>■ Water privatization policy</li> <li>■ Water grid management strategies</li> <li>■ Pa Sak river basin management plan</li> <li>■ Water resource management plan, Saraburi and Petchaburi provinces</li> <li>■ Draft of water resources act</li> </ul> | Case Study: <ul style="list-style-type: none"> <li>■ 3 administrative agencies: Department of Environmental Quality Promotion, Department of Industrial Works and Tan Diew Tambon Administration Organization, Petchaboon province</li> <li>■ 2 juridical agencies including Administrative Court and Appeal Court</li> </ul> |
| Category II.B. Information from regular monitoring   | Category III.B. Participation in project-level decision-making  | Category IV.B. Government efforts to build the capacity of the public to exercise the access principles   |
| Case Study: <ul style="list-style-type: none"> <li>■ Air quality in Map Ta Phut industrial estate and surrounding areas</li> <li>■ Water quality in Nang Rong district, Buri Ram province</li> </ul>   | Case Study: <ul style="list-style-type: none"> <li>■ Seafood bank project</li> <li>■ Lancang-Mekong navigation channel improvement project</li> </ul>   | Case Study: <ul style="list-style-type: none"> <li>■ Information sources of managerial agencies under item IV.A.</li> <li>■ Non-governmental organizations focusing on environmental issues</li> <li>■ Environmental education in secondary school level</li> </ul>   |
| Category II.C. State of the environment reports  |   |   |
| Case Study: <ul style="list-style-type: none"> <li>■ State of environment report 2003 by Office of Natural Resources and Environmental Policy and Planning (ONEP)</li> </ul>   |   |   |
| Category II.D. Facility-level information on environmental compliance  |   |   |
| Case Study: <ul style="list-style-type: none"> <li>■ 5 factories in Samut Prakan province</li> </ul>   |   |   |

## **1.2. Research Team and Advisory Panel**

In this second assessment, the **Research Team** consisted of experienced researchers with interest in and knowledge of public participation in environmental management from various institutions and organizations, such as the Thailand Environment Institute, King Prajadhipok's Institute, Foundation for Sustainable Development and experts from other organizations totaling 17 persons. (The list of researchers can be found on Page vi). The 1<sup>st</sup> assessment (pilot project) required an independent assessment, but the second assessment used a collaborative approach and invited representatives from the public sector to participate in evaluation sessions.

In addition, from the beginning of the project, the study team established an **Advisory Panel**. This procedure was different from the previous pilot testing, in which the Review Panel was established after the testing had been conducted. The establishment of an Advisory Panel at the beginning of the project has enabled the research team to receive advice and opinions on selected case studies and assessment procedures. The review by the advisory panel confirms accuracy and transparency of the assessment findings. The Advisory Panel is composed of experts in related subjects and concerned agencies, stakeholders in the case studies used, local administration organizations and general public, totaling 16 persons, whose names appear in the advisory panel on Page viii.

The second assessment on public participation in environmental management started on 24 November 2004, when the Thailand Environment Institute held the first meeting for experts from organizations and agencies participating in the program, and ended on 25 July 2005, when the seminar presented a draft of findings of the assessment.

## **2. Findings of the Assessment**

### **2.1. Synopsis of findings related to the General Legal Framework**

- 1) The study in Chapter 1 found that currently several laws and other legislation ensure and promote access to information, public participation, and capacity-building for public participation in environmental management in Thailand. However, such legislation lacks clarity in various issues, resulting in difficulties in implementation. For example, even though the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the Official Information Act B.E. 2540 (1997), and the Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992) give the right to the public to access official information, including information relating to the environment, these three pieces of legislation also specify that if some information is deemed to affect state security, public safety, or personal rights, property rights or trading rights, or any business protected by law, the government shall have the right to refuse disclosure of such information. In addition, there is no definition of "Environmental Information", even in the Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992), which directly aims to protect environmental quality. The lack of clarity in the legislation has generated a gap in legal enforcement, allowing government officials at times to make arbitrary decisions.
- 2) At present, there is no legislation related to public participation to support provisions in the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Since the Constitution lays only the framework of several issues, general

legislation (so-called "organic laws") must be enacted to enable the implementation of such provisions. For example, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) Section 56 states that *"any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impacts on the quality of the environment have been studied and evaluated and opinions of an independent organization, consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field, have been obtained prior to the operation of such project or activity, **as provided by law.**"*

However, in the eight years since the enforcement of the Constitution, no legislation has been issued to establish such independent organizations.

When comparing assessment findings in this study and in the pilot project of three years ago (2001), **the progress in amendment of laws relating to promotion of several aspects of public participation is still limited.** For example, there is no amendment of Section 6 in the Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992), which states that an individual "may" obtain information and data from the government service in matters concerning the enhancement and conservation of environmental quality, but there is no definition of "Environmental Information" or other equivalent terms.

A comparison between assessment findings of the studies in the two time periods indicates that the government has still made no serious attempt to pass legislation concerning public participation. For instance, though the current Constitution was enacted eight years ago, no supporting legislation has been issued to execute several Sections, especially Section 56 and Section 59. Furthermore, a draft of the Public Participation Act has been under the consideration of the Council of State for the past three years. The draft of the Community Forest Act has been kept in the House of Representatives since 2002, and the improvement of the environmental impact assessment (EIA) process, which was passed in 2003, was suspended after the change of the Minister of the Ministry of Natural Resources and Environment in 2004.

## **2.2. Synopsis of Access to Environmental Information**

- 1) At present, the public has more access to information because of the enforcement of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), the Official Information Act B.E. 2540 (1997), and implementations under the Strategic Plan for Thai Public Sector Development (2003-2007). The measures in Strategy 6 stress modernizing the bureaucratic system through information technology and communications to improve work performance and to service larger groups of the public. Measures in Strategy 7 on allowance of public participation in the government system specify conditions and guidelines to promote awareness of the public sector in undertaking its duties in accordance with the intentions of the Constitution and the rule of law, especially in providing knowledge and understanding, operational guidelines and reports on work performance of government functions to the directed party and the public. Furthermore, measures in place specify that all government offices shall provide, on their websites, information demonstrating accountability, transparency, and disclosure of work performed, to facilitate public access to the information.



- 2) Though Thailand has a legal structure to promote access of information, legal mechanisms and procedures for "Environmental Information" that would benefit the public still lacks clarity. No definition of "Environmental Information" or "Confidentiality of Commercial Information" exists, nor is there a specification on which types of environmental information can be disclosed to the public, and which **must be** available to the public. In addition, there is no specified time period for responding to public enquiries. Consequently, degree of dissemination, disclosure and quality of information (in terms of its context and promptness) depends on the discretion of government officials, as can be witnessed in the first outbreak of bird flu. The Press and senators strongly criticized the attempts by the government and public authorities to conceal such information, to the extent that Matichon newspaper lodged an appeal with the Official Information Board. In the case of five factories in Samut Prakarn Province, it was found that the lack of a definition of "Environmental Information" and "Confidentiality of Commercial Information" hindered government agencies collecting reports on Pollution Emissions for disclosure to the public, which is a constraint in the development of the Pollutant Release and Transfer Register: PRTR. Developed countries have seriously adopted the PRTR system. In England, notifications concerning violations of pollution standard levels are posted in community places to keep residents informed of the pollution situation in their area, to enable the public to monitor authorities and to create social pressure on industry to control pollution emissions to conserve their corporate image.
- 3) Most agencies with direct responsibilities for data preparation and collection are eager to make the information public even though there are no specific legal conditions on this matter, for example, the efforts of the Pollution Control Department to disseminate air quality information, and the attempts of the Office of the Natural Resources and Environment Policy and Planning to provide information on the State of the Environment to the public. Both agencies continuously improve their operations to disseminate information. They have expanded the variety of information formats to include printed and CD ROM versions; they have increased their distribution lists; they now publicize their information via several kinds of media, specifically through the internet.
- 4) It has been observed that in cases where information might impact negatively on an individual person/agency or on groups with economic and political interests, even though such information is beneficial to the public, officers especially at operational level are often reluctant to provide information that might lead to discrimination in regard to access of information. During the outbreaks of bird flu, for example, criticism regarding concealment arose; with the illegal landfill of hazardous waste at Pak Chong District, when the process arrived at the investigative stage, there was no continuous information dissemination; data on performance reports on industrial facilities in accordance with the laws are not made available to surrounding communities or the public, etc.
- 5) Degree and quality of data disseminated depend upon the seriousness of the emergencies and the scope of impact of a particular incident. Furthermore, it correlates with the seriousness of the impact: information is disseminated to the public if the incident has greater impact on the public, and civil society organizations closely monitor that issue. An example of such a case is the outbreak of bird flu (from the point that the government admitted the existence of outbreak in Thailand).

When the findings of this assessment and the pilot test of three years ago (2001) were compared, it was found that, at present, Thailand has more structures and procedures favoring information dissemination, especially several measures specified in the Strategic Plan for Thai Public Sector Development 2003-2007. However, assessment findings using the indicators found that in practice, there are "gaps" in legal mechanisms that force levels of information disclosure to depend on the considerations of public officials. Moreover, it found that there are no clear operational procedures in dissemination of information that needs to be carried out promptly with up-to-date information regarding environmental and health emergencies.

### **2.3. Synopsis of public participation in decision-making processes**

- 1) In most case studies, public participation in decision-making processes in environmental issues was in the form of acknowledging information or providing opinions but lacked participation in the decision-making itself. The case studies on policy, strategy, plan, and project levels found that the public was not informed before decision-making. The draft of the Water Resources Act is an exception; officials had sent invitations to persons and organizations to attend the hearing forum.
- 2) In many cases, participation resulted from criticism, demands, or awareness of those who were affected by government policies or projects, but not from government initiatives, for example, Water Grid Management and the Seafood Bank Project, etc.
- 3) It was observed that the level of public participation tends to increase in correlation with the size of the area affected by the decision, such as the Drafting the Water Resource Act or the Privatization of Water Management organizations, etc. Such policies may create greater impacts, and civil society organizations closely monitor such projects.
- 4) Good examples of government initiatives to create public participation are Drafting the Water Resource Act and Preparation of the Water Basin Plan. Many issues, however, need to be improved to create meaningful participation.<sup>2</sup>
- 5) The awareness and strength of the civil society sector are important factors in creation of public participation. On the other hand, even if the government opens opportunities for participation but the civil society sector lacks readiness and understanding, meaningful public participation cannot occur.
- 6) It is still not clear as to what degree public participation activities affect government decisions or operations. In the case of the Seafood Bank Project, it was found that suggestions from the public forum have not been implemented.

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<sup>2</sup> Meaningful participation is defined as participation in decision-making with correct knowledge and understanding on policies, projects or activities to be undertaken. This participation can be done through several activities that enable the public to participate in the discussion process to assist in decision making on policies, projects or activities (Office of the Natural Resources and Environmental Policy and Planning, 2004, page 32)

When comparing findings of this assessment with the pilot test of three years ago (2001), it was found that overall government operations to create the public participation in decision-making processes have shown minimal progress. As pointed out by the General Legal Framework Indicators, organic laws to support Sections in the current Constitution on public participation have not issued. Even though the Strategic Plan for Thai Public Sector Development has determined mechanisms or operational procedures for each government office to set up a consultancy system with the public, to survey public needs, and/or to arrange regular meetings to gather public opinions, especially on a project or work operations that directly affect the public, the case studies show that most of government agencies have no enthusiasm to open opportunities for the public in the preparation of policies, plans or projects. Most consultancy sessions or meetings were held after decisions had been made, and there were opposing opinions from the general public.

#### **2.4. Synopsis of Capacity Building of Public Participation in Environmental Management**

- 1) The study team found that officials have been appointed or divisions have been established specifically responsible for providing environmental information to the public and for promoting public participation in some agencies, especially in large organizations (ministries, bureaus and departments) of the Central Administration. The local administration cannot allocate personnel for this purpose due to limited human resources.
- 2) Training programs are arranged for the officials on providing information services for the public, but these programs occur only in some agencies, depending on whether the agency's responsibilities are related to public participation.
- 3) Public agencies demonstrate attempts to provide information on regulations and contact addresses to the public via several kinds of media (under the Public Sector Reform Policy), depending on the capacity and context of each organization.
- 4) Some agencies have a manual on accessing official information, but it cannot be widely distributed to the public because the majority of the population does not have internet access. Therefore, it would be more beneficial for people in local areas to have a variety of information channels that are easy to understand.
- 5) Non-governmental organizations receive funding from the government but still face problems in the lengthy approval process, numerous and unclear regulations, and limited public relations.
- 6) The creation of skills for instructors on Environmental Education and the support of instructional media on Environmental Education lack continuity.
- 7) An Environmental Education curriculum has been developed, but it has been integrated into several Learning Clusters that do not lead to creation of united and concrete knowledge. Furthermore, effective instructors are also in some former pilot schools/targeted schools and have not expanded to other schools throughout the country.

### **3. Overall Recommendations**

#### **3.1 General Legal Framework**

- 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) 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).
- 4) 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.
- 5) 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.

#### **3.2 Access to Environmental Information**

##### **Information Dissemination to General Public**

- 1) Improve legal mechanisms in environmental information dissemination such as revision of the Official Information Act B.E. 2540 (1997) on 1) the timeframe for responding to inquiries, and 2) type of information to be disclosed to the public (not only by request) such as information relating to environmental and health impacts, for example, Air Quality Information and Pollution Emissions, etc.
- 2) Regulations or manuals shall be available to operational staff and local administrations on dissemination of useful information to the public. (Local administrations include the Bangkok Metropolitan Authority, the Provincial Administration Organization, the Tambon (sub-district) Administration Organization and Municipalities.)
- 3) Government agencies shall attempt to prepare information in different formats to reach various groups of population and distribute it at public locations or during any environmental campaign. Examples of such formats are State of

the Environment (Youth Version), posters displayed at schools, brochures on the environment situation, etc.

- 4) The government shall increase channels to reach the general public. Examples include dissemination of accident information and analysis of short- and long-term health and environment impacts via websites and printed media, and coordination with local organizations to disseminate information, for instance, coordination with Tambon (Sub-district) Administration Organization to publicize information on prevention of bird flu, water quality assessment, easy water-sterilization methods, and air quality assessment (in risk areas) via local radio stations. In addition, the State of Environment Report shall be distributed to public libraries in every province, and public libraries in Districts, Sub-districts, and Villages (if any).

### **Information Dissemination to directly affected and vulnerable groups**

- 1) For big projects that might affect residents of the project location, the agencies responsible shall emphasize investment in information dissemination. There shall be clear information dissemination plans with a set budget. The proportion of budget shall be appropriate for information dissemination activities during the project proposal process.
- 2) The government shall increase measures to monitor the health and environment of those who reside in risk areas, such as residents near routes of chemical trucks, and residents living and working in Industrial Estates and surrounding areas, etc. Furthermore, measures shall be simultaneously implemented to improve monitoring and warning systems into real-time systems and a capacity building of residents in the risk area to protect themselves during health and environmental emergency situations. (For example, during dangerous dispersion of chemical substances, increases in pollution, and bird flu outbreaks, etc.)
- 3) During the bureaucratic structural reform of Ministries, Bureaus and Departments, the government shall emphasize the integration of related agencies to integrate performance with information preparation, promotion of coordination among agencies in the public sector (central and local administrations) and creation of networks between government offices and the press with a formal agreement for prompt and efficient information dissemination during emergency situations.

### **3.3 Public Participation in Decision-making**

- 1) Develop mechanisms for public participation in environmental operations, especially participation at Policy Levels in determining policies, strategies and plans, etc.
- 2) Pressure the issuance of legislation which promotes freedom, rights and public participation as prescribed in the Constitution, including Section 46 on rights to conserve community's customs, Section 56 rights of persons in participation and Section 59 rights to access of information.
- 3) Public participation shall be initiated at the preparation stage of policies, strategies and planning, etc. to reduce conflict and doubt between the

government and the public as well as legitimate public rights as prescribed in the Constitution.

- 4) Establish specific processes or procedures of public participation in policy planning of governmental development projects through policies, mechanisms and legislation, such as publishing operational manuals for promoting public participation, arranging training programs to build the capacity of public officers, or the issuance of the Public Participation Act.

### **3.4 Capacity Building for Public Participation**

The government shall have clear intentions to promote public participation by creating conditions in policy planning, composed of the following measures:

- 1) Create multi-lateral participation (several related agencies in the public and private sectors, society, Non-Governmental Organizations and the public)
- 2) Acquire information for policy planning from several agencies concerned as well as researchers.
- 3) Allocate appropriate and sufficient resources (e.g., human resources and budget, etc.)
- 4) Restructure basic utilities in information access such as radio, local radio, TV, notice boards, libraries, and electronic networks to wholly serve the public, taking into account the location and the needs of the population.
- 5) Arrange training programs for officials in developing skills in using different media and creating service-mindedness, in gaining knowledge in the participatory approach and creating participation trends. Issue rules and regulations to create information services for the public.
- 6) The Ministry of Education and Ministry of Natural Resources and Environment shall jointly arrange a curriculum on Environmental Education that provides knowledge in public participation, that is appropriate for the community, by multi-lateral participation and practicality. A curriculum in both the formal and non-formal education systems shall be in place at every educational level and for the public.
- 7) The Ministry of Education and Ministry of Natural Resources and Environment shall arrange training programs for instructors and officials concerned to efficiently provide knowledge to students and general public.
- 8) All related agencies shall publicize their missions and steps to access their information for the public via several media with full coverage and sufficient and up-to-date information.

To conclude, progress assessment of the government in promotion of public participation in environmental management by TAI indicators and comparison of findings from the pilot test of three years ago indicate that Thailand has laws and procedures for public access to information. Nevertheless, in practice, several obstacles hinder public access to information and are thus not responsive to the intentions of both Thailand's Constitution and Principle 10 of the Rio Declaration.

As to existing legislation related to promotion of public participation in decision-making, the study found that they are not changed from three years ago, namely, supporting laws have not been issued for Sections assuring the right to participation, such as Section 46, Section 56 and Section 59. Even though governmental agencies have operated under the Strategic Plan for Thai Public Sector Development, the evaluation of all seven case studies indicates that existing systems or mechanisms for public participation are not efficient enough to promote genuine participation in decision-making. Nevertheless, the drafting of Water Resources Act is a good example of the government's effort to create public participation, though there still has several issues to be cleared to establish meaningful participation.

One approach that the government can undertake to improve its environmental governance is to link elements in Good Practices in environmental issues with Institutional Arrangements that support good governance such as the Constitution of the Kingdom of Thailand B.E. 2540 (1997), Enhancement and Conservation of National Environment Quality Act B.E. 2535 (1992) and the Official Information Act B.E. 2540 (1997). In this regard, agencies responsible shall study Good Practices, the context of institutional arrangements, and good governance of domestic and international procedures to use as a framework in policy planning in linkage of perceptions and situations and determine appropriate measures and plans.

Elements of Good Practices in Environmental Policies concerning with public's role shall refer to institutional arrangements which include international agreements and conventions such as Principle 10 of the Rio Declaration and the Aarhus Convention (Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice) which more than 36 European countries are undertaking as guidelines to environmental good governance<sup>3</sup>. Furthermore, they shall refer to a document of the ASEM Meeting, "Towards Good Practices for Public Involvement in Environmental Policies; Progress in ASEM Environmental Co-Operation, 2004".

In any case, attempts to improve government operations to create good governance in environmental development require awareness and strength from the civil society sector. Therefore, the government shall enhance the strength and create an environmental governance culture in civil society organizations, including educational institutions, local administrations, press, business organizations and the public. The civil society sector shall have knowledge, understanding and awareness of the importance and sustainability of the environment to support human life. They shall have social responsibility, knowledge and understanding of the rights, justice, mechanisms and methods for decision-making affecting the environment, or affecting their rights, health and community way of life. In addition, an environmental governance culture must be established in the government agencies and their officers simultaneously.

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<sup>3</sup> At present, 36 member countries out of a total 40 of the Aarhus Convention have already ratified the agreement (Source: [www.unece.org/env/pp/ctreaty.htm](http://www.unece.org/env/pp/ctreaty.htm))