

# RESPONSE FROM NATIONAL HUMAN RIGHTS COMMISSION OF THAILAND

## Questionnaire for the Background Paper on Human Rights and the Environment

### PART 1: The “Right to Environment” in Your Country

#### Constitutional provisions relating to:

- the right to an environment of a particular quality;
- obligations with respect to the environment;
- the right to life
- the relevance of international law in the domestic jurisdiction.

Answer:

The Constitution B.E. 2540 (1997) was abrogated by the coup d’etat on 19 September 2006. At present, the new Constitution is in the drafting process, which requires public referendum by September 2007. The first draft Constitution was now completed and is being in the process of public hearings. The draft mentioned the right related to environment as follows:

Section 4 The human dignity, right and liberty of people shall be protected as provided by the Constitution, traditions of a democratic regime of government with the King as Head of the State, and international obligations to which Thailand is party.

Section 32 A person shall enjoy the right and liberty in his or her life and person.

...

In case of the infringement of rights and liberty as indicated, the affected person, the public prosecutor or his/her representative can sue in the court in order to cease or abolish the act of infringement, and to indicate appropriate means as remedial measures.

Section 59 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 which will be taken into consideration of such matter.

As for the social, economic, political and cultural planning, the appropriation of immovable property, the city planning, the demarcation of land use, and the issuance of regulations which may significantly affect people’s interest, the State shall organize the public hearing procedure prior to the implementation.

Section 65 Persons so assembling to be a community, a local community or traditional local community shall have the right to preserve or restore their customs, local knowledge, arts or good culture of their community and of the nation and participate in the management, preservation and exploitation of natural resources and the environment in a balanced and sustainable fashion.

Section 65 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 which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected.

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, the public hearing procedure of people whose interest is affected is implemented, and opinions of an independent organization consisting of representatives from private environmental organizations and from higher education institutions providing studies in the environmental field are obtained prior to the operation of such project or activity.

The right of community to sue a State agency, State enterprise, local government organization or other State authority which is a juristic person to enforce its compliance with this provision shall be protected.

**Relevant legislation referring to:**

- **a right to an environment of a particular quality;**
  - **protections against environmental harms that affect human life or health**
- (Please provide the full name and citation for legislation and regulations)**

Answer:

There are a number of legislation and regulations with the objective to conserve and enhance the quality of environment, which in effect protect people's life and health. For example,

**The Enhancement and Conservation of National Environmental Quality Act B.E. 2535 (1992)**

The National Environmental Quality Act B.E. 2535 is instrumental to the environment protection in Thailand. The law relates to the designation of pollution control areas, the establishment of pollution control standards from sources, the categorization of pollution control source as controlled emissions, the effluence or waste disposal, the establishment of the Pollution Control Committee to formulate policy and plan, the co-ordination for remedies of pollution problems and the prescription of possible pollution prevention measures chaired by the Permanent Secretary of Ministry of Science, Technology and Environment (MOSTE). As a result of the Act, the criteria, methods and conditions of pollution management were stipulated with the Penal Provisions in case of violation or refusing to comply. Up to now, MOSTE has issued several Ministerial Notification, Ministerial Regulation and National Environmental Board (NEB) Notification such as Motor Vehicle Noise Emission Standards, Black Smoke and Carbon Monoxide (CO) Emission from Motor Vehicle Standards, Hydrocarbon Emission from Motorcycle Standards, standards to control the effluence from some types and some sizes of buildings, Notifications to categorize type of buildings as pollution sources to control the waste water discharge to public water resources and environment, including the Coastal Water Quality Standard and Surface Water Quality Standard.

**The Factories Act B.E. 2535 (1992)**

The Act authorized the Pollution Control Department (PCD) to establish standards

and criteria to control the factory operations; especially the standards and methods to control the disposal of waste, pollution or any contaminants caused from factory operation that impact the environment. Under the Factory Act, the Ministry of Industry (MOI) can also issue the Ministerial Regulation about the disposal of solid waste and garbage, to forbid wastewater discharge and emission from factories, and the guideline for having treatment facility, and also to establish noise level not exceed the EPA standard.

### **The Hazardous Substances Act B.E. 2535 (1992)**

The Act describes hazardous substance control criteria for import, production, transportation, consumption, disposal and export not to influence and danger to human, animals, plants, properties or environment. The Ministry of Industry (MOI) categorizes the hazardous substances into 4 types for use to control correctly and appropriately and formulates Hazardous Substances Information Center to coordinate with other government agencies in part of hazardous substances information and stipulation of the criteria and methods to register hazardous substances.

There are also other legislations which are concerned with environmental protection such as

- The Industrial Estate Authority of Thailand Act B.E. 2522 (1979)
- The Land Transportation Act B.E. 2522 (1979)
- The Industrial Products Standards B.E. 2511 (1968)
- The Petrol Act B.E. 2521 (1978)
- The Land Traffic Act B.E. 2535 (1992)
- The Highway Act B.E. 2535 (1992)
- The Building Control Act B.E. 2522(1979) and B.E. 2535 (1992)
- The Energy Conservation Promotion Act B.E. 2535(1992) and

In addition, **the National Health Act B.E. 2550 (2007)** stipulates that a person shall have the right to live in the environment and surroundings which are conducive to health, and a person shall have a duty in co-operation with State agencies for the environment and surroundings as such.

### **NGO Reports**

- **reports by local, national or international non-governmental organizations on environmental harms that affect the rights to life and health in your country**

Answer:

There are a number of reports on environmental harms conducted by government agencies, NGOs, academic institutions and the Commission, most of which are in Thai. Some English papers may be obtained from the website of the Pollution Control Department of the Ministry of Natural Resources and Environment at <http://www.pcd.go.th>

## Part 1: The “Right to Environment” in Your Country

### 1. Has a “right to environment” been recognized in your constitution or national legislation?

Answer:

Yes. In Thailand, the right to live in safe environment is recognised in the National Health Act, which stipulates that that a person shall have the right to live in the environment and surroundings which are conducive to health. Similarly to the Constitution B.E. 2540 (1997), the draft Constitution also stipulates that the traditional community shall have the right to participate in the management, maintenance, preservation and exploitation of natural resources and the environment in a balanced and sustainable fashion. (See details in the Documentation Part 1)

### 2. Have your national courts recognized a “right to environment” as a component of other human rights? If so, please provide copies some of the most significant decisions.

Answer:

Similar to the 1997 Constitution, Section 27 of the draft Constitution stipulates that rights and liberties recognized by the Constitution shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws. Consequently, the right of community related to the environment (See the draft Constitutional provisions above) shall be recognised by the Courts.

In a Supreme Court’s ruling of case in 1997, concerning the complaints against the new airport construction, a part of the ruling referred that rights and duties in the preservation and exploitation of natural resources and environment are recognised by the 1997 Constitution. A person shall have the right to clean air for good health and quality of life, the right to enjoy nature, and the right to be free from the affects of environmental damages such as flood, traffic congestion, air pollution, heat discharged from buildings.

### 3. Have your national courts recognized that environmental harms have violated the rights to life or health? If so, please provide copies of some of the most significant decisions.

Answer:

In addition to the aspect of safe environment (see answer to question 2), the 1997 Constitution and the draft Constitution recognised the right to environment in relation with the community right. This is because Thailand is an agricultural country and located in a tropical forest area, the environment and natural resources are intertwined and essential to people’s livelihood. There are a good number of exemplary cases of ethnic and rural communities with well-established traditional practices for sustainable livelihoods and natural resource management in the country. It can be said that people’s life, especially those living in the upcountry, are based on the sustainable use of abundant natural resources of the tropical forest environment. The depletion of the natural resources and environment, therefore, inevitably affects people’s basic rights in various respects, especially the right to life. In this sense, the Court will also make decisions in accordance with provisions as stipulated in the former 1997 Constitution and also in the draft Constitution. Furthermore, since the Thai legal system is based on the civil law tradition, the courts

will recognise the rights as stipulated by a number of legislations which protect the right to life and health, such as the National Health Act.

**4. Have your national courts recognized that environmental harms have violated human rights other than the rights to life and health? If so, please provide copies of some of the most significant decisions.**

Answer:

See answers to questions 1-3 above.

## **Part 2: Issues Raised in the Terms of Reference**

**1. How has the right to life been interpreted by various actors (e.g. your Commission, the Courts) in your country? What positive obligations have been placed on the State to protect this right?**

Answer:

The Commission broadly interpreted the right to life, which includes livelihood, ways of living, and living with human dignity.

As for the courts, the interpretation and their rulings will be based on the written law, such as Section 32 of the draft Constitution, which is similar to Section 31 of the 1997 Constitution, stipulates that a person shall enjoy the right and liberty in his or her life and person. In addition, Section 27 of the draft Constitution stipulates that rights and liberties recognized by the Constitution shall be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws.

As for the positive obligation, in the part of Directive Principles of Fundamental State Policies in the 1997 Constitution, a number of measures are indicated to ensure the fair trial in the judicial process and to increase people's quality of life. For example, the State shall

- ensure the compliance with the law,
- protect the rights and liberties of a person ,
- provide efficient administration of justice,
- protect and develop children and the youth and promote the equality between women and men,
- provide and promote standard and efficient public health service,
- promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance and protection of the quality of the environment in accordance with the persistent development principle as well as the control and elimination of pollution affecting public health, sanitary conditions, welfare and quality of life,
- implement fair distributions of incomes.

**2. Do your national courts recognise customary international law as a source of law to be complied with? Include any cases that refer to rules of customary law as establishing the scope of the right to life.**

Answer:

In addition to Answer to Question 3 in Part 1, previous Constitutions did not specifically mention the relevance of international law in the national judicial process.

Traditionally, the Thai legal system subscribes to dualistic system, whereby international obligations can be applicable by courts and administrative authorities only through any transformation into domestic statutes. For example, Section 32 of the 1997 Constitution as well as the draft Constitution, stipulates that a torture, brutal act, or punishment by a cruel or inhumane means shall not be permitted.

Nevertheless, Section 4 of the draft Constitution now stipulates that the human dignity, right and liberty of the people shall be protected as provided by the Constitution, traditions of a democratic regime of government with the King as Head of the State, and international obligations of which Thailand is party. If the draft Constitution passes the public referendum in September, the international obligations related to human rights will be automatically applicable to domestic judicial process.

**3. What obligations does the State have in your country to protect individuals against violations of their rights by non-State actors engaged in either public or private projects? Has the State been required:**

- a. **To take steps to prevent potential harms, for instance, by regulating industry, or by providing the public with information about threats to their life or health?**
- b. **To provide remedies where violations have occurred?**

Answer:

Concerning environmental issues, there are a number of laws and regulations which require non-State actors such as factory owners or industrialists to abide by environmental standards. For example, the Factory Act B.E. 2535 authorized state agencies to cease factory operation which cause serious harm, damages, or troubles to persons, properties in areas close to it or the factory which gives the adverse impacts to the environment. The industrial entrepreneurs cannot continue their operation until such time that they have remedial measures to improve the factory to comply with the standards set up by the laws concerned. In addition, a regulation issued in accordance with the Hazardous Substance Act B.E. 2535 set up license application procedures, principles of production location, storing, importing and exporting, and possession of hazardous substances under the responsible state agency. In case of violation, the hazardous substances will be seized by the Court's order and delivered to the responsible state agency for destruction or other forms of management which deem appropriate.

In addition, the 1997 Constitution, Section 56 stipulates that any project or activity which may seriously affect the quality of the environment shall not be permitted, unless its impact on the quality of the environment have been studied and evaluated and opinions of an independent organization. In the new draft Constitution, it adds up that such project or activity requires conducting the health impacts assessment (HIA) and cannot be implemented prior to the public hearing procedure.

In sum, the State has responsibility and authority to prevent harms or damages which are caused by non-State actors as prescribed by the Constitution and laws concerned.

**4. Does your country have legislation or regulations imposing human rights obligations on non-State actors? Have your national courts found that non-State actors have obligations to protect the rights to life and health against environmental harms arising from their activities?**

Answer: Yes. (See details in Part of Documentation.) As far as the information is available, there is no courts' ruling directly involved with human rights obligations on non-State actors related to the rights to life and health against environmental harms. The courts issued rulings as they applied and interpreted the legislation related to safe environment and health without direct linkages to human rights.

**5. If your country is facing environmental threats to human life or health caused by activities occurring outside your country, what steps have been taken to address these problems? Have your national courts imposed any obligations on the State to protect against harms to human rights that originate outside the State?**

Answer: There are two aspects which should be considered when dealing with transboundary environmental problem.

First, in terms of international relations and administration, the Thai government preferred to deal with it in a cordial manner such as the case of haze caused by Indonesia some years ago with impacts on other ASEAN countries. The issue has been discussed, among others, within the framework of cooperation on environment to address the problem. They issued a statement to enhance co-operation to manage natural resources and control transboundary pollution within ASEAN region as "one eco-system". In addition, they expressed concerns over the increasing periodicity and worsening impact of the haze in the region and agreed to prevent and control the haze problem.

Second, in terms of obligations of State, it is necessary to consider Thailand's obligations related to environmental conservation, which varied with treaties to which Thailand is party. For example, Thailand is party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989. In its ratification instrument, Thailand defines the "area under the national jurisdiction of states" as any land, marine area or airspace within which a State exercises administrative and regulation responsibility in accordance with international law in regard to the protection of human health or the environment. In this case, the Thai government's responsibility will be based on territoriality or spatiality principle, excluding some other aspects in accordance with "jurisdiction of states" such as nationality principle, preventive principle, universality principle or treaty principle. Subsequently, the State is unable to act against any environmental threats which do not occur within the State's responsibility of the defined jurisdiction,

In addition, in the same vein of other international obligations, it requires that they must be transformed into domestic statutes for the application of national courts.

### **Part 3: Activities of your Commission**

**1. Has your Commission received complaints from individuals or groups claiming that environmental harms, including harms caused by non-State actors, have affected their right to life or health? If so, please indicate how many complaints you have received, and please describe some of the most important cases, and the role of your Commission in resolving the complaints.**

Answer:

Under Section 22 of the National Human Rights Act, the Commission has authority to examine the commission or the omission of acts which violate human rights committed by both State and non-State actors.

Since 2002, the NHRC received approximate 160 cases concerning the right to environment, some of the cases are as follows:

**Case 1: Harms caused by State actor**

A group of locals filed a complaint to the NHRC that the local administration dumped waste close to their living area. They claimed that they were afraid that after a long period of dumping, the fluid from the waste might flow into the local river, where they use for everyday life. The locals also claimed about the bad smell of the dumping and asked the NHRC to be a moderator between state agency and the community.

At present, the case is still under investigation.

**Case 2: Harms caused by Non-State actor**

A group of locals in the Tak province, a northern province of Thailand, filed a complaint to the NHRC claiming that orange farming by big companies which belonged to influential businessmen caused many environmental problems. This includes trespassing common public land, damaging water system and creating agrochemical overflow.

Later, the government appointed 6 working teams to find out solutions including health and environmental impacts from the operation of orange farm. At present, the NHRC works closely with local NGOs in monitoring their works and gives recommendations, when any outcome might impact the locals.

**2. Has your Commission conducted research on the connection between environmental harms and the rights to life or health? If so, please provide the results of this research.**

Answer:

The mandate of the National Human Rights Commission for the promotion and protection of the right to environment may be seen as connected to three other categories of rights. These included right to life, right to health and community right.

There are two Sub-Commissions: the Sub- Commission on Land and Forest Management and the Sub-Commission on Water and Mineral Resources which deal directly with environmental issues. During the years, they conducted many researches. For example, the three dwellings of rivers project.

For several years now, Thailand is facing water shortage problem. Some of the main reasons included the expansion of the major cities and the higher demand on dry-season crops growing. When water shortage happens in the water basin areas, some of the water gates were ordered close. The closure affects villagers in many ways.

This is because, normally, the delta part of the river is the most fertile part of the river since clay and mud are collected around the area. When closed, the water changes its way and affects the fertility and destroys ecosystem around it. Therefore, the fishery community who depends their living on it was forced to change their livelihood or was forced to move away.

The two Sub-Commissions conducted researches on the matter and later, gave recommendations to the government, at both local and policy level.

**3. Has your Commission undertaken awareness and education campaigns relating to environmental harms affecting the rights to life or health? If so, please provide details of these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.**

Answer:

Yes. Under the responsibility of the two Sub-Commissions related to right to environment i.e. the Sub-Commission on Land and Forest Management and the Sub-Commission on Water and Mineral Resources, a great number of seminars were held with the objectives to raise awareness on people's right to environment and to build up a stronger network among parties concerned, particularly local communities.

For example, the seminar on water resource management of the lower Khong River was held in 2005 with approximate 50 attendees from the government sector, NGOs and locals. Starting from 2002, the Burmese, Thai, Laos and Chinese governments agreed to burst the River Khong islets to change the river way in order for better transportation. When 21 islets were destroyed, a number of locals gathered to protest, claiming that the project affected their way of living. They claimed that should all the islets were destroyed, they would not be able to do fishery as used to because water would change ways. The Sub-Commission held a seminar with objectives to discuss the problem with the full recognition and realization of the right to environment within communities. The seminar will provide as much time as possible for discussion. Participants were asked to divide into groups according to their problems or rights which were violated, and to discuss the solution among themselves. The Seminar also served as bridge where parties concerned can come for the open discussion and people can expand their networks to protect their own community right and their ways of living.

**4. Has your Commission intervened in court proceedings on the issue of the environment and the rights to life and health? If so, please provide details of the cases, the role of the commission and the outcome of the cases. Please provide copies of any submissions and court decisions.**

Answer:

Section 22 of the National Human Rights Act does not authorize the NHRC to intervene in court proceedings. It said that the Commission shall have the duties to examine and propose remedial measures for the commission or the omission of acts which violate human rights and which is not a matter being litigated in the Court or that upon which the Court has already given final order or judgement.

**5. Has your Commission addressed the effect of environmental harms on the rights to life and health in its annual reports or in any other reports? If so, please provide a copy of the relevant sections.**

Answer:

In its latest annual report in Thai (2004), the number of complaints received by the NHRC was categorized into areas. The statistics showed that 6.5 per cent of cases was related to the right to environment and health. The NHRC expressed its concern that the right to environment in Thailand is outstanding in terms that the problem has impacts on local communities collectively, such as the denial to get access to water or forest when the State initiated projects or announced the land for conservation. The NHRC also addressed the effects of environmental harms on the rights to life and health in other reports on specific issues (in Thai), which has been produced consistently. These reports were normally prepared in collaboration with academic institutes, NGOs and local communities.

**6. Does your Commission work in collaboration with civil society, including the private sector, government or U.N. agencies or multilateral donors, such as the World Bank, on the issue of environmental harms affecting the rights to life and health? If so, in what way?**

Answer:

The NHRC normally works through a three-pronged approach, which requires the collaboration between the NHRC, the academic institutions and civil society groups. The Sub-Commissions appointed by the NHRC, including the Sub-Commission on Land and Forest Management and the Sub-Commission on Water and Mineral Resources, comprise a number of academics and civil society members.

**7. Has your Commission proposed legislation or regulations relating to environmental harms that affect the rights to life and health, or helped to develop a national policy?**

Answer:

In 2004, the NHRC gave recommendations to the government concerning the problem of shortage of water in the eastern part of Thailand. At the time, there was an immense problem of water shortage in the region, especially in Rayong province. Part of the problem was caused by the Eastern Seaboard, the country's biggest industrial zone, where water resources was highly on demand.

Not only the entrepreneurs in the industrial zone were affected by the shortage of water but also the villagers with majority of farmers were. However, when the government short-term solution was to divert water from the province's rivers to the reservoirs, the environmental impact assessment (EIA) was not planned to be conducted. The NHRC's investigation found that at the stage, the water diversion was not necessary and might cause more negative impacts to farmers and vast agricultural areas. The NHRC then also asked the project to be prolonged; and if the measure is undertaken, villagers and all stake holders should have a chance to participate in the decision making process.

**8. What jurisdiction does your Commission have over the activities of non-State actors? Has your Commission undertaken any activities to address environmental harms caused by non-State actors that are affecting the rights to life or health?**

Answer:

The National Human Rights Act authorised the NHRC to investigate human rights violations committed by State and non-State actors. In accordance with Section 32, the NHRC can summon a person, juristic or private agency concerned to give statements or to deliver objects, documents or other related evidence at the date, time and place as specified.

As stated above that the NHRC received about 160 cases related to environmental issues, especially on industrial development and many of which caused by non-State actors. In addition to investigation and recommendations given to parties concerned, the NHRC in collaboration with academic institutes such as Thailand Environment Institute conducts researches to support the prevention and protection of villagers' rights, and disseminate the results in order to increase social awareness on the issues.

#### **Part 4: Current Situation**

**1. Are there currently environmental problems in your country that could affect the rights to life and health, but that have not been addressed as human rights issues? If so, what obstacles exist to addressing the human rights consequences of these environmental problems?**

Answer:

Yes. To the NHRC's experience of a number of cases, the public and private projects are undertaken without due consideration of affected people, especially their right to get information and participants into the decision-making process despite its guarantee by the Constitution and legislations concerned. The major obstacles is the lack or ineffectiveness of law enforcement, and the government's policies which usually give more emphasis on economic growth without due consideration of impacts on environment, natural resources depletion and the impacts on local people's livelihood.

Among others, there are some major discrepancies within the system which needs to be addressed including:

- the lack of appropriate environmental education that incorporates aspects of local people's knowledge/wisdom
- the lack of knowledge, either from inadequate research or from inaccessibility of existing knowledge due to inadequate database system
- the existing approach to assessing and solving environmental problems is fragmented with lack of coordination between concerned agencies and lack of consultation with local people
- the decision-making processes and environmental management implementation are not transparent and are monopolised by influential people such as politicians and business entrepreneurs, excluding other such as members of local communities.

**2. Would the articulation of a specific right to the environment be valuable in addressing threats to human life and health in your country?**

Answer:

To articulate a specific right to environment can be useful to the works of the Commission, as well as the promotion and protection of human rights in general. However, it is important to have a clear definition and interrelatedness with other aspects of rights apart from the right to life and safe environment. The right to environment should also be considered in conjunction with environmental and natural resource management both at local, national and international levels. This includes the right to get access to information and public participation in the decision-making process, international co-operation and assistance.