# Thai Public Hearings: Smokescreen or Ceremony?

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Since Thailand promulgated its present constitution in 1997 there have been increasing demands for people's participation in public policy decision-making and implementation, especially in government mega-projects that might affect the way of life of people and community.

This has led to widespread demands for public hearings in the hope that the process would satisfy everyone. The two case studies in this study on public hearings on the coal-fired power plants in Prachuab Khiri Khan Province and the frequency bill show that public hearings have been used by the Thai state as public relations rather than public participation. This was caused by the gap of perception between state officials and the citizens towards the status of public hearings and the hearing process that blocked the three foundations for citizen participation: the right to know, the right to be heard, and the right to affect decisions.

#### Introduction

Recently, there seem to be an increasing number of public hearings in Thailand. *Prachaphijan* seems to be everywhere in the Thai press and broadcast media. Running alongside with this heightened news awareness are sentiments of hope, optimism, curiosity, confusion, frustration, indifference, even sometimes despair... What is giving rise to this new interest in the public decision-making process and such a wide range of emotions?

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Since Thailand promulgated its present constitution in 1997 there have been increasing demands for people's participation in public policy decision-making and implementation, especially in government mega-projects that might affect the lifestyle of people and their community. There is a clause in the constitution saying that the government has to listen to how people in that community think about those projects. It also means that the people have the right to be heard about their desires from the ruling groups that make policies and decisions. This has led to widespread demands for public hearings in the hope that the process would satisfy everyone. Groups that are opposed to government infrastructure projects hoped that public hearings would give an opportunity for policymakers to hear what their demands are all about. At the same time, state officials expected that the hearings would result in a chance for citizens to complain but not necessarily participate in the policy-making process since all policies have already been made and the public hearings would and should help solve confrontation and potential conflicts. However, it has not worked out that way, Instead. public hearings seem to have increased the degree of conflicts and violence between the state and people or amongst people.

In Thailand public hearings started officially in 1996 with issuance of a Prime Minister's Office Decree on Listening to Public Opinion by Public Hearings, during the Barnharn administration. A former law scholar from Ramkamhang University—Dr. Phokin Polakoon, a legal consultant to Mr. Banharn had an influence in the decree-making. Phokin Polakul later became Minister of the Prime Minister's Office and was the key person who pushed a policy of people's right to participate in government decision-making for mega-projects that might affect their way of life or their community. The policy later became an administrative decree on listening to public opinion by public hearing of 1996. However, the decree did not raise much public interest until the 1997 constitution was promulgated. A clause in the constitution saying that the govern-

ment had to listen to how people in that community think, reinforced the concept of public participation and the similar idea behind the 1996 Decree on Listening to Public Opinion by Public Hearing.

The Prime Minister's Office report on public hearings reported that from 1996 to 1998 there were 43 public hearings organized by 12 public agencies.1 According to the report the people who are affected directly by government mega-projects (the stakeholders) rarely participated in the hearing process. This reflects the fact that most stakeholders are not interested in such a process and do not believe they could gain anything from spending time attending meetings. Media and academia claim that the public hearings in Thailand are rhetoric since most of the project decisions have already been made by the state and there is no room for change. This can be seen from the recent public hearing on the electricity plant at Bor Nork Tambol, Prachuab Kiri Khan Province which, though considered the most complete public hearing form (according to the constitution), still failed to include all stakeholders as participants.

Several questions can be raised. Why do public hearings seem unable to be an instrument for conflict resolution in Thailand? Should public hearing be a proper instrument for conflict resolution in Thai society? What are the perceptions and misperceptions of public officials and people towards public hearings in Thailand? Has the idea of public hearings been imported into Thailand from western societies without understanding its definition and limitations, or how exactly are public hearings used in western societies? Several case studies show that public hearings have been used for the convenience of the state. This leads to more confusion among decision-makers, bureaucrats, and the people who are involved in the policy process.

<sup>&</sup>lt;sup>1</sup> Prime Minister's Office, Report on Public Hearings PM 1308/10574 December 24, 1998.

In western societies such as the U.S., United Kingdom, and Australia the public hearing has found widespread use on many public projects that might affect people. Public hearings in those countries, especially the U.S., have been simplified and can be organized by the public or private sector.<sup>2</sup> Public hearings in the U.S., therefore, are of several types depending on objectives, styles, and organizers. In Thailand only one type of public hearing has been proposed, that is the one that is centrally controlled and organized officially by the state. In fact the decree says that three persons could *organize* a hearing, they are the Bangkok Governor (elected politician), provincial governors (appointed by the Ministry of the Interior), and portfolio ministers. The decree also provides that if there is any issue or decision that might affect a community, a group of at least 50,000 eligible voters could sign a petition to *request* a public hearing.

The process defined is a strictly bureaucratic style with 19 steps. The organizers must be appointed by the government although the chairs of the organizers tend to be well-known scholars or respected persons, such as Drs. Sippanondha Ketudat, Ammar Siamwalla, Nikom Chantaravitoon, Pradit Chareonthaithavee, to ensure that they are 'neutral and nonpartisan.' In the event they more often appear to be instruments of the state defending predetermined decisions; as a result they have been criticized and have lost their "middlemen" status.

To make clear the role of public hearings and the perceptions of Thai state officials and people toward public hearings we would like to talk about two case studies: one is related to environmental issues (the power plants in Prachuab Khiri Khan Province) and the other is about deregulation (the radio-cable frequency distribution). The two cases are chosen because they are different in content and participants but the

<sup>&</sup>lt;sup>2</sup> Jean Mater, *Public Hearings Procedures and Strategies: A Guide to Influencing Public Decisions*. Prentice-Hall, Inc. 1984.

result is similar, that is public hearing does not make people think that they have power or impact in the policy-making process and decision.

## Case 1. Coal-fired Powerplants in Prachuab Khiri Khan **Province**

A planned coal-fired power plant was originated under an Independent Power Producers (IPP) Project which aimed at promoting the private sector to produce and sell coal-fired power to the Electricity Generating Authority of Thailand (EGAT), a state enterprise which formerly monopolized all the power production in Thailand. The objectives of the project were to reduce the state monopoly in power production, increase efficiency, and save the government budget to be spent on this huge project. The plant was planned to be built at Bor Nork Tambol, Amphur Muang, Prachuab Khiri Khan Province which is located at the east coast of Southern Thailand. The plant was to be a joint-venture between the Gulf Power Generation Company (a joint venture of the Metropolitan Cement (Thailand) Public Company and Lanna Lignite Public Company) and Edison Mission Energy, a worldwide U.S. power company.

The decision on the IPP was started on May 31, 1994 when the cabinet approved the project. In December of the same year EGAT invited private power companies for bids. Also in 1994 Gulf Power Generation Company purchased 2,000 rai in Bor Nork Tambol to be used as a plant location. A few months later it made a request to rent a piece of public land on the coast of the Gulf of Thailand since the purchased land did not have access to the seashore. In February 1995 nine tambol heads made a letter requesting amphur and company officials to provide details about the utilization of the public land and about the plant building. A letter protesting the project was signed by 3,579 villagers. In 1996 the company received approval to rent the public land for a period of three years.

Finally, in June 1997 nearly three years after the project was begun, Gulf Power Generation Company submitted its proposal with an EIA (environmental impact analysis) study report to the Ministry of Science, Technology and Environment. It took one year for the environmental agency to make its decision approving the EIA report. Thirteen days after that the agreement between EGAT and Gulf Power was signed.

It appeared the project could not start even though the agreement between EGAT and the company had been signed. The project still had to get approval from several other agencies such as the Bor Nork Tambol Administration Organization (TAO), the Board of Investment, Factory Department, Civil Works Department, and Harbor Department.

In 1997 a group of 500 villagers and environmentalist NGOs visited the Prachuab Khiri Khan provincial governor to submit a protest letter stating their concerns that the project failed to estimate economic losses for local fisheries. Juvenile fish breeding and plankton would be destroyed by the water use and discharge of the plant. The letter was also sent to TAO to express their disapproval of the project. The company responded by taking a group of local officials and representatives of private sector groups such as the Provincial Red Cross and women's village groups on a study tour of the Mae Moh Lignite Mine in Lampang (Northern part of Thailand). The purpose of the trip was to show how the Lampang project could manage its pollution problem.

Consequently, during 1997 and 1998 a conflict between the antiplant and pro-plant villagers emerged. The anti-plant group made an appeal to the Palace to stop the project. Later the province organized a lecture on public hearings by Professor Kaewsun Atibodhi, a Thammasat law scholar who has written a book on the topic. The lecture was wellattended, especially by the anti-plant group. In December 1998 the antiplant group got together and blocked the intersection of Petkasem Road (the road that connects the southern part of the country to the central

part). A high-ranking police officer was injured in a failed attempt to negotiate with demonstrators. The villagers declined to negotiate with the deputy governor. Finally the Deputy Minister of the Interior arrived on the scene and stated that the plant could not legally start construction until it received approval from the Civil Works Department (under the Ministry of the Interior's supervision) and that at the time the Department did not plan to give its approval. The villagers agreed to leave the highway intersection.

One year later in December 1999 the cabinet made the decision to have a public hearing on the plant construction and appointed a public hearing committee under the leadership of Dr. Sippanondha Ketudat, the Chair of the National Economic and Social Development Board. The anti-plant villagers submitted a protest letter not to participate in the public hearing to the governor. The public hearing took place on 10-12 September 1999 without participation of the anti-plant groups. Most of the 1,000 opponents, led by the TAO stayed in tents set up near the provincial hall, where the public hearing was held, and listened to speeches for and against the plant project.

#### Case 2. Frequency Bill

The Frequency Bill is warranted by the new Constitution. Under Article 40 of the Constitution, Thailand must have a new regulatory system for broadcasting and telecom businesses. The article was intended to ensure that radio frequencies would be fairly allocated and managed in the public's interest.

Currently, much of the radio frequency band is misused. Most of the ranges have been given to government agencies. Some agencies lease their frequencies to private firms without exposing the contracts and income to the public. Some companies re-sell the radio frequencies to another company to make profits. That is, there are agencies which do not use radio frequencies but still want to keep them as private

properties.

At first, the Article 40 creators concentrated only on the broad-casting business. But later, the wording was changed. Also using radio frequency as a medium, 'telecom business' was thus included in the article along with 'broadcasting business' for fair allocation.<sup>3</sup> This has proven to be a big clause for controversy. Prior to the creation of Article 40, the Transportation and Communications Ministry had planned to establish an independent regulatory body to oversee the telecom industry with responsibility over radio frequency allocation and management. The regulatory body is part of the ministry's cabinet-approved Telecom Master Plan. The ministry wanted to expand the role of the regulatory body to cover radio frequencies for broadcasting because the two industries are merging, at least in foreign countries. However, the idea was dropped because the broadcasting businesses were under the Office of the Prime Minister's Public Relations Department.<sup>4</sup>

Following Article 40, the government formed a subcommittee to prepare details in drawing up the regulatory system for both broadcasting and telecom industries. Led by Senator Vichit Srisa-arn and PM's Office Minister Supatra Masdit, the subcommittee was made up of representatives from the broadcasting industry, mass communications, academia, the Post and Telegraph Department, and the Council of State. More than 50 percent of the subcommittee members were from the mass communications and broadcasting industries.

Although Article 40 was clear in its principles, there were some loose clauses. Should there be one single regulator or two regulators for separate broadcasting and telecom businesses? The subcommittee agreed to have several meetings all over the country to survey and get

<sup>&</sup>lt;sup>3</sup> "Another Public Hearing on Frequency Bill", Krungthep Thurakij, May 1, 1998, 8.

<sup>&</sup>lt;sup>4</sup> "Want to See the Frequency Free of the State and Business", *Prachachat Thurakij*, May 17-18, 1999, 3.

input from the people on four main points: independent regulatory agencies, frequency allocation, frequency for public interest at national and local levels, and fair and open competition.

Five meetings were set in five big provinces of the country: Bangkok (central), Songkla (southern), Khon Kaen (northeastern), Chiengmai (northern), and Chonburi (eastern). The objective of the meetings was to listen to public opinion. More than 1,000 people concerned with the broadcasting sector, from both business and NGOs as well as citizens, participated.5 The participants had to register, answer the questionnaires, and express their ideas at the meetings, and all the main points were duly summarized and published. The majority of the people wanted to see two separate independent regulatory agencies, one to deal with radio and television frequency allocation and management, and the other with the telecommunications sector. The frequency allocation should cover the entire country, and frequencies for local use must be allocated. All contracts with the private sector should be of no more than five years' duration. A clear and consistent policy on mass media should be written. The qualification of entrepreneur and media people had to be determined. All concessions and contracts must be based on fair competition and must be transparent under state supervision. Freedom for utilizing telecommunication equipment should be strictly upheld. The conclusions of these meetings became the content of the frequency bill draft based on public opinions which gained approval from the Cabinet on 23 June 1998. The draft had to be sent to the Council of State, whose job is to interpret the contents of a draft law before it is presented to the House of Representatives.

It took five months for the Council of State to review the draft. During the time of the review process, three additional drafts of a frequency bill were produced by state agencies. The first was by the

<sup>&</sup>lt;sup>5</sup> Matichon Daily, April 8, 1999, 1, 23.

Council of State itself (first version of the Council of State), another by the Ministry of Transportation and Communication, and the third was the second version of the Council of State. During these five months there was great concern throughout the media. The second version of the Council of State was issued and submitted to the Cabinet, and despite strong criticism by civic groups in the media the second draft of the Council of State won approval from the Cabinet and was sent to the House.

The approved draft proposed a single independent regulatory agency in obvious contrast to the draft based on public opinion. The academics in mass communications as well as civic groups opposed one regulator on the grounds that the single regulating body might not adequately protect the people's right to use radio and television frequencies. In addition, the single regulatory agency might be manipulated by vested-interest groups which had pushed for only one regulatory body. The academics collected a list of people to oppose the draft and appealed to the House. The House finally passed the second version from the Council of State, but it set up a special House subcommittee consisting of a 35-member panel from the public and private sectors as well as politicians to consider Article 40. This House subcommittee agreed to make public hearings in cooperation with public colleges and universities in nine provinces on the draft contents during June and July 1999. The results of the hearings were consistent: there should be two separate independent agencies. The subcommittee made a draft amendment and submitted it to the House in September 1999. The House sent the amendment to the Senate for approval and the amended bill was finally promulgated on March 7, 2000.

#### **Discussion and Comments**

The two cases of public hearings in Thailand are probably not

surprising for anyone who is familiar with Thai politics. Fred W. Riggs<sup>6</sup> might say that public hearings in this country are just ritual, that is they give the appearance that Thai people have a right to participate but in fact the people's input from the limited participation is not considered an issue in the decision-making process. The public hearings in Thailand in fact have been used for legitimizing the state decisions in that the public officials can say that they have followed the process prescribed by the law. Some observations can be made from the two case studies.

First, the gap of perception<sup>7</sup> between state officials and the citizens toward the status of public hearings. Since the new constitution says that the government has to listen to how people in that community think about the projects that might affect their way of life, public hearings have become a necessary legal condition for the government to pass in order to implement a major project or to adopt certain policies. For State Officials and the Cabinet, the hearing process became legally necessary in order to continue the power plant project that had been decided long before the 1997 Constitution became effective. For the anti-plant villagers it would be a wrong strategy to participate in the hearing since participation would imply acceptance of a process they viewed as largely ceremonial to fulfill a legal requirement that could legitimize the power plant (a suspicion that has been somewhat validated by the project owner moving on to the next step in the legally defined process).

For the Frequency Bill the perception gap between the state and civic groups is also obvious. The state appointed a subcommittee which produced a draft bill using a public hearing process. During the review of the draft bill three new drafts were proposed by the state, and the third of these was approved by the state while the version approved

<sup>&</sup>lt;sup>6</sup>Fred W. Riggs, Thailand: The Modernization of a Bureaucratic Polity, Honolulu, East-West Center Press, 1966.

Patcharee Siroros and Thaveda Kamolvej (eds.), Conflicts in Thai Society in a Time of Crisis, (in Thai), EPA, Faculty of Political Science, Thammasat University, Bangkok, 1999.

by the state-appointed subcommittee was ignored. This reflects the perception of the state officials that while the public hearing is a legal requirement they are free to make their decisions completely removed from the public participation process—the public hearing becomes a smokescreen for public participation in making public policy that affects their lives and communities. Once again the perception of the state officials appears to be that the public hearing is really only a legal ceremony. If this attitude continues the public hearings may become nothing more than a smokescreen confusing the public while the officials continue to make policy decisions in autocratic isolation. In the case of the Frequency Bill the civic groups involved in the media policy debate were strong enough and united enough to fight back in alliance with the politicians in Parliament resulting in the public hearing version becoming law.

Several people might argue that public hearings in Thailand lead to conflicts and confrontation between the government officials and villagers or civic groups because all decisions have been made earlier by the state before the hearings started. The Frequency Bill case shows that although the decision had not been made before the public hearings, the conflict still took place because of the way the state officials perceived public hearings as ceremony rather than a way to learn knowledge from having citizen participation for public decisions. The conflicts and confrontations more likely arose as a result of the perception gap between the state officials and citizens which existed regard-

<sup>8</sup>This viewpoint was raised by some NGOs such as Mr. Pairoj Polapet of the Citizen's Rights Association in a seminar on *Public Hearings in Thai Society* held by TDRI at the Faculty of Political Science, Chulalongkorn University, 6 January 2001.

<sup>&</sup>lt;sup>9</sup>This was a public hearing definition given by Professor Nedthi Oey\_srivong, former history professor of Chiengmai University at a conference on *Public Hearings: A Mechanism for Conflict Reduction?* held by the EPA Foundation at the Siam City Hotel, Bangkok, 20 January 2001.

less of when the hearings were held.

Second, in the introduction several questions were posed. including one relating to the understanding of the use of public hearings in other countries where they are an established successful part of the public policy process. This question relates to deeper issues of public participation that should be noted. The rationale for public participation in all forms, has components from several sources: the Theory of Consent tells us we will get stronger rules and laws when the rules and laws have the consent of the governed; officials of the State are not the sole repository of all wisdom and information and can benefit from the knowledge and experience of the people, especially in the case of policies that will have an impact on a local environment; and there is a need for public trust in the decision makers as well as in the decisionmaking process which other countries have found can be facilitated by including public participation in the policy process.

The conflicts that have occurred related to several recent projects in Thailand underscore failures in all three of these areas. Civil disobedience such as the occupation of the Pak Moon Dam site in Ubol Ratchathani Province increased the cost of maintaining public order, deprived the public of services, and surely decreased the overall effectiveness of laws related to these areas. The occupation ended when the government promised to study the complaints, but without addressing the underlying problems presented by the demonstrators such as loss of fishing livelihood. Whether including public opinion at the time the dam was being planned would have been able to address the current concerns of the demonstrators is difficult to judge, but experiences in other countries indicate that the fact of inclusion in the process not only helps the public to accept a decision when they perceive that they are losing something,<sup>10</sup> but sometimes helps them to stop the proposed project and build stronger collaborative links with the project owner which may help future planning at the same time.<sup>11</sup>

The question of whether the proposed power plant at Prachuab Khiri Khan will harm the environment would surely have benefited from discussion including the knowledge and experience of the local people. It is still not too late to do so as the question still does not appear to be resolved to the satisfaction of the people of the area who have demonstrated against the project. The government has, however, followed the correct (according to the decree) procedure and the project has advanced to the next step. We are reminded of the fate of the tantalum plant in southern Thailand which was pushed to completion without allaying the concerns of the local people and hope the same mistake is not repeated again.

Public trust in the officials who make policy continues to be low. Loss of public confidence in the neutrality and nonpartisanship of respected persons who appear to act as instruments of the State defending prior decisions shows further decline in confidence in the process.

Third, the way public hearings in Thailand have been organized might lead us to question the concepts of the right to know, the right to be heard, and the right to affect decisions, the three foundations for citizen participation. In the case of the power plant the villagers did not

<sup>&</sup>lt;sup>10</sup>Ruth Greenspan Bell, "Environmental Impact Assessment and the Role of the Courts and the Public in the United States", Paper presented in a workshop on Good Governance, *Public Participation and the Decision-Making Process for Environmental Protection organized by ISP and REF*, Bangkok, Queen Sirikit's Conference Hall, March 18-19, 2000

<sup>&</sup>lt;sup>11</sup>Thomas C.Beierle and David M.Konisky, "Values, Conflict, and Trust in Participatory Environmental Planning," *Journal of Policy Analysis and Management*, Vol.19, No.4, 587-602

know about the plant until all the decisions and the bids had been made. In the case of the Frequency Bill, the right to affect decisions would never have happened if the civic groups had not been united and able to work hard to lobby the politicians in the parliament, and the media resources had not been powerful enough to win over the state side. We can not take for granted that this avenue is possible for other civic groups which are poorer and weaker, and which may not have the media as a natural ally for their cause.

When one observes the magnitude of overlapping bureaucratic steps and approvals required in the Prachuab Khiri Khan case above. one can understand why state officials not enthusiastically incorporating yet another step, especially one that may be as unpredictable and difficult to control as public participation through public hearings. One could surmise that the bureaucratic hurdles consumed much of the intervening time between when the company purchased the land in 1994, through to when the agreement was signed in 1998, and continuing yet in 2001. It may be useful to streamline the process and restrict the number of steps or the number of agencies involved in independent steps, but we doubt that failing to include the public participation promised by the new constitution will help the people to have more confidence in officials or the process and thus to cooperate in moving mega-projects to quicker implementation.

There will be obstacles in the path towards greater public participation, including cultural and traditional factors. Most people are accustomed to accepting the fiat of state officials in helpless submission. State officials accustomed to strong control are likely to be reluctant to give the public a greater role. The function of meetings is more often to communicate prior decisions to the attendees rather than to foster discussion and problem solving to reach a decision acceptable to all. Information distortion is likely to continue as long as there are minimal real penalties against those who conceal or distort information.

There are also signs for optimism, including the following. Public involvement in drafting the new constitution. People are becoming more convinced that they do have rights to participate and are asserting those rights more and more. Representatives of state entities, such as the Civil Service Commission or the Council of State are participating in workshops on public hearings and participation and are engaging in discussion with the concerned individuals as they work on drafting new policy guidelines such as that relating to accountability and new laws such as the draft law on public hearings.

We believe it will be far more productive to fully incorporate public participation into the decision-making process, drawing on the experiences of successful systems<sup>12</sup> to develop a Thai public participation method that in real terms finally grants the people those fundamentals of democracy, the right to know, the right to be heard, and the right to affect decisions.

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<sup>&</sup>lt;sup>12</sup> Magdolan Toth Nagy et. al., *Manual on Public Participation in Environmental Decision-making: Current Practice and Future Possibilities in Central and Eastern Europe*, Budapest: Regional Environmental Center for Central and Eastern Europe, 1994.

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