

Thailand's Public Consultation Law: Opening the Door to Public Information Access and Participation

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Introduction

In the old days, Thai people took no part in decisionmaking process. Thailand administration at that time was absolute monarchy regime in which the King, with advice of his noblemen, was the only person of the realm who made decision in all matters. Even though the bloodless revolution in 1932 turned Thailand to be democratic regime of government, right to participation of people had not been represented yet. Most of people however did not realize whether they have such right. This might be the result of very long acceptance of the absolute monarchy concept that the administrator, irrespective of who he is, had supreme power.

However, there was a small group of people who fought for their basic rights that include the right to public participation. Most of people in this group graduated from western countries. Some were university professors, some were government officers. They sow their seeds of thought on rights of people in democratic administration they learnt to their students and colleagues. As a result of great expansion of education during 1950s - 1970s, the number of people who appreciated their rights under constitution had increased sharply. On the other sides of the coin, the government of that day took absolute control over life of people and did not leave room for public consultation in whatever matter. People then had a great concern about such limitation and urged the government to do something to represent their right.

First Step

The first representation on public consultation in decisionmaking process had emerged after People's Rallies in October 14, 1974 when the Parliament passed the City Planning Act in 1975. Even this Act of Parliaments authorizes the City Planning Bureau, after taking future development of the city into its consideration, to make city plan and prescribe the limitation on the use of lands in each zone as it think appropriate, Section 23 provides that the draft city plan as well as land use limitations have to be put up in the public place for public checking. If interested parties do not agree with the plan or the

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prescription on lands use, they may lodge their comments, with reasons, to the City Planning Board. In the case where the Board so agrees, such plan or prescription, as the case may be, has to be revised.²

This process has favorable outcome even serious confrontation between concerned government agencies and affected people has emerged at the outset. The government agencies learned that if they provided their justification and clear cut information to people and, in the meantime, find the best solution for any concerns of people, public consultation process was the best way to find out the suitable solution and to promote good understanding between government agencies and interested parties. By now, Bangkok Metropolitan Administration (BMA) is reviewing Bangkok City Planning. It published both draft city plan and the prescription on land use limitations in the newspaper many consecutive days and has asked for written comments from people in Bangkok. BMA has opened forums for Bangkok people to express their views and reasons in this matter as well.

Second Step

After the first and successful test, the second test on public consultation in decisionmaking process appears in the Promotion and Conservation of Environmental Quality Act of 1992. This Act prescribes rule for subsidizing registered NGOs, both Thai and non-Thai NGOs, in order to help government agencies to prevent and conserve environmental quality. Section 8 (4) provides that the registered NGO shall be subsidized by the government if it makes research related to the protection of environment and the conservation of natural resources and “gives recommendations on such matters to the government or concerned government agencies.” The other public consultation method employed by this Act is the requirement for environmental impact assessment report (EIA) for a project or activity that may have environmental impact. Subject to Section 46, the report shall be submitted to the National Environmental Board for approval before giving permission to operate the project or activity. In addition to impact to environment aspect, the Board, with consent of the Minister of National Resources and Environment,

² City Planning Act, B.E. 2518 (1975), Section 24.

requires the independent specialists who provide the EIA report to assess impact of the project or activity on quality of life of people as well.³

Rule on Public Hearings

As result of the Rallies in May 1992, the call for new Constitution, and the government's policy to improving civil service system, the outstanding method for public consultation emerged in January 1996 when the Cabinet approved the Rule of the Office of the Prime Minister on Public Consultation by Public Hearings. According to the Rule, if the Minister or Provincial Governor, as the case may be, is of opinion that an implementation of any project under his/her power and duty may cause adverse impact to environment, culture, occupation, safety, way of life of individual, community or society and may cause serious arguments among interested parties, the Minister may organize public hearings.⁴ On the other hands, if any interested party is of opinion that an implementation of any government project may cause such adverse impact, he/she may submit written complaint to concerned government agencies. In the case where no response is given or he/she is not satisfied with such response, he/she may ask the Minister or Provincial Governor to organize public hearings on the project. The decision of the Minister or Provincial Governor is deemed final.⁵

It should be noted that public hearings under the Rule may be made during the study for feasibility of the project, the study for alternatives, the study for impacts of the project, or any step prior to the decision on the project is made.⁶ Public hearings shall be organized by ad hoc Committee nominated by the Minister or Provincial Governor, as the case may be, from a person who has not interest in the project and one -third of the members shall not be government officer, member of the Parliaments, member of City council, or City administration.⁷

³ Notification of the Minister of National Resources and Environment on Rules and procedure for the Making of Environmental Impact Assessment (Government Gazette Vol. 109, Part 130, dated October 8, 1982)

⁴ Article 7

⁵ Article 8

⁶ Article 11

⁷ Article 12

Transparent Decisionmaking Process and Right to Information

The Rule unfortunately was not successful in practice. The formal public hearings were the only one technique for gathering public comments. The government agencies, as a result, did not deal with any other suitable techniques. They always provide, during public hearings process, fundamental things for the project because the Rule, paragraph two of Article 11, permits government agencies to do anything about the project during the process except for making decision to continue the project. Such inflexible method and unsuitable exemption clause called for confrontation and collision between pro & con groups rather than compromise.

Apart from defect of the Rule as aforesaid, the government has learnt much from many hearings that concerned government agencies provided little information about the project to people and some of such few were not up-to-date and clear information. No two-ways communication between government agencies and interested party had been established as well. Further, people take no part in decisionmaking process of government agency since there are no standard rules and procedure thereon.

In order to solve those problems, the Office of the Council of State (OCS), as central legal agency for the Royal Thai Government, then proposed the Administrative Procedure Bill and the Official Information Bill to the government. The purpose of first bill was to establish general and transparent rules and procedure in decisionmaking process for all government agencies, while that of the second bill was to establish the method for people to access to official information. The government agreed with the bills and then proposed them to the Parliaments. The Administrative Procedure Act, which similar to the US and German Administrative Procedure Act, was approved by the Parliaments and has come into force in late 1996 while the Official Information Act has come into force one year later.

Even the two legislations⁸ enhance individual to participate in the decisionmaking process and to access to official information, the matter on limited technique for public consultation still exist.

⁸ Full text of the Administrative Procedure Act 1996 and the Official Information Act 1997 (English version) could be downloaded from www.krisdika.go.th and www.lawreform.go.th

New Constitution and Public Consultation

In 1997, the Parliaments adopt the Draft Constitution made by the Constitution Drafting Assembly and it came into force since October 11, 1997. As per public consultation, Section 59 provides that “A person shall have the right to receive information explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of any project or 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 community and shall have the right to express his or her opinions on such matters in accordance with the public consultation procedure, as provided by law.”⁹ The government then ordered the OCS to make research and draft the law on public consultation.

The OCS and the Public Consultation Bill

The OCS, as legislative drafting agency, realizes for very long period that public comments are invaluable to our works. They are invisible hands which help the OCS to draft law that meet social’s requirements. The OCS always organize seminar to explain principal and mechanism of the law we draft and then take any comments we have got for consideration in improving the draft law. We open P.O. Box for any written comments about the draft and the existing law for the purpose of law drafting and law reform. We have provided the draft law that may have great impact to our society on the Office’s websites (www.krisdika.go.th and www.lawreform.go.th). People may download the draft law and its explanatory note for free. They may send their comments on the draft law via forum provided in the website, email and letter. The Office has our own view whether if any government agencies realize the significant of public consultation and do their best to gather public comments on what they have done, what they are doing, and what they are going to do, it could help government agencies to provide public service which accord to real needs of people.

However, the limitation of the Rule of the Office of the Prime Minister on Public Consultation by Public Hearings itself is strong impediment for the development of public consultation in Thailand. The formal public hearings under the Rule are, in most

⁹ Full text of the Constitution of the Kingdom of Thailand (English version) could be downloaded from www.krisdika.go.th and www.lawreform.go.th

governmental agencies' view, the only method for public consultation. They do not pay attention to develop and apply new techniques for this purpose because no law empower them to do such that. The worst is they always, by Article 11 paragraph two of the Rule, provide fundamental things for the project during public hearings process. This situation seems that formal public hearings has no impact to the project at all.

Apart from the internal factor on the defects of the Rule as mentioned, there has also been an external factor that impedes the development of public consultation in Thailand. The OCS has found whether there is a misleading on the notion of public consultation in Thai context. In Thais' perception, public consultation and referendum are alike. This means the result of public consultation is the decision on the project instead of being good evidences for the government to have "suitable decision" on the project.

With regards to the findings, the Office of the Council of State lay down the principle of the Public Consultation Bill as follows:

- The purpose of public consultation is to provide correct and clear information about the project to interested party, and to collect and analyze comments of interested party for government's decisionmaking;
- The concerned government agencies shall organize public consultation on the impacted project or activity before the permission to operate such project or activity is given (It should be done at the initiation of the project);
- The projects or activities which shall be consulted with interested parties are the project or 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 community;
- The concerned government agencies shall provide necessary, clear and correct information on the project or activity to interested parties, and shall take those comments into their consideration before the decision to operate the project is given;
- Public consultation should be varied;

- Formal public consultation, if any, shall be conducted by independent ad hoc committee. Member of such ad hoc committee shall be appointed from the list of impartial specialists by independent organization;
- If the government agencies fail to organize public consultation, interested parties may institute their cases to the Administrative Court.

Gathering Public Comments on the Bill

The OCS finished the first draft of the Bill in June and disseminates the bill throughout the Kingdom for public comments. Techniques for gathering comments are as follows:

1. Interactive Internet - OCS put the bill and its explanation on websites of the Office for public comments for 2 months. People could download the bill and its explanatory note from our websites free of charge;¹⁰
2. Disseminates hard copy of the bill for free - OCS have disseminated the bill throughout the country via all government agencies and local authorities;
3. Advertising - Request for comments had been published in widespread circulation newspaper and announced on hit radios;
4. Seminar - Many universities, both in Bangkok and in the region, devote themselves to help the Office in organizing seminars on the bill.

People could send their comments to us via the phone call, facsimile, letter and interactive Internet. By now, all comments have been analyzed and the Office plans to finish the revision version of the draft in December 2003.

Difficulties in Gathering Public Comments

As mentioned above, the Office of the Council of State employed varieties of methods in gathering public comments on the Public Consultation Bill. The Office expected at the beginning that we should have a large number of comments in return since this bill related to right to participation of people and thousands of the hard copy of the bill have been sent throughout the Kingdom. Public hearing database has then been designed to manage at least 10,000 data.

¹⁰ Website of the Office of the Council of State is the most famous legal website in Thailand

Unfortunately, the OCS received only 341 comments, 98% of them made by letter. The Office found that such minimal number caused by 3 main factors:

1. Most of Thais always keep silent in any situation. This is the outstanding characteristic of Thais. People don't want other know what are they thinking about. This characteristic could be changed, but it should take quite a long period of time;

2. The use of interactive Internet is limited to people in the big city. In addition, most of internet users are teenagers who pay a little bit attention to such serious matter as law, politic, civil right etc. However, this situation could be better within 5 years due to the sharp development of information technology in Thailand;

3. Even 98% of the comments made by letter, it does not mean that letter is the best way for collecting public comments since the number of written comments is minimal. The Office found that people do not want to be responsible for all cost occurred in writing letter. The government agencies themselves should be responsible for stamps and envelops for sending comments.

Attitude of Other Government Agencies on Public Consultation

All government agencies at the present day anonymously agree that public consultation is necessary for public administration. However, they found that the Rule of the Office of the Prime Minister on Public Consultation by Public Hearings create undesirable climate between them and people, and there is no existing legislation on public consultation. They have rushed the OCS to complete the bill. The real and urgent need therefore is to have the new rule and procedure for organizing public consultation.

Conclusion

Even the bill is in drafting process and it might take months for debating in the Cabinet and the Parliaments, many government agencies tried to employ the new principle and techniques proposed in the bill to their public consultation. The Electricity Generating Authority of Thailand (EGAT) advertises its request for public comments on its new transmission line in widespread circulation newspaper. The PTT Company, State enterprise, is applying new techniques for public consultation prescribed in the bill on its new gas transmission line project. During legislative process, the government has established the Committee for Revising the Rule of the Office of the Prime Minister on Public Consultation by Public Hearings. This Committee is revising the Rule to comply with new principle and techniques proposed in the bill. It could be said that by now

concrete representation on the right to participation of people has been established in Thailand.
