

Human Rights Standards and Community Livelihoods in Thailand

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It is my great pleasure and privilege to be able to participate in this workshop and share my experiences relating to community rights in Thai society. As a member of the National Human Rights Commission of Thailand, I have acted as Chairperson to the Subcommittee on Community Rights under NHRCT for over two years since the inauguration of the second group of persons appointed in office at the Thai Human Rights Commission in 2008.

Apart from my medical expertise, I have also been professionally deeply involved in environmental and natural resource-responsive and political reform movements in the capacity of volunteer activist for over thirty years. In this light, I would like to describe my experiences so far with the never-ending struggle in processes of community rights recognition in Thailand. The two dimensions I will focus on are the evolution of community rights infringement in Thai society and the emergence of community rights and capacity-building in Thai society.

The evolution of community rights infringement in Thai society

Over the past fifty years, Thailand has been recognised as a country employing various capitalist tools for its 'great-leap-forwarding' in terms of economic and social development. This development has been carried out under the direction of the National Economic and Social Development Plan, currently under Plan No.10 (2007-2011). This Plan has been primarily implemented in the mindset of capitalism and economic growth, focusing on the change in mode of production from subsistence

to cash-oriented development.

However, a number of infringements have been committed as a result of greedily aggressive development leading to the aggravation of relationships between communities, the government and enterprises, as the government has played an instrumental role in facilitating and legitimating the grabbing of land and the seizing of natural resources by enterprises and investors.

These developments have had a number of consequences. First is the transformation of collective assets into individual belongings with the allocation of title deeds. Second is the commoditisation of natural resources, for instance, the acquisition and purchase of plots of land and huge concessions for agricultural and forestry plantations or monocrops of rapidly increasing value. Third is the capitalisation of natural resources and assets, for instance, the construction of dams on main rivers with the purpose of generating hydraulic power, as in the case of Pak Moon Dam, in Ubolratchathani province, and the Private Electricity Power Plant Project in the coastal area of Bor Nok-Hin Kruad, Prachubkirikhan province.

These developments overwhelmingly disregarded people's participation and were mainly focused on responding to the State's Policy on Energy Generation for energy consumption and utilisation in industrial and urban areas. Recently, for example, a number of evidence-based monitoring and evaluation studies have revealed that while the Pak Moon Dam, a project of huge investment obstructing the longest river in the north-eastern part of Thailand, would be able to generate around 136 megawatts of energy, the livelihoods of communities in the river basin would be severely disrupted. This case sets a precedent for the failure in the implementation of a development project without people's participation.

In another example, when the Private Electricity Power Plant project in the coastal area of Bor Nok-Hin Kruad, Prachubkirikhan province was proposed, all the local communities in Bor Nok-Hin Kruad protested against it and the interpretation of the concept of community rights behind it, as stipulated in the 1997 Constitution of the Kingdom of Thailand. The Project was scrutinised with political engagement, people's participation and a judicial process, and was eventually terminated. This

case sets a precedent for community rights being exercised and defended in the face of development.

Meanwhile, the Eastern Seaboard Industrialisation project, which was developed in Maptabud district, Rayong province almost twenty years ago is causing a high level of pollution and leading to the destruction of natural resources and the environment with severely detrimental impacts on local communities. This prolonged development with total disregard for people's participation is led by the government and the investment sector. Prior to this, the people of Maptabud community had depended on a 'three-pronged balanced economic system', comprising the agricultural, tourism and industrial sectors. Agriculture was later added to their means of livelihood but declined with the spread of industrial zones, operated by foreign or domestic investors who together represented an average of 80% to 90% of investments.

In the past few years, the health and safety of Maptabud community has gradually deteriorated. In 2010, the Eastern People's Network initiated a litigation case against the Project by filing a case to the Administrative Court, with unliquidated claims against the government. They demanded the prioritisation of investments for environmental schemes, preventive measures to mitigate negative impacts on health and sanitation, social welfare schemes for an improved quality of life and provisions for people's active participation.⁸⁰

At the same time, regional cooperation through the 'ASEAN Community' collective agreement in 2015 was elaborated based on constructive ideas and dialogue on a number of 'care-and-share' platforms with the participation and inputs of civil society. However, this initiative is unavoidably challenged by the development of liberal economic policies across ASEAN countries. Several transnational mega-projects have been developed and implemented in response to transnational investments, such as the Hutgyi Dam Construction Project on the Salween River on the border between Thailand and Burma (Myanmar⁸¹); the Baan Kum Dam Project on the Mekhong River at the border between Thailand and Lao PDR; and huge extensions of agricultural concessions on plots of land by Thai investors in Lao PDR and Cambodia for the low-cost produc-

⁸⁰ See Compilation I: Factual Profiles of Case Studies on Community Rights.

⁸¹ *Ibid*

tion of sugar, coffee, rubber and oil palm.

The expansion of foreign investments in ASEAN countries has contributed to the prosperity and integration of the State and business sectors involved. The business sector is estimated to represent 10% of the ASEAN population. However, the remaining 90% of the population have involuntarily become sacrificial surrendering victims of this development. They are being robbed of their natural resources and healthy environment while their livelihoods and social capital are being destroyed.

Over the last two years, the Sub-committee on Community Rights of NHRCT has been involved in the landmark controversial case of the Department of Natural Parks, Wildlife and Plant Conservation (DNP). DNP accused local communities living and cultivating crops within conservation areas of contributing to global warming. DNP litigated this case with a claim for indemnity and liability as set forth in Article 97 of the Act of Supporting and Preserving the Environmental and Surrounding Quality of Thailand, B.E. 2535. Five crucial factors, according to Article 97, were pointed out as benchmark indicators for the calculation of damages. These were the type of forest in question, the size of the destroyed area, the average height of plants, the substantive profile of devastated areas and the clay body, with a resulting 150,000 baht (or approximately 5,000 USD) per rai.⁸²

With the cooperation of academicians and experts, NHRCT examined the calculation of the formula from which this figure was derived and concluded that it was not only discriminatory but also in violation of the principle of equity. Technical surveillance was also found to be unreliable. The weakest point identified was the neglect of community participation. The formula for the calculation of the indemnity was therefore deemed an illegitimate infringement of community rights and the judicial process. According to the database compiled by the Land Reform Network of Thailand, there are 131 cases associated with civil case proceedings on global warming country-wide, allegedly affecting 500 communities. At the time of writing, thirty peasants were being litigated with claims for cumulative damages in the amount of 17,559,434 baht, or 585,315 USD.

82 1 rai = 0.395 acres.

Another landmark case of community rights infringement linked to ethnic discrimination in Thailand is the case of the expulsion and evacuation of the local Karen communities in Kaeng Kachan Natural Park, Petchaburi province. The main alleged infringers, the Unit for Preservation in Kaeng Kachan Natural Park No.10, Huay Mae Sarieng, Kaeng Kachan district, Petchaburi province, claimed that they organised a cohesive task force recruited from among officials to expel groups of local Karen residing in Jai Sang Din-Porn Rakam and Bang Kloi Bon villages, Huay Prik sub-district, located in Kaeng Kachan Natural Park, in early 2011. Rapid and aggressive searches of dwellings and residential areas were conducted, with the arbitrary destruction of barns and the confiscation of assets, as well as charges against the Karen of trespassing into the natural park and causing deforestation. In addition, charges of narcotic smuggling were fabricated against the Karen without any substantive grounds for evidence.

According to an official investigation of NHRCT, the Karen communities have been living in the disputed area for over a hundred years. They are Karen-Thai citizens and depend on subsistence farming and hunting and gathering with rotational shifting cultivation, which is also legitimised and respected worldwide as 'one of the modes of production for the sufficiency and preservation of natural resources'. Some villagers reflected on how they felt after being expelled and having their community rights derogated:

If we stay in our communities, although we are located in the natural park and do not have any money, we still have rice and chilli, so we can sell and barter them for other necessities. But if we are expelled and have to evacuate from our motherland, we need to adjust and compete with others under numerous constraints, languages, knowledge, skills and so on. How can we survive with only a minimum daily earning of 80 baht (around 2.6 USD) a day? Do we have the right to self-determination in terms of modes of living?

The case of Kaeng Kachan National Park reflects the way in which development can cause social disruption, conflict and the loss of basic necessities of life and fundamental community rights of indigenous peoples. It is cases of this kind that make it critical that the implementation of the law be revised not only in its legal dimension but also its moral one.

*Emerging community rights: capacity-building and the strengthening of
Thai society*

This section reflects my personal point of view on the way forward in terms of strengthening community rights through the decentralisation of power, the strengthening of the self-managing capacity of local communities, and the checking and balancing of development. In order to achieve legitimacy and righteousness in social justice, I would like to propose four main components:

Upraising and embedding of 'community rights' in the decentralisation of power

Community rights are enshrined in the Thai Constitution but they must also be exercised in practices of self-planning and management for a truly democratic process featuring the participation of community members in decision-making processes relating to development projects and their monitoring. Meanwhile, government authorities and political sectors have to encourage the development and emergence of community-based organisations (CBOs), networks and civil society organisations (CSOs).

Furthermore, access to information must be enhanced and expanded. In addition, communities must be fully involved in decision-making processes relating to natural resource exploitation and allocation. Indigenous peoples must also be primarily involved and responsible for the management of their intangible heritage, culture and folk wisdom. Integrated strategic plans also need to be elaborated through a collaborative process between the government and communities. Should these changes take place, a new and more constructive relationship and power dynamic would emerge between the government and communities, better reflecting the complexity of rights involved, as stipulated in the 2007 Constitution of the Kingdom of Thailand, Sections 66, 67, 85 and 87.

All efforts need to be put into raising awareness of these rights among the public.⁸³ Community rights consist of numerous individual rights as

83 See Compilation II: The Constitution of the Kingdom of Thailand, B.E. 2550 (extracts on Community Rights only).

well as collective rights of use, benefit and exercise. Community rights are important in negating the linear concept of rights, which tends to derogate and violate community rights when primarily focused on the development of investment and capitalism through the centralisation of power, as has been characteristic of the development of Thai society over the past fifty years. As such, it is very important to **upraise and embed** community rights within the decentralisation of power. In order to implement the range of rights and establish safeguards to guarantee they are respected, laws, by-laws, codes and regulations need to be reviewed and substantially linked to each other.

1. UPRAISING OF COMMUNITY RIGHTS WITH DECENTRALIZATION OF POWERS



Institutionalising supportive infrastructures for community rights

Apart from the establishment and streamlining of existing decentralising entities, such as the Local (Tambon) Administrative Organisations (TAOs), Community-based Organisations (CBOs) and Civil Society Organisations (CSOs), further steps must be taken in order to achieve collective

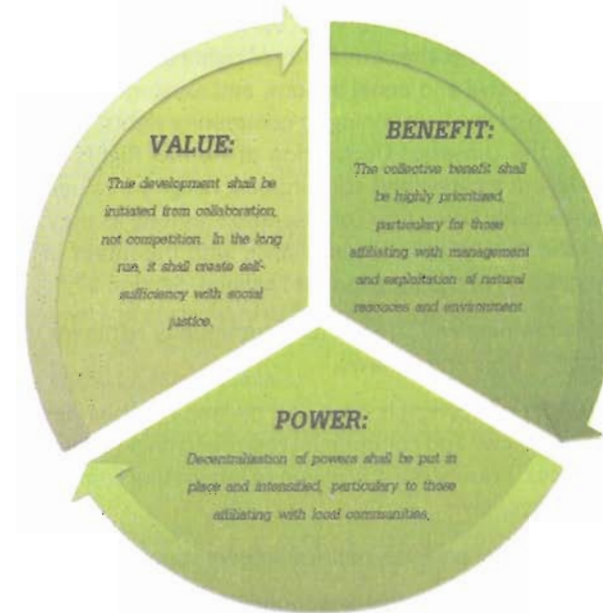
bargaining power and the checking and balancing of power, particularly for the marginalised, unreached and unheard. The institutionalisation of supportive infrastructures must be initiated as follows:

- (a) The enactment and promulgation of the Community Forest Act: lessons learned and best practices must be disseminated and examined to understand better how local communities can 'care and share' for the environment and natural resources in a way that benefits forest preservation.
- (b) The entitlement to community title deeds: this relates to the strategy and practice of checking and balancing the capitalisation of assets. It can also act as a safeguard against the loss, grabbing or seizure of land, especially in the name of development within specially administered economic zones.
- (c) Laws and by-laws pertaining to progressive tax rates must be issued.
- (d) A lending bank for arable lands must be established.
- (e) The development of land reform in general must include an increase in the negotiating power of communities with respect to natural resource management. This includes, for instance, their participation in the design of community plans and tailor-made by-laws.

Community rights and development

The nature of the complaints of community rights infringements in the development of mega-projects filed to NHRCT since its establishment in 1999 reveal that community rights are not necessarily against development. Development and community rights are not necessarily mutually incompatible. Instead, they appear to share a lot of common ground. Examples include the ideals of the enjoyment of civil and political rights, accessibility to information, freedom of expression, freedom of assembly and participation in decision-making processes, and so forth. In the long run, these common engagements could contribute to a checking and balancing process of development featuring both the State and the people and rooted in their shared accountability and concerns for economic development and community integrity.

Human rights-based and politically aware development therefore needs to be undertaken through a tripartite model as follows:



Community rights and the right to fair trial and judicial process

Although Thailand respects the principle of rule of law as a way of maintaining social order, the violation of the right to the judicial process reflects the fact that there still exist loopholes, shortcomings and gaps between the law and its implementation, or otherwise put, between legality and righteousness. This includes, for instance, the above mentioned cases of legal proceedings with accusations against local communities of contributing to global warming, prolonged detention and imprisonment, and the eviction or displacement of poor people striving to defend their right to the management and exploitation of natural resources. In these cases, laws are used as tools for controlling and abusing community rights and the right to the judicial process, especially that of marginalised and impoverished communities.

In this light, in order to initiate safeguarding policies and practices for 'community rights with social justice', it is recommended that the following interventions be implemented.

(a) Recognition of equality before the law:

Laws must reflect the complexity of rights and legal proceedings, apart from civil and penal actions, and must integrate the entire spectrum of laws pertaining to community rights, including public law, the Universal Declaration of Human Rights (UDHR) and all relevant treaties and conventions. Religious values must also be selectively taken into consideration, as long as they are in line with the Rule of Law in compliance with the intent of the 2007 Constitution of the Kingdom of Thailand, Section 27.⁸⁴

(b) Mainstreaming and streamlining community rights for their integration in laws and by-laws:

A number of applicable laws and by-laws must be developed as part of the civil and commercial codes and laws related to natural resources. Priority must be given to integrating community rights within these laws.

(c) Recognition of people's political intervention and participation:

In order to achieve social and economic justice, community rights must be recognised where communities have been affected by development projects initiated by the government and the private sector.

Conclusion

Decades of profit-driven and aggressive development, compounded with unrestrained natural resource exploitation, have adversely affected numerous communities on the ground, especially the marginalised, unheard and unreached in Thailand. In response, the principle and value of community rights has been highlighted, discussed and acted upon at the countrywide level with the emergence of tailor-made approaches to community rights and the sharing of lessons-learned and success stories.

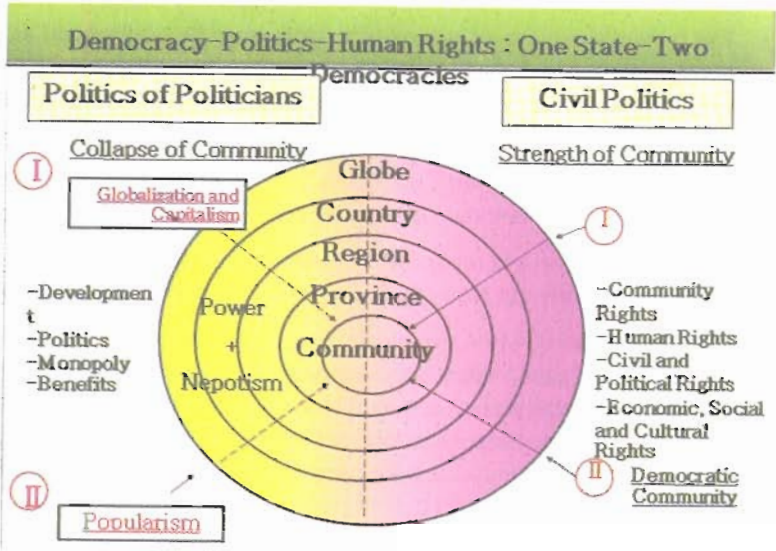
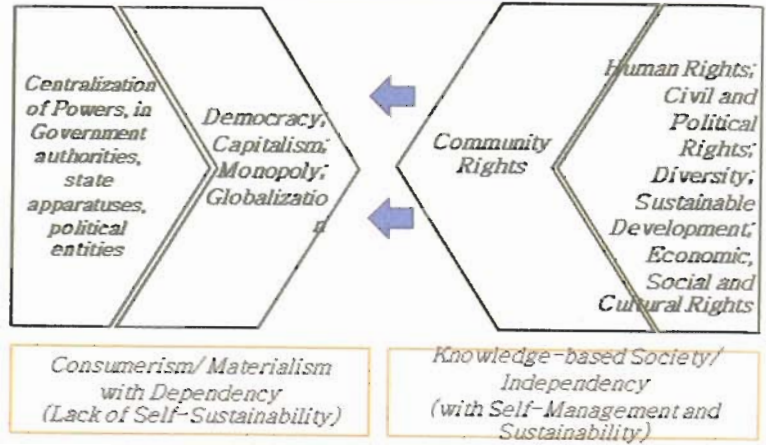
⁸⁴ See Compilation II: The Constitution of the Kingdom of Thailand, B.E. 2550.

Nevertheless, the persistent and deeply embedded capitalist mindset in which the development and industrialisation of Thailand are grounded is plagued by a number of structural problems. The very survival of communities is endangered by the lack of concern for human rights behind development, as the resources they depend on (their homes, lands, farms and watersheds) are seized from them without their consent and without due compensation.

- For collective rights to be strengthened and sustained, they must be periodically reviewed and monitored. Community rights should be directed towards the benefit of the community and the public as a whole, and not for the monopoly of political power by any particular group.
- The exercise of customary rights must focus on the checking and balancing of power while also seeking solutions to structural problems at the social and policy levels.
- Social space needs to be created for and by community and the public as a whole in order to be able to exercise community rights on the ground.
- The main dimensions of community rights must be understood as: human values of equity and non-discrimination, human dignity, ethnic identity, right to self-determination and self-management with sovereignty and rights over natural resources, culture and livelihood.
- People's participation must be taken into consideration at every stage of the implementation of policies, plans, activities and so forth.
- The strengthening and recognition of community rights must be undertaken urgently but through a non-violent, peaceful and iterative approach.

Community rights can in this way be expanded through the creation of tripartite partnerships among communities, the government and investors. In the long run, these principles will give rise to greater equity, harmony, acceptance and tolerance between and among the diverse components of Thai society.

COMMUNITY AS SACRIFICIAL SURRENDERING VICTIM



Compilation I: Factual Profiles of Case Studies on Community Rights

Case-Study	Affiliating Parties		Ground of Abuse	Details of Abuse (and Recommendations, if any)
	Alleged offender(s)	Abused person(s)		
<i>The Maptabud Industrial Estate Authority of Thailand Project in Rayong province</i>	Industrial Estate Authority of Thailand	People and communities in Maptabud district, Rayong province.	1) Violation against community rights of people residing in Maptabud district, Rayong province, on utilisation and management of natural resources and surrounding s; 2) Life and health threatening factors and violence against people residing in Maptabud district, Rayong province.	1) The project has created severe threats to the health, environment and community rights of residents. Health and environmental impact assessments have been conducted with a number of platforms for the participation of stakeholders and the general public; 2) Independent, reliable and expert organisations must be encouraged to provide opinions prior to the operationalisation of projects and activities.
<i>The Hutgyi Construction Project on Salaween River, Burma (Myanmar), managed by the</i>	The Electricity Generating Authority of Thailand	Karen and Thai communities in Sob-Moei village, Mae Sam Lab sub-district, Sob-Moei district, Mae Hongson	Community rights of residents on the site of construction, in-between the border of Thailand and Burma	1) The construction site of Hutgyi Dam is located on land that is disputed by Karen communities and the State Law and Order Restoration

<i>Electricity Generating Authority of Thailand (EGAT)</i>		province, Thailand.	(Myanmar), have been violated and undermined, particularly the right to livelihood, fishing and agriculture.	Council. The Hutgyi dam construction project is described as a tool for development but has caused the evacuation of Karen communities, some of whom have fled to Thailand; 2) The arable and dwelling areas of Sob-Moei village, Mae Sam Lab sub- district, Sob-Moei district, Mae Hongson province would be submerged if the project goes ahead, and a massive involuntary evacuation will ensue.
<i>Case of Department of Natural Parks, Wildlife and Plant Conservation (DNP) with Civil Case Proceedings on Global Warming Accusation with Indemnity and Liability against the Land</i>	Department of Natural Parks, Wildlife and Plant Conservation (DNP)	In total 30 peasants and members of the Land Reforming Network of Thailand have been litigated in a civil case, in accordance with the Act on Support and Preservation of Environmental and Surrounding Quality of	1) Infringement against community rights to the management and exploitation of natural resources and surroundings, in accordance with Section 65 of the Constitution of the Kingdom of	1) Department of Natural Parks, Wildlife and Plant Conservation (DNP) litigated a case with claims for indemnity and liability, under Article 97 of the Act on Supporting and Preservation of Environmental and Surrounding Quality of Thailand, B.E. 2535, in the amount of 150,000 baht per rai (around 1,600

<i>Reforming Network of Thailand</i>		Thailand, B.E. 2535, for an indemnity and liability cost of 17,559,434 baht in total.	Thailand, B.E. 2550 (see Compilation II); 2) Infringement of the right to judiciary and fair trial which the government is obliged to respect in compliance with Section 28 of the Constitution of the Kingdom of Thailand, B.E. 2550 (see Compilation II);	square meters); 2) The mode of calculation for this liability and indemnity depends on 7 damages (from man-made erosion or acts): loss of soil nutrients; loss of water absorbing capacity of soil; loss of humidity; soil damage; global warming; decrease of rainfall and explicit damage to forests.
<i>Case of expelling and evacuating of local Karen's community in Kang Kachan Natural Park, Petchaburi province</i>	The Unit for Preservation towards Kaeng Kachan Natural Park No.10, Huay Mae Sarieng, Kaeng Kachan district, Petchaburi province	Karen and Thai communities residing in Jai Sang Din- Porn Rakam and Bang Kloi Bon villages, Huay Prik sub-district, Kaeng Kachan district, Petchaburi province.	1) Violation against community rights of Karen and Thai including their right to reside within the Kaeng Kachan Natural Park, Petchaburi province, and violation of their right to traditional customs and	1) Allegations against local Karen charged with trespassing into the natural park and causing deforestation, regardless of their mode of product and shifting agriculture. There are also fabricated charges of narcotic smuggling without any substantive grounds of evidence; 2) Rapid and aggressive searches of dwellings and

			livelihood; 2) Threats to physical freedom beyond their dwelling and residential areas.	residential areas conducted with arbitrary destruction of bams and confiscation of assets.
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**Compilation II: The Constitution of the Kingdom of Thailand, B.E.
2550**

(extracts on Community Rights only)

Section (s) in the Constitution	Content in Details
Section 27, <i>Chapter 3 Rights and Liberties of Thai People, Part 1 General Provisions (Protection and Binding of Rights and Liberties)</i>	Rights and liberties recognised by this Constitution explicitly, by implication or by decisions of the Constitutional Court shall be protected and directly binding on the National Assembly, the Council of Ministers, the Courts, the Constitutional organisations and all state organs in enacting, applying and interpreting laws.
Section 28 <i>Chapter 3 Rights and Liberties of Thai People, Part 1 General Provisions (Protection and Binding of Rights and Liberties)</i>	<p>A person can invoke human dignity or exercise his rights and liberties in so far as it is not in violation of rights and liberties of other persons or contrary to this Constitution or good morals</p> <p>A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend himself in the Courts.</p> <p>A person may bring a lawsuit against the state directly so as to act in compliance with the provisions in this Chapter. If there is a law enforcing the exercise of any right and liberty as recognised by this Constitution, the exercising of that right and liberty shall be in accordance with such law.</p> <p>A person shall have the right to be enhanced, supported and assisted by the state in exercising of right under this Chapter.</p>

Section 66 <i>Chapter 3 Rights and Liberties of Thai People, Part 11 Community Rights (Right to conserve or restore their customs, local wisdoms, arts or good culture of their community)</i>	Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.
Section 67 <i>Chapter 3 Rights and Liberties of Thai People, Part 11 Community Rights (Right to preserve and exploit natural resources)</i>	<p>The right of a person to participate with state and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.</p> <p>Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organised, and opinions of an independent organisation, consisting of representatives from private environmental and health organisations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.</p> <p>The right of a community to sue a government agency, state agency, state enterprise, local government organisation or other state authority which is a juristic person to perform the duties under this section shall be protected.</p>
Section 85 <i>Chapter V Directive Principles of Fundamental State Policies, Part 8 Land Use, Natural Resources and Environment</i>	<p>The state shall act in compliance with the land use, natural resources and environment policies as follows:</p> <p>(1) preparing and applying the rule on the use of land throughout the country with due regard to the compliance with environmental condition, nature of land and water and the way of life of local communities, the efficient measures for preservation of natural resources, the sustainable standard for</p>

<p>Policies</p> <p><i>(Guiding Policy on Land, Natural Resources and Environment)</i></p>	<p>land use and opinion of the people in the area who may be affected by the rule on the use of land;</p> <p>(2) distributing the right to hold land fairly, enabling farmers to be entitled to the ownership or the right in land for agriculture thoroughly by means of land reform or by other means, and providing water resources for the distribution of water to farmers for use in agriculture adequately and appropriately;</p> <p>(3) preparing town and country planning, and developing and carrying out the plan effectively and efficiently for the purpose of sustainable preservation of natural resources;</p> <p>(4) preparing systematic management plan for water and other natural resources for the common interests of the nation, and encouraging the public to participate in the preservation, conservation and exploitation of natural resources and biological diversity appropriately;</p> <p>(5) conducting the promotion, conservation and protection of the quality of the environment under the sustainable development principle, and controlling and eliminate pollution which may affect health and sanitary, welfare and quality of life of the public by encouraging the public, the local communities and the local governments to have participation in the determination of the measures.</p>
<p>Section 87 <i>Chapter 3 Rights and Liberties of Thai People, Part 10 Public Participation Policy</i></p> <p><i>(Guiding Policy on People's Participation)</i></p>	<p>The state shall act in compliance with the public participation policy as follows:</p> <p>(1) encouraging public participation in the determination of public policy and the making of economic and social development plan both in the national and local level;</p> <p>(2) encouraging and supporting public participation to make decision on politics and the making of economic and social development plan and the provision of public services;</p> <p>(3) encouraging and supporting public participation in the examination of the exercise of state power at all levels in the form of profession or occupation organisation or other forms;</p>

	<p>(4) strengthening the politics power of the public, and preparing the laws establishing civil politics development fund for facilitating the communities to organise public activities and for supporting networks of the groups of people to express opinion and requirements of the communities in the localities;</p> <p>(5) supporting and providing education to the public related to the development of politics and public administration under the democratic regime of government with the King as Head of State, and encouraging the public to exercise their rights to vote honestly and uprightly.</p> <p>In providing public participation under this section, regard shall be had to approximate proportion between women and men.</p>
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