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Foreword

2013 is the year of dynamic development of democracy in Thailand. The interests in the inspection of the exercise of state power in all sectors of the Thai society, the exercise of peoples' rights under the Constitution of the Kingdom of Thailand, and the extensive campaign to promote government transparency have been increasing. For these reasons, 2013 is not only the 13th year commemoration of the establishment of Thai Ombudsman but also the year of greater responsibilities and achievement for the Ombudsman.

The Ombudsman's primary operation is still the inspection of the exercise of state power by the administration through an investigation of the facts of a complaint against all levels of government or state officials to identify the cause of unfair distresses to the public; whether such conducts were carried out lawfully pursuant to the vested authority of the accused official or not. Other missions of the Ombudsman include: development and promotion of politician's and government official's ethics, investigation of the constitutional and judicial organization's negligence to perform their duties or unlawful performance of their duties (excluding judicial proceeding of the courts); the monitoring, evaluation, and provision of recommendations on constitutional compliance and opinions on necessary constitutional amendment. The Ombudsman can initiate an investigation on its own without prior complaint in the cases that it deems to have adverse impacts on the general public or to defend the public interests. Overall, the Ombudsman must strictly observe justice principles in the course of their operations.

With the Ombudsman's past performances and reputation as an institute that can strongly contribute to the maintenance of justice in the Thai society. Ombudsman will continue to adhere to the principles of expedient, rapid, transparent, just and accountable operations. Based on these measures, the Ombudsman of Thailand firmly believe that this institute will be able to successfully accomplish its missions of providing remedies to people's distresses in timely, just and efficient manners.

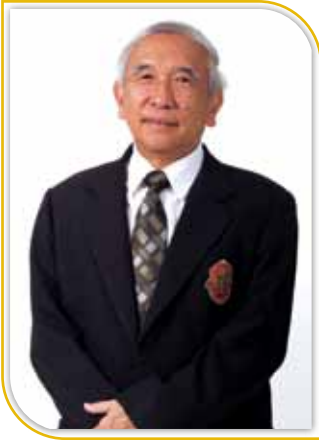
MESSAGE FROM THE OMBUDSMAN



MRS. PANIT
NITITHANPRAPAS
Chief Ombudsman

The work of the Ombudsman is not only to arbitrate argued problems or any damage harmful to people but to prevent a repetition of the same problems from happening over and over again. In order to fulfill this task, the Ombudsman must undertake several researches to seek prevention methods or to amend obsolete laws and regulations.





**PROF. SIRACHA
CHAROENPANIJ**

Ombudsman

Environmental problems and situations in Thailand have severe direct impacts on Thai citizens. Each year, due to failures to solve the root cause of environmental problems, we receive repetitive complaints lodged by those who encountered environmental impacts, i.e. drought, flooding, forest invasion, etc. Thus, we provide systemic guiding principles to address the environmental matter with the aim to serve Thai citizen's public interest at large.



**DR. PRAVICH
RATTANAPIAN**

Ombudsman

Complaint settlement of the Ombudsman in my view, rather than enforcing his/her judgment, is to act as a representative of people. People's distress is relieved through mediation process with the purpose to raise their happiness. This can be so-called conciliation to find resolution and alleviate people's distress in a peaceful, rightful, and unbiased mean.

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*Ombudsman
Thailand*





OMBUDSMAN THAILAND

Who is Ombudsman?

The term "Ombudsman" means agent, proxy, deputy, or authorized representative which clearly denotes someone who acts on behalf of another, and taken up his or her problems with government and public authorities.

The main duty of the Ombudsman is to investigate public complaints about mal-administration within government organizations, provide recommendations for remedial actions, and report to the House of the Representatives, Senate and the public. The main objective of the Ombudsman is to redress civil grievances and investigate complaints about alleged mal-administration by government departments and public organizations. The Office operation must be based on standard, promptness, systematic measurements, which are fair, impartial, and acceptable to public.

The first Ombudsman of Thailand, Mr. Pichet Soontornpipit, was appointed by His Majesty the King on April 1, 2000. Consequently, the Office of the Ombudsman was established on April 12, 2000.

Currently, there are three Ombudsmen. Mrs. Panit Nitithanprapas, the Chief Ombudsman was appointed by His Majesty the King on October 13, 2008. She was elected amongst the Ombudsmen themselves to be Chief Ombudsman. Prof. Siracha Charoenpanij and Dr. Pravich Rattanapijan were appointed as Ombudsman on April 5, 2010 and October 26, 2011 respectively. Each Ombudsman holds office for a term of six years as from the date of their appointment by the King and shall serve for only one term.



Legal Mandate

The 2007 Constitution of the Kingdom of Thailand stated the legal mandate of the Ombudsmen as follows:

Section 244. The Ombudsmen have the powers and duties as follows:

(1) to consider and inquire into the complaint for fact-findings in the following cases:

(a) failure to perform in compliance with the law or performance beyond powers and duties as provided by law of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation;

(b) performance of or omission to perform duties of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation, which unjustly causes injuries to the complainant or the public whether such act is lawful or not;

(c) investigation on any omission to perform duties or unlawful performance of duties of the Constitutional organisation or agencies in the administration of justice, except the trial and adjudication of the Courts;

(d) other cases as provided by law;

(2) to conduct the proceeding in relation to ethics of persons holding political positions and State officials under section 279 paragraph three and section 280;

(3) to monitor, evaluate and prepare recommendations on the compliance with the Constitution including considerations for amendment of the Constitution as deemed necessary;

(4) to report the result of its investigation and performance together with comments to the Council of Ministers, the House of Representatives and the Senate annually. Such report shall be published in the Government Gazette and disclosed to the public.

In exercising of powers and duties under (1) (a), (b) and (c), the Ombudsmen shall proceed where there is a complaint thereon, provided that the Ombudsmen are of the opinion that such act causes injuries to the public or it is necessary to protect public interests and, in such case, the Ombudsmen may consider and conduct investigation irrespective of a complaint.

Section 245. The Ombudsmen may submit a case to the Constitutional Court or Administrative Court in the following cases:

(1) if the provisions of any law begs the question of the constitutionality, the Ombudsmen shall submit the case and the opinion to the Constitutional Court and the Constitutional Court shall decide without delay in accordance with the organic law on rules and procedure of the Constitutional Court;

(2) if rules, orders or actions of any person under section 244 (1) (a) begs the question of the constitutionality or legality, the Ombudsmen shall submit the case and the opinion to the Administrative Court and the Administrative Court shall decide without delay in accordance with the Act on Establishment of the Administrative Courts and Administrative Courts Procedure.

Section 279. Ethical standard of each kind of persons holding political positions, government officials or State officials shall be in accordance with the established Code of Ethics.



Ethical standard under paragraph one shall consist of mechanism and system that ensure its effective enforcement and shall have punishment procedure for each degree of violation.

Any violation or failure to comply with ethical standard under paragraph one is deemed to be in breach of discipline. In the case where a person holding political position violates or fails to comply therewith, the Ombudsmen shall report to the National Assembly, the Council of Ministers or related local assemblies, as the case may be, and shall refer the matter, in case of serious violation or failure, to the National Counter Corruption Commission for further proceedings and it is deemed the cause for removal from office under section 270.

The consideration, selection, scrutiny or appointment of any person to hold the position relating to the exercise of power of State power, including the transfer, promotion and elevation of the salary scale and punishment of such person shall be in accordance with merit system with due regard to ethical behaviour of that person.

Section 280. For the purpose of this Chapter, the Ombudsmen have the powers and duties in giving suggestion or recommendation in the making of or improving the Code of Ethics under section 279 paragraph one and enhances ethical consciousness of persons holding political positions, government officials and State officials, and have duties to report any violation of the Code of Ethics to the responsible person for the enforcement of the Code under section 279 paragraph three.

In the case where the violation or failure to comply with the ethical standard is made in a serious manner or there is a reasonable ground to believe that the responsible may act unfairly, the Ombudsmen may

conduct inquisition and disclose the result thereof to the public.

The Ombudsmen have to submit an annual report together with recommendations from the implementation to the House of Representatives and the Senate before the end of March every year.

The Ombudsman shall notify the government departments, independent agencies, state enterprises, and other authorities concerned about the suggested procedures and provisions so that the agencies will be able to adjust and amend related laws, regulations, orders, or Cabinet Resolutions. If the agencies fail to comply with Ombudsmen's suggestions, the Ombudsman shall report to the Parliament. If there is no action regarding this matter, Ombudsman will report to general public. If the evidence found indicates that an officer who was the source of the complaint is guilty of criminal, disciplinary, or corruption charge, Ombudsmen shall notify the agency of the officer concerned for further investigation and appropriate action. The chief of the agency has to report on progress of the investigation to the Ombudsmen every three month.

Ombudsmen shall request occurrence reports, secure testimony, or obtain objects, documents, or any other evidence relevant to the investigation from the head or from subordinates of any agencies. Anyone who violates or fails to comply with this request is subject to prison term not to exceed six months or a fine of not more than ten thousand baht or both.

Ombudsmen have the power to enter any premises where a complaint has occurred, provided that the owner or person in charge has been given prior notice. Anyone who resists or intentionally obstructs Ombudsmen in their exercise is subject to prison term not to exceed one year or a fine of not more than twenty thousand baht or both.



Issues that Ombudsman can examine

(1) A civil servant, member or employee of a government body, state agency, state enterprise or local government violates the law or exceeds the jurisdiction of his or her authority;

(2) An action or inaction by civil servant, member or employee of a government agency, state enterprise or local government causes harm, damage or injustice to an individual or to the general public, whether or not this action or inaction is within his or her jurisdiction; or

(3) The law warrants investigation.

Ombudsman will not investigate

(1) Public policies announced by the Cabinet in Parliament

(2) Cases currently under consideration in a court of law or cases in which the court has issued a final ruling

(3) Complaints relating to personnel management or disciplinary action

(4) Complaints without real name and address of the complainant/s, relevant circumstances as well as agency for lodging the complaint, complaint with inflammatory language, complaint without signature of the complainant

The Ombudsman may refuse to consider or may cease consideration of a complaint if:

(1) The complaint involves official corruption or misconduct.

(2) The complainant has suffered no personal loss or damage and investigation would not be in the public interest.

(3) The complainant has taken no action in the two years after alleged violation and investigation would not be in the public interest.

(4) The complainant has already been justly compensated for the damage.

(5) The complainant, without reasonable grounds, does not give testimony, supply documentary evidence, or comply with the written instructions of the Ombudsmen within a specified length of time.

(6) The complainant died and further investigation would not be in the public interest.

(7) Ombudsmen have previously issued a ruling in this matter.

Who can complain?

People, Thais or non-Thais, who consider they are effected by cases of mal-administration from government departments and public organizations are eligible to exercise their civil rights by submitting complaints to the Office of the Ombudsman.

What should be in the complaints?

(1) Reasons and details of the problem caused by the government and state officials.

(2) Submit a letter of complaint, with following details

2.1 Real name and address of the complainant/s

2.2 Specify the grounds and relevant circumstances

2.3 Agency you want to complain

2.4 Complainants have to avoid inflammatory language

2.5 Signature of the complainants

Methods of delivering complaints

(1) By the complainant personally.

(2) By post

(3) Through the Senators, or Member of House Representatives

(4) By fax

(5) By telephone (1676 Toll free)

(6) Through office website

www.ombudsman.go.th

(7) Through Department of Legal Aid and Civil Rights Protection, Office of the Attorney General in every province throughout the country.

(8) By any other means specified by the Ombudsman



*Highlighted
Cases*



Case 1

Section 57 Ter and section 57 Quinque of the Revenue Code has the question of constitutionality.

Summary

The Ombudsman received a complaint with the following details on the question of constitutionality:

Under Section 57 Ter of the Revenue Code, for the purpose of income tax collection from husband and wife, if their marital status exists through the preceding tax year, the assessable income of the wife shall be treated as income of the husband, and the husband shall be liable to file a tax return and pay tax., along with Section 57 Quinque states that if a wife has assessable income under Section 40(1) during preceding tax year, whether with or without any other assessable income, she may file a tax return and pay tax separately from the husband only for assessable income under Section 40(1), which shall not be treated as income of the husband in accordance with Section 57 Ter. Both provisions together let the husband the wife becomes a single unit of income tax collection. As a result, due to the progressive taxation system, the wife who has assessable income under Section 40(2)-(8) has to pay tax in a higher rate than single person do.

The Ombudsman was of the opinion that in spite of the Constitution court's decision No. 48/2545 deliberating that Section 57 Ter and Section 57 Quinque of the Revenue Code are not contrary to Section 29, 30, and 80 of the Constitution B.E. 2540 (1997), the fact of this complaint confirms that the unfairness of income tax collection from the husband and the wife has actually existed. The husband and the wife regarded as an individual unit of taxpayer, according to Section 57 Ter, might have to pay total amount of tax in a higher rate



than the wife who pay tax separately or the single person do. In addition, Section 57 Quinque prescribes that only the wife who has assessable income under Section 40(1) may file the tax return and pay tax separately from the husband only for the income under Section 40 (1) which shall be not treated as income of the husband in reference to Section 57 Ter. In contrast, the married wife who has assessable income under Section 40(2)-(8) cannot pay tax separately but must bring their income to include with the income of the husband for the tax assessment. They are unfairly treated accordingly by the law because they must pay tax in a higher rate and much more in total amount of tax than the single lady, owing to the progressive taxation.

After the consideration, the Ombudsman deemed that Section 40 (2)-(8), Section 57 Ter and Section 57 Quinque of Revenue Code have the question of constitutionality because of their essence regarded the marital status discrimination. It is for the reason that when compared with the single lady who has assessable income from other sources prescribed in Section 40 (2)-(8), the married woman shall be treated in a different way. In particular, these provisions of law is considered an unjust discrimination to the couple where the wife has assessable income from Liberal Professions namely Laws, Arts of Healing, Engineering, Architecture, Accounting, Fine Arts and other Liberal Professions prescribed by a Royal Decree, because. Although the Constitution court decision No. 48/2545 deliberating that Section 57 Ter and Section Quinque is not contrary to the Constitution B.E. 2540 (1997) shall be deemed final and binding on all of State organs in accordance with Paragraph five of Section 216 of the Constitution B.E. 2550 (2007), Ombudsman was of the opinion that this case contains different legal issue and further issues of fact for the Constitution court to make a decision. The Ombudsman decided to submit this case with its opinions to the Constitutional court for deliberation. The Constitutional court accepted this case for trial and adjudication.

Case 2

The matter of the constitutionality of the nomination of Selection Committee of the Bank of Thailand Board and the nomination of the Bank of Thailand Board

Summary

The complainant realised that nomination of Selection Committee of the Bank of Thailand Board (called herein the BOT Board) made by Finance Minister was illegal on the grounds that the selected Board had some prohibited characteristics – all of them had benefit or interest in contravention to the duties subject to Section 28/1 of the Bank of Thailand Act B.E. 2485 (1942) as amended by the Bank of Thailand Act (No. 4) B.E. 2551 (2008).

In this regards, having reviewed the whole of facts and related laws, the Ombudsman made the following recommendations.

1. In case of whether or not the nomination of Selection Committee of the Bank of Thailand Board was illegal, Section 28/1 of the Bank of Thailand Act B.E. 2485 (1942) provides that in case of appointment of the Chairman and experts in the BOT Board, Finance Minister shall nominate the suitable persons who shall have the following qualifications and prohibitions, as member of the Selection Committee.

Having held previous positions of Secretary of Ministry of Finance, the Secretary of the Ministry of Commerce, the Secretary of the Ministry of Industry, the Director of the Bureau of Budget, the Secretary of the Council of State, the Secretary of the Office of the National Economic and Social Development, the Director of Fiscal Policy Office, the Governor of the BOT or the Secretary of the Securities and Exchange Commission;



Not being a holder of political position and not having personal benefits or interest in contravention to duties as provided by this BOT Act at the time of the appointment and during their performance of duties.

Section 28/1 of the Bank of Thailand Act B.E. 2485 (1942) states that the Selection Committee shall have power and duties not only to select the persons who are deemed to be appointed as the Chairman and experts of the BOT Board and submit the name list of selected persons to the Finance Minister for consideration and appointment, but also to determine regulations on the meeting of the Selection Committee, the nomination, the proposition of name list, the consideration and the selection of the experts to be a Chairman or members of the BOT Board. Consequently, to complete their performance of duties prescribed by the BOT Act, the Selection Committee shall appoint the suitable persons as Chairman or experts in the BOT Board.



With regards to the prohibitions of the Selection Committee, it states “not having personal benefit or interest in contravention to the duties imposed by this Act”, Section 7 of the Bank of Thailand Act B.E. 2485 (1942) provides that the BOT’s objectives are to carry on such tasks as pertain to central banking in order to maintain monetary stability and financial institution system stability and payment systems stability, whilst Section 17 of this Act provides that for the implementation of the BOT’s authority, there shall be the Bank of Thailand Board or the BOT Board functioning control over the management of BOT, the Monetary Policy Board functioning in formulating and monitoring the implementation of monetary policies of the country, the Financial Institutions Policy Board functioning formulating and monitoring the implementation of the supervision and examination of financial institutions, and the Payment System Board functioning in formulating and monitoring the implementation of policies on payment systems that are under the supervision of the BOT and on clearing system among financial institutions. Consequently, in case where the members of the Selection Committee, who are responsible for selecting the eligible persons to be appointed as the Chairman and experts in the BOT Board, held a position in the financial institution and had power and duties to determine requirements of the selection and select the most suitable persons to be member of the BOT Board, such members may select the persons who are beneficial for their own financial institution to be expert of the BOT Board instead, although it is provided the BOT Board shall be competent to issue regulations on the selection of members of the BOT Board and appoint the expert of the BOT Board from those who are holder of a position in the financial institution under the supervision of the BOT. In this connection, the selected experts will be able to choose the members of the Financial Institutions Policy Board who may perform their duties in a dependent and impartial manner.

It was shown in Ministry of Finance’s Order No. 769/2551 on the Appointment of the Selection Committee in accordance with the Bank of Thailand Act B.E. 2485



(1942) as amended by the Bank of Thailand Act (No. 4) B.E. 2551 (2008) that at the time of appointment and during performance of duties, three of seven members of the Selection Committee were holders of position in financial institutions, so called in Section 28/1 "interested persons". As a result, the appointment of Selection Committee made by the Financial Minister, subject to the Bank of Thailand Act B.E. 2485 (1942) as amended by the Bank of Thailand Act (No. 4) B.E. 2551 (2008), proved to be illegal and should be transmitted to all related persons for further actions as follows:

1) To request the Financial Minister to re-elect the Selection Committee who will perform their duties to appoint the suitable persons as the Chairman and experts of the BOT Board as provided by the BOT Act and re-appoint the Chairman and experts in the BOT Board;

2) To request the Prime Minister to suspend such illegal appointment of the BOT Board Chairman;

3) To inform His Majesty's Principal Private Secretary of the Ombudsman's consideration on complaint regarding the appointment of Chairman and the fact that name list was being tendered to His Majesty the King for the appointment.

1. Regarding whether or not the case where the appointment of BOT Members are illegal, the selection of suitable persons to be appointed as Chairman and experts of the BOT Board made by the Selection Commission was considered illegal. Thus the Ombudsman's recommendations were informed to the Minister of Finance for modifications according to legal proceedings; there was no reason why this issue must be decided.

The Cabinet issued the resolution dated 28th October 2008 to acknowledge the said recommendations and decision of the Ombudsman, asked the Office His Majesty's Principal Private Secretary to return the proposed name list for appointment and ordered the Ministry of Finance to abide by the Ombudsman's decision and proceed with related procedure.

Case 3

The misapplication of expropriated land by the Royal Thai Air Force

Summary

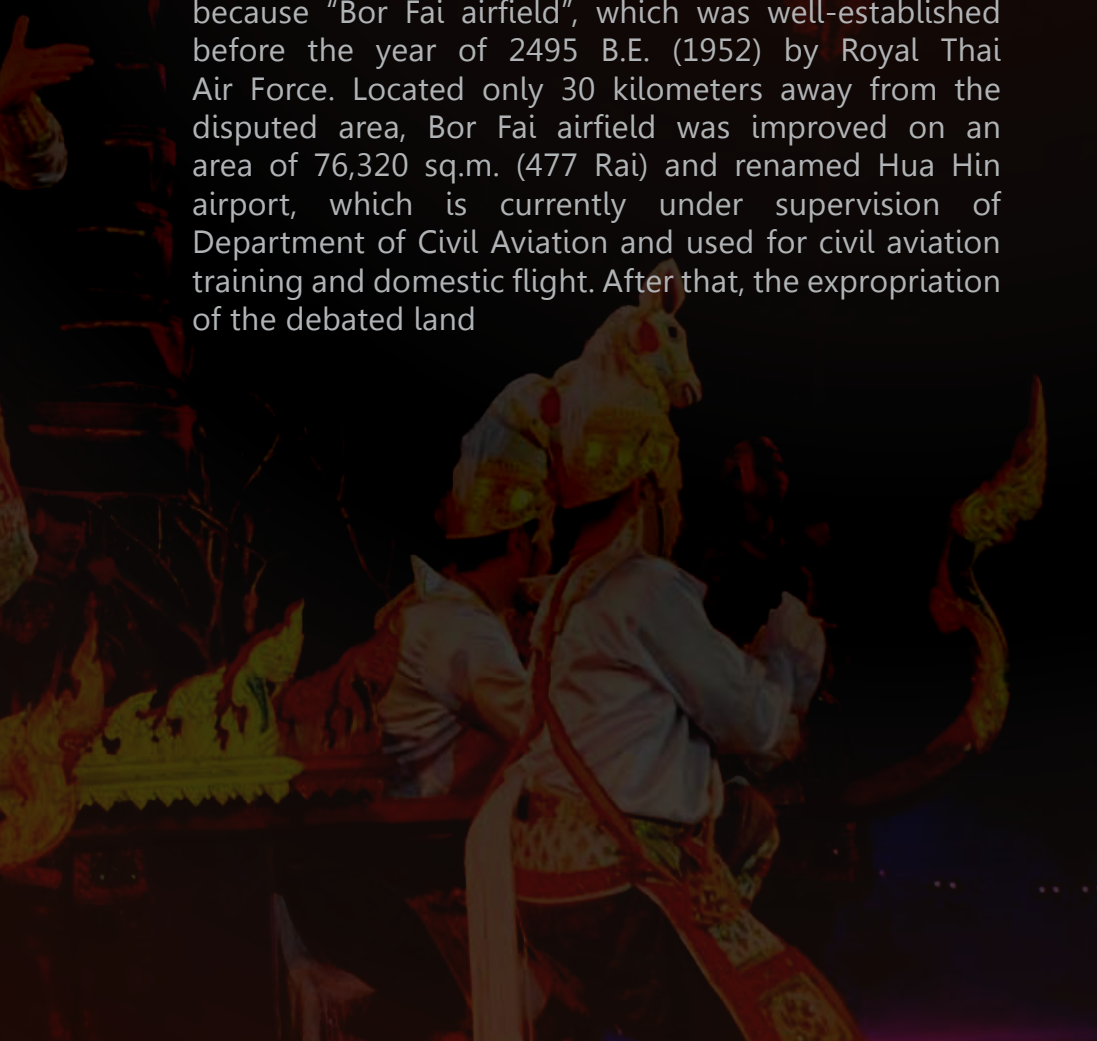
In the year of 2496 B.E. (1953), the government by the Royal Thai Air Force expropriated land of the complainant and his neighbors for the purpose of airfield enlargement in order to support the traffic of large-sized aircrafts. 54 years later, in the year of 2550 B.E. (2007) the land has been not used as claimed by the Air Force at the time of expropriation. Besides, lots of constructions such as market, Public Park, and municipal standard-sized stadium and the large number of residences and shops of people migrating from other area were found in the mentioned land as well. It was also found that the Royal Thai Air Force offered an opportunity to the former landowners and heirs to repossess the land by rental with charge collection referring to the rate, set by the Treasury Department under Ministry of Finance. In the complainant's opinion, the Royal Thai Air Force did not proceed according to the objective of expropriation, so the land should be given back to the landowners or heirs.

The Royal Thai Air Force explained that the expropriation was in compliance with Section 29 of the Constitution of Kingdom of Thailand 2475 B.E. (1932) as amended in 2495 B.E. (1952) and Section 5 of the Act for Expropriation of Immovable Property 2477 B.E. (1934) as amended until 2495 B.E. (1952), so the debated land legally belongs to the government. The rights of the landowners or heirs to reclaim the ownership on expropriated land depend on the authorization by the law which enforced at the time of expropriation. It was found that Section 32 of the Act for Expropriation of Immovable Property 2477 B.E. (1934) authorized the rights to reclaim only in case of expropriation for



the purpose of mining and infrastructures but not for utilities of the national defense. The Royal Thai Air Force also claimed that the preserved land has been necessary for supporting the contingent military operations in the future.

From on-site investigation, the Ombudsman found that the Royal Thai Air Force had allocated pieces of land for people to hire for their farming and the area of 64,000 sq.m. (400 Rai) had been for agricultural cooperatives to build the market. The background document showed that the debated land was not selected for airfield construction from the beginning because "Bor Fai airfield", which was well-established before the year of 2495 B.E. (1952) by Royal Thai Air Force. Located only 30 kilometers away from the disputed area, Bor Fai airfield was improved on an area of 76,320 sq.m. (477 Rai) and renamed Hua Hin airport, which is currently under supervision of Department of Civil Aviation and used for civil aviation training and domestic flight. After that, the expropriation of the debated land



The Ombudsman decided that before the expropriation, Royal Thai Air Force had developed and already used of the nearby Bor Fai airfield. In addition, considering the expropriation process, the host government has to submit the proposed expropriation Act or Royal Decree and report objectives and necessities to the Parliament for approval. When Royal Thai Air Force, on behalf of the government, attained, the expropriated land have to be used without hesitation for the approved objectives – airfield construction for large-scaled aircrafts because the Parliament endorsed the expropriation Act with the emphasis of reported objectives. It was; however, proved that the land had been not utilized for the stated objectives of expropriation for over 50 years until the time of petition; moreover the agency allocated land for rental and other interests. This means the agency did not only comply with the intention of the Parliament but also infringed on the private's right of ownership. The Ombudsman; accordingly, recommended Royal Thai Air Force in collaboration with Department of Treasury abided by Ministerial Regulation to hand back the land to former landowners or their heir. Later on, The Ombudsman was informed that Royal Thai Air Force complied with the recommendation by giving the land to Department of Treasury to give back to the complainant and the grievant people.



Case 4

Improper traffic law enforcement on drivers whose motorcycles was without vehicles registration plates during the pending time for new plate as proposed

Summary

The complainant lost the vehicle registration plate while riding his motorcycle. The complainant had notified the police and then informed the leasing company to proceed for a new plate. During the awaiting time for a new plate, the complainant rode his motorcycle without the plate attached, so he was charged with violating the traffic law by the policeman. Even though the complainant tried to explain the reason, the policeman ignored his explanation, overlooked his evidential documents, grasped a driving license, and issued a ticket. The complainant has to pay fine to get his driving license back. The complainant considered that the performance of the police caused injustice, so he lodged his complaint to the Ombudsman.

The Ombudsman assigned his staff to enquire the fact and explain Section 7 of Land Traffic Act B.E. 2522 (1979) which prohibits cars and motorcycles without vehicles registration plates to be used on the road. Thus, driving his vehicle without plate on the road, the complainant was charged with violating the mentioned Act. Accordingly, the policeman had lawfully performed his duty to issue a ticket to fine the complainant. After given explanation, the complainant had a good understanding and decided to discontinue his complaint and pay the fine.

However, the Ombudsman considered the fact from the complaint and found that the reason that the complainant did not attach the vehicle registration plate with his motorcycle when in used is because

of its loss. He had submitted the request for a new plate in case of loss at the transportation office at which the motorcycle was registered, but, during the short pending time, he was charged and fined by the police as abovementioned. The Ombudsman was of his opinion that the traffic law enforcement performed by some policemen may unjustly caused burden to the drivers who are without intention to violate the law. For the sake of the Royal Thai Police to efficiently enforce the traffic law, the Ombudsman recommended that the Royal Thai Police review the guideline to enforce the traffic law to the drivers, especially whom accidentally had lost their plates and submitted their request for new plates to the agency. The traffic policemen may exercise proper discretion in this circumstance by asking the drivers to present the evidential documents to prove that their new plate application is under the process.

Later on, the Ombudsman received the letter of Royal Thai Police dated June 1, 2010 which can be concluded that Office of Legal Affairs of the Royal Thai Police had introduced that practice and also addressed the internal circular letter to all the police agencies to comply with the recommendation of the ombudsman.



Case 5

Unlawful consideration of a government agency on renewal of a sand suction license

Summary

A complainant filed an application to P. branch of C. Land Office in order to renew his sand suction license for 2 plots of land. After the Provincial Sand Suction Operation Permit Sub-committee approved the application, P. branch of C. Land Office sent a document request letter for renewal procedure. Later, the Land Office informed the complainant to make further coordination with other agencies in order to hold a public hearing within the community. This had led to a suspicion in official conduct against law and regulations. Investigation Outcome and Ombudsman's Consideration:

Having received a letter of clarification from the Governor's Office together with other related documents, the Ombudsman concluded that:

The complainant had been granted the sand suction license on two banks of a river. He filed an application for the license renewal on both banks which were divided by the river into in P. District and M. District. The Provincial Sand Suction Operation Permit Sub-committee came to the decision that "The applicant shall seek consent from the concerned Councils of the Local Administration." and "As the requested river area was situated between districts or municipals, the Land Office that receives the application shall conduct a field investigation survey for verification, make an official announcement in the area concerned, and seek approval of the responsible local administration councils for further considerations." The Governor also requested the Land Office, as the secretary to the Sub-committee, to inform the district to initiate a public hearing.

Results of the public hearing would be brought into consideration on renewing and granting sand suction license to the complainant. As a result, the complainant lodged a complaint to the Governor, the Minister of Interior, the Prime Minister, and the Ombudsman and to seek fairness and justice on the issue.

The Ombudsman, after reviewing the letter of clarification from the Governor's Office and other related evidences and documents, was on the opinion that:

Under Article 9 of the Land Code, sand suction operation permitting and licensing is an order of a government officer, in this case a governor appointed by the Minister of Interior, who is, according to Article 39, eligible to impose any necessary requirement to fulfill the objective of the law. Such order shall be considered the use of authorized powers in compliance with the law, i.e. use of powers to change, to transfer, to prohibit, or to suspend an activity in which the use might affect status of rights or duties of an individual. However, Section 27 of the general provision of the Ministry of Interior on Sand Suction Operation Permits B.E. 2546 (2003) stipulates a provision on permit and license conditions for a sand suction activity and states that additional conditions shall be added or altered in accordance with local circumstances of an area if the Sub-committee approves of it.

It was evident that the Governor, without consent from the Sub-committee, had determined the conditions for the complainant to seek further coordination with M. district or P. District in order to hold a public hearing. Even if the Governor's Office later obtained an approval from the Sub-committee to hold the public hearing, the resolution of the Sub-committee still could not be applied with the case of the complainant. It was because when the sub-committee approved the renewal of the sand suction license, there had not been any condition or disapproval made during the time. In this case,



the Governor's decision not to process the license renewal was considered a failure to perform duties in compliance with Section 27 of the general provision of the Ministry of Interior on the Sand Suction Operation Permits B.E. 2546 (2003).

The Ombudsman requested the Governor's Office to perform duties and to review the consideration on the renewal of the sand suction license of the complainant in compliance with Section 27 of the general provision of the Ministry of Interior on the Sand Suction Operation Permits B.E. 2546 (2003). The Governor's Office afterward informed to the Ombudsman that the license was eventually granted to the complainant.



Case 6

The matter regarding the constitutionality of the Private School Act B.E. 2550 (2007)

Summary

The complainant, entitled to receive a license to establish a private school in accordance with the Private School Act B.E. 2497 (1954), lodged a complaint with the Ombudsman for consideration on the constitutionality of Section 159, Section 45 (3), Section 33, Section 34 and Section 6 of the Private School Act B.E. 2550 (2007). After having reviewed the facts and related provisions, the Ombudsman made the following recommendations:

1. Regarding Section 159 of the Private School Act B.E. 2550 (2007) which provides that any school established existing before the effective date of the Private School Act B.E. 2550 (2007) shall be a juristic person and a licensee who shall have the right to operate over the land and properties to be used in the business of the formal school, the question was whether or not this section was in conformity with Section 3 paragraph 2, Section 29 paragraph 1, Section 41, Section 43 and Section 49 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Section 159 of the Private School Act B.E. 2550 (2007) stipulates that the rights of business operation enjoyed by any private schools established existing before the effective date of the Private School Act B.E. 2550 (2007) shall become a measure allowing such private schools be integrated into the education management system similar to any private schools established under the Private School Act B.E. 2550 (2007).

Moreover, in the case where it is provided that a licensee shall be able to transfer land, assets and other properties to the school to be used sufficiently for the education operation as prescribed by minimum requirements for



available curriculum and as authorized by the list of assets made by the licensee on the approval of the Executive Board within a year upon the effective date of this Act, the Private School Act B.E. 2550 (2007) provides that the formal schools shall be "juristic person" having ownership and right of possession of their assets similar to natural person. Thus, the provision of Section 159 that states that any private schools established before the effective date of this Act shall be a juristic person and it shall be deemed that the Licensee shall transfer or render assets to the school, become a measure relevant to position of being "juristic person" of private school as prescribed by law.

Meanwhile, the fact that any private schools established existing before the effective date of the Private School Act B.E. 2550 (2007) shall be juristic person and it shall be deemed that the Licensee shall be operating the land and assets relating to the educational management of the formal school, is provided by the act, which comply with Section 29, Section 41 and Section 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that it is necessary and it does not affect the matter of the rights. Accordingly, Section 159 of the Private School Act B.E. 2550 (2007) was not contrary to or inconsistent with Section 29, 41 and 43 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

2. Regarding this Act provides that the profit obtained from the operation of formal school affairs of not more than twenty percentage shall be distributed to the Licensee under Section 45 (3) of the Private School Act B.E. 2550 (2007), the question was whether or not this section was in conformity with Section 80 (3) (4) and Section 49 paragraph 3 of the Constitution and contrary to Section 31 and Section 43 of the National Education Act B.E. 2542 (1999) and Amendments B.E. 2545 (2002);

In response, the Private School Act B.E. 2550 (2007) is promulgated to promote and protect the educational administration and management of private schools.

It provides that all annual profit obtained from the administration of affairs of the formal schools shall be transferred to various welfare as prescribed by Section 45 of the Private School Act B.E. 2550 (2007) to promote and protect the educational administration and management of private schools in accordance with required standard. Similarly, money and assets are needed for the educational administration and management of private schools. Therefore, the school operation profit shall be distributed to different funds, including Formal School Promotion Fund, Reserve Fund or other funds, instead of the Licensee, to be used for further management and development of private schools as well as ensure the school administration.

Thus, the said provision was not contrary to or inconsistent with Section 49 paragraph 3 and Section 80 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the spirit of the National Education Act.

3. In the case where Section 33 and Section 30 of the Private School Act B.E. 2550 (2007) provides that the Private Education Promotion Commission and the Ministry of Education are entrusted to order the formal schools to reduce the tuition fees or other fees, whether or not the provision was contrary to and inconsistent with Section 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

On account of the private educational administration and management being of the public interest, if any private schools issue the prescription of tuition fees or other fees to seek unreasonably excessive profit, it will poses an unreasonably excessive burden on the public. Thus, the government who has power and duties to provide public services shall be able to issue a law to empower the Private Education Commission or the Ministry of Education as the case may be, to order the reduction of such tuition fees or other fees as it thinks fit and it must not affect the matter of the rights. The said provision was not



of the issue inconsistent with Section 29 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

4. In the case where the Minister of Education, with the advice of the Private Education Promotion Commission may announce any school to be exempted from compliance with Section 6 of this Act with regards to any matters, whether or not it was contrary to and inconsistent with Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Although this Section provides that the Minister of Education, with the advice of the Private Education Promotion Commission, may announce any school to be exempted from compliance with Section 6 of this Act with regards to any matters, the exercise of this power shall comply with Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). There shall not be an unfair practice. Thus, the question whether or not such announcement of the Minister of Education is contrary to and inconsistent with the Constitution shall be considered with the support of the matter of facts of each case.

The said issue was proved not to be contrary to and inconsistent with the Constitution of the Kingdom of Thailand B.E. 2550 (2007). However, the private schools



management and administration must continue to be carried out in an appropriate manner especially when the private schools established existing before the effective date of this Act were being integrated and adapted to the Private School Act B.E. 2550 (2007). Thus, the Ombudsman decided to transmit this complaint to the Education Minister for further consideration as the case may be.

According to the report of Ministry of Education submitted subsequently to the Office of the Ombudsman, it stated that at the meeting of the Education Ministry Commission to solve problems arisen from operation relevant to the Private School Act B.E. 2550 (2007) in which there shall be some modifications approved exclusive of Section 6, Section 33 and Section 34. In this regards, the Ministry submitted an official letter to the Secretary-General of The Cabinet for consideration on amendment of the Private School Act (No...) B.E...., that the Cabinet approved in principle on 17th March 2009.



Case 7

Local Administration unjustly terminated employment contract of a temporary government employee

Summary

The complainant was a temporary government employee in the position of general administrator of a Municipality with an employment contract valid from 1 October 2007 to 30 September 2008 and was assigned to station at a local cultural centre with responsibilities to welcome and provide information to visitors, to publicise details and information of the local cultural centre, and to administer expenditures of the centre's utilities.

On 17 September 2008, the Municipality had conducted reports on performance assessment of 30 temporary government employees including the complainant which the complainant obtained a good result. Performance Assessment Committees afterward agreed to extend the employment contract term. However, the complainant later received a letter of termination of employment contract from the Office of the Municipal Clerk on 2 October 2008, in which the Mayor did not indicate the ground of the termination. The complainant, after signing an acknowledgement of the letter, lodged an appeal to the Mayor to request reasons and revisal of the termination of the contract.

On 17 October 2008, the complainant received results of the appealing letter which indicated end of the contract period on the ground of the contract termination. The complainant decided to lodge another complaint to the Ombudsman. After the Ombudsman's fact-finding examination, it was revealed that the complainant passed the best performance assessment result when comparing to other temporary government employees of the local cultural centre. However, the complainant became

the only one among other temporary government employees whose employment contract was terminated even though the Performance Assessment Committees had already approved the extension of the employment contract of the complainant.

The Office of the Ombudsman, by receiving the letter of clarification including other evidence and related documents from the Governor's Office, concluded that:

The Governor's Office had received the same letter of appeal as the Ombudsman and had referred the case to the District Office for further fact-finding investigation. Owing to the examination of the case, the Municipality's termination of the employment contract was in compliance with Section 39 and 54 of the declaration of the Provincial Administration Worker Committee on General Standards of Temporary Government Employees which indicated the ground of the termination as end of the contract period. Plus, the public relations duties carried by the complainant were not relevant to his actual job description. The Municipality, at the time, was also planning to increase a temporary work force in the position of public relations assistant in order to fill in the complainant's position. The declaration of the Provincial Administration Employee Committee on General Standards of Temporary Government Employees also states that performance assessment result shall be utilised as an instrument for temporary employee management and further consideration of such matters as salary raising, contract termination, and other issues that the Municipality thinks fit. The conducted assessment was claimed as an annual performance assessment.

The Governor's Office, therefore, considered the case as a permanent leave of a temporary government employee due to end of the contract period as stated in Section 54(1) of the aforementioned declaration as well as irrelevancy between the jobs performed



and the position of the complainant, regardless of his performance assessment result. The Governor's Office ceased the case and informed the complainant that the discretion of the Municipality was in compliance with the declaration of the Provincial Administration Employee Committee on General Standards of Temporary Government Employees.

Having investigated the facts, The Ombudsman revealed that the clarification of the Governor's Office was contrary to the matters of law. Section 34 of the declaration of the Provincial Administration Employee Committee on General Standards of Temporary Government Employees states that Municipality shall conduct performance assessment together with following factors: Clause (3) states that performance assessment of a temporary government employee shall be conducted in order to extend employment contract; Section 40 stipulates that there shall be performance assessment of a temporary government employee twice a year during 1 October – 31 March and 1 April – 30 September; then, the Assessment Oversight Committee shall be appointed by the Mayor to scrutinise the performance assessment to encourage a fair discretion of a superior or an assessor prior to the submission of performance assessment result to the Mayor. In this case, it was evident that the performance assessment of the complainant should have been conducted with the purpose to extend the employment contract, not an annual performance assessment as claimed.

The decree of the Department of the Local Administration also indicates that an employment contract of a temporary government employee shall be made in a fair manner. When a temporary government employee carries out his/her duties until the termination of the contract and the extension of the contract term will be made for the first time, the Department of the Local Administration shall take the one-year performance assessment result into consideration.

If a temporary employee obtains good result, his/her employment contract shall be extended according to the Section 6 of the Performance Assessment Criteria and Conditions on a Temporary Government Employee.

It was also found that the Municipality had terminated the employment contract of the complainant on account of the irrelevancy between the job performed and the complainant's position, but decided to transfer one of the general employees from Technique Division to Education Division instead. From the point of view of the Ombudsman, the complainant should have been treated as fairly and equally as the transferred general employee, since the Municipality's decisions on terminating the complainant's employment contract and transferring another general employee to a vacant position in a different field were accordingly unfair and improper. Nevertheless, the Mayor's decision on not extending the employment contract period of the complainant was considered as a failure to perform duties as stated in the declaration of the Provincial Administration Worker Committee on General Standards of Temporary Government Employees as well as an omission to perform duties as stipulated in the Department of the Local Administration which caused injuries and damage of the complainant.

The Ombudsman, as a consequence, made the recommendations to Governor's Office to inform the Chief District Officer, who assists in supervising a municipal district in the compliance with the Municipal Act B.E. 2496 (Amendment Version (12th Issue) B.E. 2546 (2003), to promptly redress grievance of the complainant and report results of its performance to the Ombudsman.

Later, the Ombudsman received a letter from the Governor's Office indicating that the Municipality had resolved the grievance by sending a letter to the complainant to resume his position as general administrator of the local cultural centre.



Case 8

Police officers executed a search beyond the terms of a search warrant issued by the court and held a press conference, which was considered as violation of the rights of the complainant

Summary

On 17th October 2008, a search warrant was issued by the court to allow the Police Commissioner of the Provincial Police of the Region to conduct a search at the dwelling of the complainant for the sought and seizure of handguns 3.2 mm. The following day, at 5.30 a.m., 60 police officers encircled and searched the house of the complainant, which allowed them to discover and seize firearms and bullets. It was of an execution beyond the listed contents of search warrant. It was found that all seized handguns in the possession of the complainant and the security guard officers had been registered and granted by a mandatory license of tenancy. Consequently, such search and seizure made by police officers were considered unlawful. On the other hand, police officers held a press conference on seizure of such weapon where the complainant was obliged to attend as an accused and which was broadcasted throughout the country. The complainant found this execution as a violation of rights that caused a real and violent damage to his reputation and occupation.

After having reviewed the facts, the Office of the Ombudsman delivered an official letter to Police Commissioner of the Provincial Police of the Region to ask for justifications on the matters of the complaint. In response, the Provincial Police of the Region's letter justified that the Superintendent of Provincial Police Nor. was entitled to execute the search warrant himself by virtue of the law. However, the complainant had already submitted a letter of complaint to Police

Committee of the Parliament and Committee of Law, Justice and Human Rights. Police Commissioner then gave oral statement on this matter toward the committees. In relation to holding a press conference, in response to the Ombudsman's request for additional explanations, Police Commissioner reasoned that he was required to abide by the Royal Thai Police Order No. 855/B.E. 2548 (2005) dated 16th November 2005 indicating that the objective of the press conference was to disseminate the performance of police duties on stopping criminal offenses. The press conference was also believed to help police image promoting in a better way and provide trust in performance of police duties. Nevertheless, in case of where the picture of the complainant was nation-widely broadcasted to public, it was caused by the record and presentation of mass media not by the press conference held by police officers.

Pursuant to the review of Ombudsman on the whole of provisions related to seizure of property under the term of search warrant as well as the aforementioned Royal Thai Police Order, it is apparent that Section 132 (2) of the Criminal Procedure Code provides that an officer shall have the power to search for any article whose possession constitutes an offence, or which has been obtained through, or used or suspected of having been used in, the commission of an offence, or which is likely to be used as evidence; prescribed that the provisions of the present Code governing search must be abided by. Meanwhile, in case of holding the press conference, the Royal Thai Police issued the Royal Thai Police Order No. 465/B.E. 2550 (2007) dated 15th August 2007 to repeal some extents of the Royal Thai Police Order No. 855/B.E. 2548 (2005) dated 16th November 2005 that were replaced by the provisions which prescribes that it is prohibited to allow the press to take photograph, interview or present any matters of the following persons:

1. The accused under control/custody of the police both inside and outside the police station;



2. The victim of any crime or any torture, brutal act or inhumane means or any act affecting reputation and human dignity, except for the case where the investigator executes for the benefit of case with the approval of the accused, victim or injured person.

Obviously, the fact that police officers of Provincial Police Nor. had the press conference held was contrary to the Royal Thai Police Order No. 465/B.E. 2550 (2007) dated 15th November 2007 on the grounds that the picture of the complainant who was obliged to attend as an accused was disclosed and published in several newspapers.

After having examining the facts, the evidences and the justifications made by the authorities concerned, it was required to focus on two points for consideration. Firstly, in case of whether or not the seizure of objects beyond the term of the search warrant shall be executed, in accordance with the Criminal Procedure Code, an officer shall have the power to conduct a search and seizure of any article which is believed to be used in the commission of an offense and which may be significant as evidence beyond the terms of the search directed by the court.

Secondly, there must be a consideration on whether or not the press conference on the seizure of weapons where the complainant was forced to attend as an accused was of a violation of people rights. In accordance with the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), it provides that a person's family rights, dignity and reputation shall be protected; the assertion or circulation of a statement or picture in any manner whatsoever to the public, which violates or affects a person's family rights, dignity, reputation or the right of privacy, shall be made except for the case which is beneficial to the public.

As a consequence, the fact that the Police Commissioner of the Provincial Police of the Region and the Superintendent of Provincial Police Nor. did not forbid the press to record the picture of the complainant in the scene where the investigation of weapons were being executed as shown in the news, and the fact that the complainant was judged thereof promptly by the public as an accused, were of the widespread assertion or circulation of a statement or picture, which violates or affects a person's family rights, dignity, reputation or the right of privacy. Such execution was, thus, of an action inconsistent with the principle of fundamental rights of people as provided by the provisions of the Constitution.

As regards, the Ombudsman requested the Royal Thai Police to review and examine the defected performance of mandatory duties of police officers that caused the violation of people rights and the breach of the Royal Thai Police Order.



Case 9

State officials' invasion of the land where crops were cultivated, which unjustly caused injuries to the complainant

Summary

Governor, District Chief Officer and Royal Forest Department's officials intruded all together to cut down the number of rubber trees and palms throughout the living land of 8 residents, some of whom were managed to harvest their crops, thus such action caused injuries to them.

After having reviewed the facts indicated in the complaint and the mutual meeting report between all concerned parties namely officials, complainant and villagers, the facts of the complaint were summarized as follows.

1. In case where State officials called the Administration intruded all together to demolish plants and crops on the land situated in the area of the national reserved forest which is of wildlife preservation area as prescribed by the Royal Decree B.E. 2537 (1994), and was occupied by the complainant upon the date of the declaration of the Wildlife Reserved Area and called "Wildlife Sanctuary", it was of an illegal commit as provided by the National Reserved Forest Act, B.E. 2507 (1964). Section 14 of the present Act prescribes "Within the national reserved forest, no person shall hold or possess land, exploit and inhabit land, make a construction, destruct or burn forest, do logging, collect forest product, or do any matter what so ever with propose to harm or decay a condition of national reserved forest." As a result, officials of the Royal Forest Department and the Administration sued the complainant and his collaborates in 2006. Subsequently, before the destruction of the demolishment of crops, on the 15th March 2008, the Administration made a written order to a person who violates the provisions of this act

to demolish, amend or do any manner whatsoever to any object which harms or decays a condition of national reserved forest within a prescribed period in accordance with Section 25 (2) of the National Reserved Forest Act, B.E. 2507 (1964). However, when the complainant and his collaborates did not follow the order within the prescribed period of time, the officers performed duties in accordance with Section 25(3) of the National Reserved Forest Act, B.E. 2507 (1964). Evidently, the said complaint was related to the performance of duties of officers in compliance with procedures and regulations. The Ombudsman, thus, had the consideration on this complaint terminated.

In spite of the fact that the demolishment of crops was of performance of duties and legal procedure, the Cabinet Resolutions dated 30th June 1998 and 24th April 1997 determined the policy guideline of the government about the solution of earning people who resided in the forest area. The intention of the government policy was to extend the living license for villagers in the forest area until the examination on the area occupation would be finished. There was a review of the fact on the possession of land where rubber trees were planted for livelihood to be used to find solution on earning of people living in the forest reserve area. In this case, officials were able to exercise their discretionary power causing least injuries to the complainant and people by destroying only any object which harms or decay condition of national reserved forest. However, all destroyed rubber trees and palms would have become forestry condition if they had been still growing. At that moment, there should be performance of duties conform to the Cabinet Resolutions dated 30th June 1998 and 24th April 1997, which provided that there should be a data survey on cultivating rubber trees in the area of national reserved forest where the complainant and the residents are given help and funded by the Sufficiency Economy Project. As a consequence, the Ombudsman recommended that the Department of National Parks, Wildlife and



Plant Conservation and the province should discuss altogether to help the complainant and his/her collaborates by contacting other agencies which processes an aid project of agriculture occupation promotion as well as provide them with appropriate land for agriculture.

2. According to the verification of land in the wildlife preservation area where people exploit and inhabit to find related information for consideration on problems of the exploitation of residents. It was found that there were totally 422 occupants of forest reserved area. As a result a plan of occupation of land for people to locate such forest map was made.

The Cabinet Resolutions on solution of forest land utilization were as below.

2.1 The Cabinet Resolution dated 30th June 1998 approved in principle the measures and solutions for forest land occupation following to the agreement of the Commission of National Forest Policy at the meeting 3/1998 on 10th June 1998.

2.2 Later on, on 24th April 2007, the Cabinet issued the resolution dated 30th June 1998 on the title of the solutions of land problem in the forest area, that must be implemented within the delay of 2 years, including survey of data on cultivating rubber trees of people in the area of forest reserve area. That was to annul forest reserve area to be determined as national forest reserved area. This would allow residents who occupied initially such land a priori the declaration of forest reserved area in accordance with the Cabinet resolution dated 30th June 1998 to execute and inhabit as provided by the National Reserved Forest Act, B.2507 (1964) as well as to help subsequent inhabitants to have the right to occupy such land pursuant to Community Sufficiency Economy Project.

The above-mentioned resolutions showed that the government set out the policy to solve land occupation problem of the inhabitants in the forest area including

reserved forest area mandatory reserved forest, reserved forest prescribed by the Cabinet resolution as well as other areas reserved for forestry. Relevantly, there were measures and guidelines on management of land and forest resources and forest protection which provided that deteriorated forest area must be examined appropriately for agriculture and economy. These areas were transferred Agricultural Land Reform Office to distribute to people in accordance with the government policy. In relation to mandatory reserved forest and reserved forest as provided by the Cabinet's resolution, there must be examination of evidence of land occupation to prove the trace of land utilization and execution that should have left before or after the day of first declaration of mandatory reserved forest area. Also the limitation of living area was made to defend against expansion of area. During the examination on the land possession, inhabitants were allowed to continue their living until the examination would be finished. Moreover, on 24th April 2003 the Cabinet's resolution approved the two-year implementation of the Cabinet's resolution dated 30 June 1998 to resolve land possession in the nation forest area, survey rubber treeing in the reserved forest area as well as provide help to dwellers who owned the land subsequently in accordance with sufficiency economy project. As a consequence, in case where the said complaint took place in Chor Province where a number of inhabitants occupied forest area and there were 2 groups of occupants including those who occupied before and after 30 June 1998, this area was widely touched by the occupation of forest area. In this connection, Samut Sakhon province became the pilot project to explore the possession of land in the forest area and to accomplish the solution of land possession problem following to the determined policies. Considering all above-mentioned justifications, the Ombudsman provided the concerned agencies the following recommendations.

1. It is obliged to notify Director-General of Department of National Parks, Wildlife and Plant Conservation,



Director-General the Royal Forest Department and the Governor to order the officials and the administration responsible for an offense in relation to forest law and regulations to be aware of any action which may cause the least injuries to inhabitants who occupied the forest area in accordance with the government policy on solution of forest problem.

2. As Chor Province deems to be a piloting province to solve the land problem, Director-General of Department of National Parks, Wildlife and Plant Conservation, Director-General the Royal Forest Department and the Governor altogether shall conduct a survey of landownership of inhabitants in the whole of forest area and conduct a land occupation plan to be used as beneficial information for land ownership solution.

3. It is required to notify Department of National Parks, Wildlife and Plant Conservation and Royal Forest Department in cooperation with Agricultural Land Reform Office as well as governors of all provinces to operate without delay a survey of rubber tree cultivating in the reserved forest area and examine the facts of landownership with the purpose of land solving in the forest area to achieve the goals in line with the Cabinet Resolution dated 24 April 2007

As Royal Forest Department allowed the private sector to utilise the land in the reserved forest area in accordance with Section 16 of the National Reserved Forest Act, B.E. 2507 (1964) to cultivate a great amount of rubber trees or palms. This was the reason why in case where the plantation and utilisation permission of any person is invalid and where there is not any regulation on this matter provided by Royal Forest Department, the Ministry of Natural Resources and Environment issued an order to Royal Forest Department to inform the occupying inhabitants to move from and modify such land reserved for land solution to achieve the goals in line with the government policy.

Case 10

A school in a remote area suffered from teacher shortage

Summary

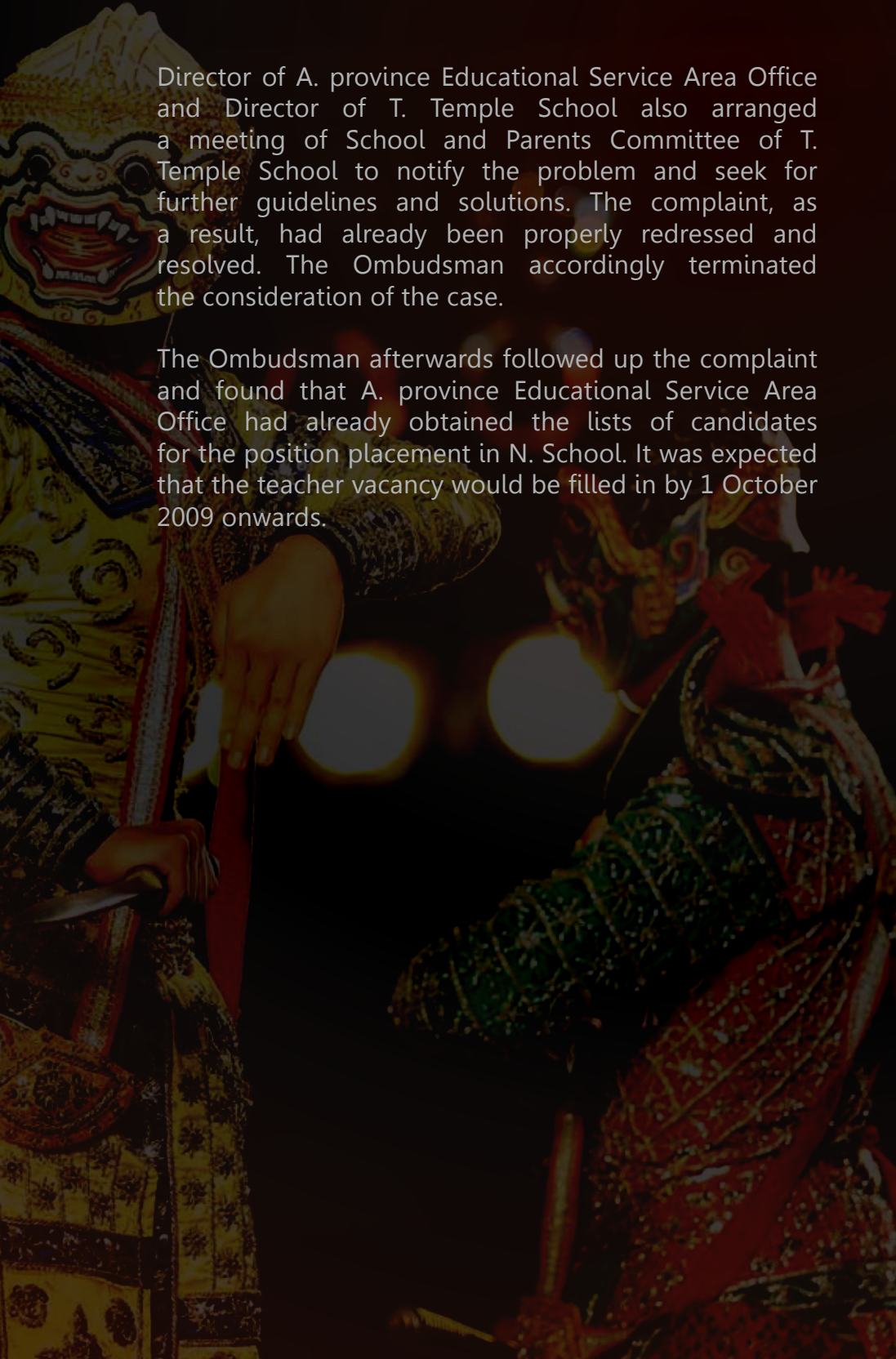
There was a complaint lodged to the Office of the Ombudsman requesting for coordination with concerned public authorities due to the shortage of teachers in N. School in A. province which was situated in a remote area where the complainant was working both as a teaching assistant for kindergartens and teacher for grade 1 – 6. The school was also in disrepair and lacked of teaching aids and facilities.

Investigation Outcome and Ombudsman's Consideration:

Through coordination for grievance redressal between the Office of the Ombudsman and the provincial Educational Service Area Office in accordance with the Cabinet resolution effective from 23 April B.E. 2545 (2002), the Ombudsman and investigators conducted a field examination for fact-finding investigation on 8 June 2009 together with executives from the Educational Service Area Office and T. Temple School. Having reviewed facts obtained, it was found that, as a sub-branch of T. Temple School, N. School had already received teaching aids and facilities. Moreover, there had also been secondment of teacher from T. Temple School to N. School since 8 June.

When found that there was not any teacher who voluntarily expressed his/her intention to be permanently transferred to N. School, the Educational Service Area Office requested an approval from Educational Service Area Sub-Committee to use lists of candidates who passed the job placement test from S. province Educational Service Area Office 3 in order to fill in the vacant position. The process; however, was still pending at the time.





Director of A. province Educational Service Area Office and Director of T. Temple School also arranged a meeting of School and Parents Committee of T. Temple School to notify the problem and seek for further guidelines and solutions. The complaint, as a result, had already been properly redressed and resolved. The Ombudsman accordingly terminated the consideration of the case.

The Ombudsman afterwards followed up the complaint and found that A. province Educational Service Area Office had already obtained the lists of candidates for the position placement in N. School. It was expected that the teacher vacancy would be filled in by 1 October 2009 onwards.



Case 11

The lack of U-turn under the Srinakkarin-Rama 9 intersection caused inconvenience to the complainant

Summary

The complainant lodged a complaint requesting for Ombudsman's consideration and coordination with the Department of Highway to construct a u-turn under the Srinakarin intersection. According to the complaint, concrete wall was set up in 2003 along Rama 9-Srinakkarin intersection that caused inconveniences to drivers residing in the vicinity from accessing their residences.

Result of Ombudsman's consideration:

The Ombudsman reviewed the facts of complaint and coordinated with the concerned authorities to seek clarification on the matter. Information provided by the Department of Highway, Bangkok revealed that partial traffic area has been consigned to the supervision of Bangkok Metropolitan Administration (BMA). The construction of u-turn as requested by the complainant therefore implied that the consigned traffic area must be revoked to the administration of the Department of Highway. Consecutively, an on-site investigation between the investigators of Ombudsman Office, representatives of related agencies, and the complainant was conducted. The engineering design of u-turn blueprint drafted by the Department of Highway was approved by all parties. The next administrative procedure was to reassign the traffic area back to Department of Highway's control.

On May 2, 2007, the Office of the Ombudsman invited representatives of responsible agencies and the



complainant to a follow-up meeting which can be summarised that the traffic area has been successfully transferred to the Department of Highway's management. The following procedure is to estimate projected figure of construction budget.

The Ombudsman decided that the concerned authorities, with their utmost cooperation, have taken remedial action to the complainant and therefore ceased the consideration of complaint. However, the recommendation was provided to the Department of Highway to accelerate its internal budgeting procedure in order that the grievance would be settled at prompt. The complainant later informed the Ombudsman that the construction was finally accomplished that greatly alleviated inconvenience of drivers living in the neighbourhood and passers-by.



Case 12

The Transport Co., Ltd. did not pay off outstanding oil debts to the private equity

Summary

A Limited Partnership (the complainant) had been trading oil with the Transport Co., Ltd. for the period of 20 years and they had been a great business partnership between each other. The Transport Co., Ltd ordered all company vehicles to fuel up at the A Limited Partnership service station only causing arrears from 1997 to 1998 in the total amount of 5,304,004.70 Baht. The A Limited Partnership then charged the incurred expenses to the Transport Co., Ltd. on September 6, 2006 because it had just found out. The Transport, Co., Ltd. had taken the matter into consideration and finally admitted the complainant on August 15, 2006 that they were actually behind in payment however the A Limited Partnership's rights of claim had been precluded by prescription, therefore they could not pay off such arrears. On the contrary, the A Limited Partnership was of the opinion that the oil purchase from 1997-1998 was conducted on daily basis until 2001 and the oil price from 1997-1998 was charged in the amount of more than 1.8 million Baht which was paid by the Transport Co., Ltd. Therefore, regardless whether the rights of claim was terminated or not, the Transport Co., Ltd. agreement to pay off oil debts from 1999-2001 would interrupt the period of prescription and restart the new prescription for another 10 years, not just 2 years as notified by the Transport Co., Ltd. Thus, it was deemed that partial payment would enable the extension of prescription for another 10 years. However, the A Limited Partnership requested the Transport, Co., Ltd. to pay outstanding debts but they took more than 4 years for consideration



until there was a resolution on August 15, 2006 to payment on the grounds of prescription.

The result of the Ombudsman's consideration: The Office of the Ombudsman Thailand issued a letter to the Permanent Secretary of the Ministry of Transport and acting Managing Director of the Transport Co., Ltd. inviting them to confer about this case on March 19, 2007 at the Office of the Ombudsman. The result of the meeting concluded that the Transport Co., Ltd. accepted existing debts and was ready to pay the total amount of arrears but there was no payment channel. In addition, the Office of the Auditor General of a clear opinion that such debts were precluded by prescription and if the Transport Co., Ltd. paid off this amount, there would be subsequent audit problems with Office of the Auditor General anyway. The Company, therefore, suggested the A Limited Partnership to file a lawsuit on the matter as to be the grounds of requiring the Transport, Co., Ltd. to enable such payment, by ensuring that it would not only raise any defense but also accept proceedings in all respects.

Later on October 30, 2007, the Deputy Secretary General of the Office of the Ombudsman Thailand together with responsible investigating officers testified as a witness in such case at the Civil Court. The prosecutor (A Limited Partnership) cited the Deputy Secretary General of the Office of the Ombudsman Thailand as a witness that there was an early mediation but in proceedings of the court, the defendant (Transport Co., Ltd.) cross-examined the witness for the prosecution by raising the issue of prescription as defense that the oil debts incurred during 1997-1998 were not claimed by the prosecutor making them barred by prescription. The Civil Court then ruled the red case no. 5746/2550 that the Transport Co., Ltd. was truly in

oil debts to the A Limited Partnership in the amount of 5,304,004.70 Baht but its rights of claim was overdue and subsequently precluded by prescription. The Court dismissed the case.

After that, on July 9, 2008, the Office of the Ombudsman Thailand invited relevant authorities to a meeting in which the Transport Co., Ltd. was of an opinion that the documents filed by the A Limited Partnership to receive payment were made up and insufficient to guarantee the actual payment of oil charges previously made and then station master was now retired or resigned so that there was no witness to affirm the authenticity of the documents. The Office of the Ombudsman Thailand realized that if the A Limited Partnership was unable to find the original documents, the Company might calculate oil price from average annual trip due to the fact that vehicles needed to be fuelled up otherwise it could not perform business operations. Thus, the Ombudsman issued another letter to the Managing Director of the Transport Co., Ltd. and the complainant inviting them to confer about this case once again on October 3, 2008 at the Office of the Ombudsman Thailand. According to the result of the meeting, the Office of the Ombudsman suggested the A Limited Partnership to find out supporting documents about annual balance sheet and income tax of juristic company or partnership (Phor Ngor Dor 50 form) as evidence to confirm the amount of outstanding debts to the Transport Co., Ltd. After having obtained the said documents, the A Limited Partnership should submit them to the Company for consideration and review of outstanding balance in order to come to a conclusion. The Office of the Ombudsman Thailand sent a letter dated on November 10, 2008 to the Managing Director of the Transport Co., Ltd. suggesting the Company as a state enterprise operating business based on good practice, transparency, fairness and accountability to perform the obligation to the complainant to maintain good corporate image and reputation, and not to raise



any conditions of prescription as a pretext to ignore the debt payment to the A Limited Partnership. The Ombudsman, therefore, ruled that the Transport Co., Ltd. paid debts in the amount of 5,245,728.53 Baht. In compliance with suggestions of the Ombudsman, the Office of the Ombudsman Thailand later coordinated with the Transport Co., Ltd. on the progress of operation and was informed that the Transport Co., Ltd. could not comply with the recommendations of the Ombudsman because the person who authorized the order of payment for oil debts shall be liable under both criminal and civil charges. Considering such facts, the Ombudsman was of the opinion that if state enterprises were unable to comply with comments or recommendations of the Ombudsman within appropriate time, the Ombudsman might have to refer the said matter to the Prime Minister or immediate Minister to such state enterprise. Therefore, the Office of the Ombudsman Thailand issued a letter dated July 21, 2009 notifying the result of adjudication of complaint to the Prime Minister for consideration and reasonable action in order to ensure fairness to the complainant.



Case 13

Section 26 (10) of the Judge of Court of Justice Service Act, B.E. 2543 (2000) was inconsistent with Section 30 of the Constitution

Summary

The complainant had applied for an entrance examination to the position of Assistant Judges at the Court of Justice in the year of 2008 and had the physical checks on May 15, 2008. Then, the Judicial Service Commission announced the list of the eligible candidates that excluded the complainant with the reason concerning his physical disability that is unsuitable to perform judicial officials' functions, according to section 26 (10) of the Judge of Court of Justice Service Act, B.E. 2543 (2000). (The fact is that the complainant has obvious atrophic leg resulting from the poliomyelitis syndrome.) The complainant believed that the Judicial Service Commission's decision to disqualify himself with reference to those provision of law can be considered as a unjust physical discrimination which is not in compliance with the equality and discrimination stated under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007). Even though there is the decision of the Constitutional Court No.16/2545 (2002) stating that Section 26 (10) of the Judge of Court of Justice Service Act, B.E. 2543 (2000) was consistent and in compliance with Section 30 of the Constitution, in the current Constitution B.E. 2550 (2007), the mentioned section was amended to be more apparent to outlaw the unjust discrimination on the grounds of the difference in disability and physical status. The complainant, consequently, lodged the complaint to the Ombudsman for consideration and submission with opinions to the Constitutional court.



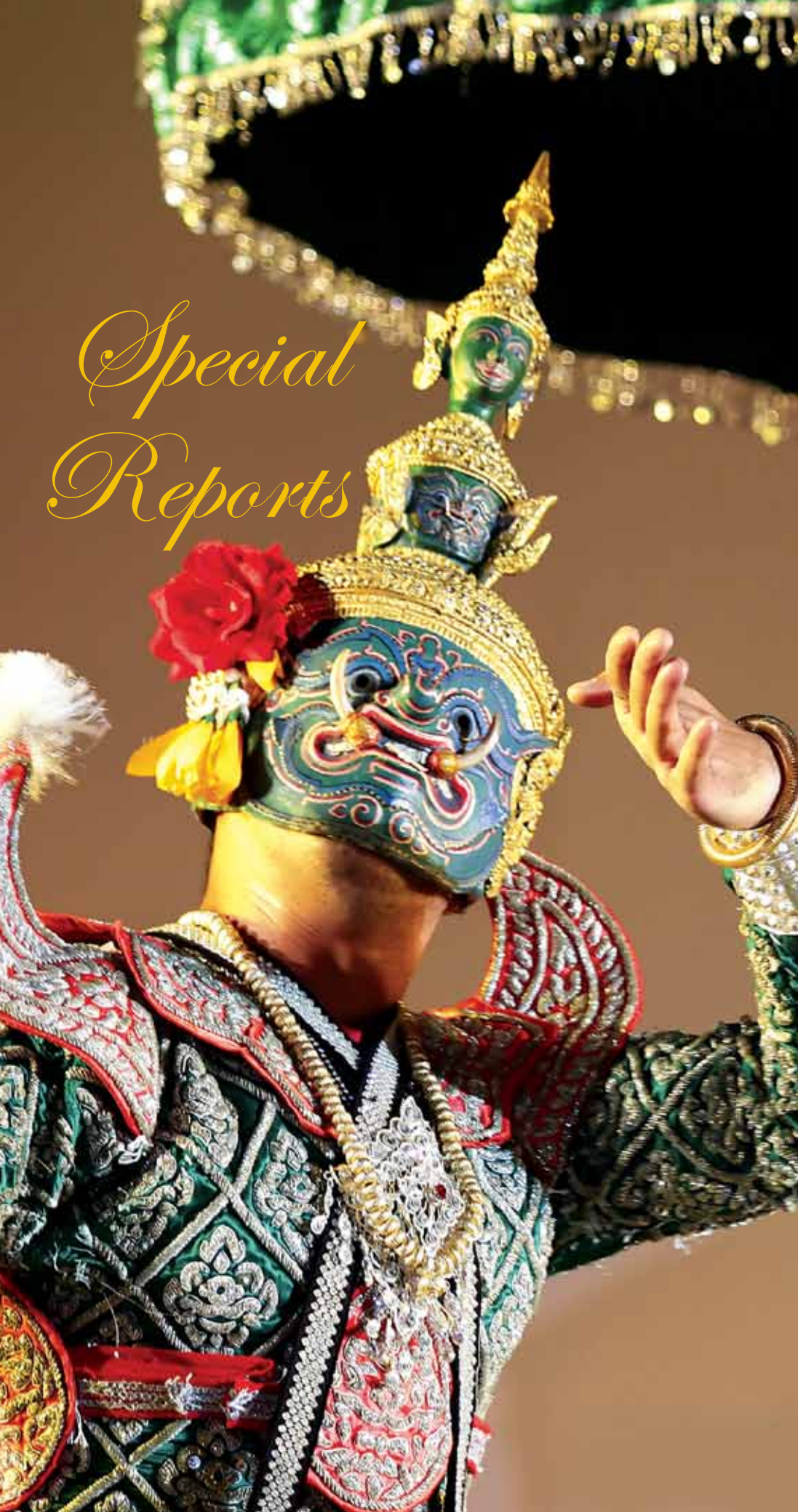
The Ombudsman had an opinion on this subject matter as follow;

1. This complaint relates to constitutionality which is under the Ombudsman's jurisdiction according to section 245(1) of the current Constitution B.E. 2550 (2007) and section 14(1) of the Ombudsman Act B.E. 2552 (2009). In spite of the decision of the Constitutional Court No.16/2545 (2002), the Constitution of the Kingdom of Thailand B.E. 2550 (2007) has been enforced and the word "Disability" was unprecedentedly added in Paragraph three of section 30. The Ombudsman was of the opinion that this case should be proposed for the Constitutional court for deliberation after the amendment of constitution.

2. In particular, the words "Being of a physical... conditions which is unsuitable to be judicial officials" in Section 26 (10) of the Judge of Court of Justice Service Act, B.E. 2543 (2000) where discretion of law interpretation is allowed to be made to judge the personal physical status might cause unfairness to some candidates, whereas the Constitution disallows.

The Ombudsman considered Section 26 (10) of the Judge of Court of Justice Service Act, B.E. 2543 (2000) has the question of constitutionality and submitted with its opinions to the Constitutional court for deliberation. The Constitutional court had accepted this case for trial and adjudication.

*Special
Reports*



1. Flood and Flood Crisis Management in Thailand

Executive summary

Background and rationale

Thailand is located in the area affected from the south west and the north east monsoons and always facing disastrous floods. From October to December 2010 heavy floods occurred almost all over the country causing damaged community, agricultural area, resources and loss of people at a large number. Such damages and happening crisis did stir public criticizes that Thailand lacks of sustainable management to mitigate the seasonal flood disaster.

Although government and private sectors had jointly mobilized resources and materials to mitigate people suffering during and after flood disaster, all in all they were only the emergency response actions. After the crisis, the relevant public sectors fail to analyze and clarify the causes of problem to develop proper measures and technology for problems solving in those flood affected areas. Therefore flood disaster management at present and in the future requires government efforts and attention to establish policies and practical measures, then accelerate the operations to achieve the effective goals in all risky watersheds. In the long-term the government must try to solve the causes of all concerned problems systematically to minimize apparent social, economic and environmental losses. It is very important that all government agencies, from various ministries with duties on water resources management must co-operate to ensure integration and unity to maximize the effectiveness of water management and benefits of the country and people as a whole.

The constitution of the Kingdom of Thailand B.E.2550 prescribes the ombudsman's functions of investigating cases of omission or illegitimacy to perform duty of organizations under the constitution and those under the procedural justice, including ethics of political and government officers. Moreover, assessment and suggestions of operation conformed to the constitution, propose consideration for constitutional amendment in essential cases as well as awareness of losses happening to the public at large or protecting the public advantages without petitions are all ombudsman's responsibility.

The ombudsman, Prof. Siracha Charoenpanij, said that water is important and essential for human life. Nobody can live without water, we all need water for consumption, agriculture and industrials. Without water human's life, agricultural activities and industrials will no longer exist. If Thailand has no capacity to manage the water supply for demands, it will be the end of our nation. It has been well realized that management of water resources is fundamental for which all sectors must cooperate to reserve water to ensure sustainable supply. The water supply situation around our country, however, tends to indicate water shortage in the future. Thailand cannot rely on its neighbors. The Mekhong river which was once brimming, is now becoming drought because PR. China's 4-5 dams have irrigated water for themselves and released less water along the river ways. Our neighbors will also follow the PR. China model. Now it's time to improve our water management for sufficient supply and be free from relying on external sources. Firstly the systematic management must be implemented from the headsprings, 25 watersheds, towards the lower part of streams. We must reserve water for consumption and prevent flooding. Accordingly Thai people can ensure sustainable agriculture and Thailand will be the kitchen of the world in the future. It is the universal truth that food is a fundamental



need of human. No food means no human's life. Thailand should keep its abundant advantages of natural richness over other countries, to enhance Thai people survival on the earth.

This is the reason why the ombudsman mainly pays attention to water management. We are also concerned about flood disaster impact on people. It is considered that the serious problem of both drought and flooding, which happened repeatedly, affected people's peaceful living the most. Mainly government's problem solving was of short-term action carried out by each functioning unit without any cooperation. There were also petitions that Ayutthaya province has faced flooding repeatedly. Therefore water management including flood and disaster prevention by direct and indirect responsible parties should be seriously considered.

Scenario of water management problem and flooding in Thailand

The study based on data base of 19 related operational units that have duties on water resources management in Thailand has revealed 9 key issues. Those 18 government units are Thai Meteorological Department, Geo-Informatics and Space Technology Development Agency (GISTDA), Hydrographic Department, Marine Department, Royal Irrigation Department, Department of Highways, Department of Rural Roads, Department of Disaster Prevention and Mitigation, Office of the Royal Department Projects Board, Department of Water Resources, Department of Public Works and Town & Country Planning, Land Development Department, Royal Forest Department, Department of National Parks, Wildlife and Plant Conservation, Electricity Generating Authority of Thailand, Royal Thai Armed Forces Development Command, Department of Drainage and Sewerage and Hydro & Agro Informatics Institute (Public Organization). Another private unit, sharing data

in this study, is the Foundation for National Disaster of Warning Council. The 9 problematic factors are as follows:

1. Deforesting is a cause of flooding.
2. Encroachment of waterways and public areas and dredging of canals and ditches
3. Direction of water drainage in urban planning
4. Warning system
5. Preparations for flood evacuation and disaster relief
6. Redundancy of government agencies' function arising from Ministers and Departments Reformation in 2002.
7. Sufficient budget allocation
8. Lack of readiness after decentralization of power to local authorities
9. Proposed changes to and revisions of laws

Ombudsman's Recommendations

1) The suggestion is listed according to the aforementioned problems

Revealing problems have led to Ombudsman's Suggestion of how to solve each specific problem as follows:

Issue 1: Deforestation is a cause of flooding.

Solutions

The government must command the Royal Forest Department to expedite expansion of forest area especially in all river source lands. Watching the changes of forest area by using Geo-Informatics and Satellite Imaging technology should be done to obtain the latest data such as the advance of forest poachers specifically the illegal logging and forest fires. It will support forest reservation.

GISTDA also confirms that this technology can be used as an effective tool for inspecting forest invaders.



For the forest service task with insufficient budgeting while requiring many officers and employees, the proper technology and measures should be used as the additional tool to solve the problem more effectively. These measures are:

Legal measures: include legislation amendment to add execution penalty for illegal invaders into river source areas of conservation forests. In the case it is a hiring operation and the hirer has been named (the accused capitalist) the penalty condition may be reduced or the invader may be authorized to act as a witness, if considered appropriate. The execution penalty has been proposed on the ground that invading deforestation affects people in all aspects and more harmful to the society at large than the adverse impact of drug trafficking. And in the worst case assets seizure may be as well added. Moreover, compensation at the rate of one million Baht and over per one rai of land paid to the state, as people's representative, should be acquired under the civil code. Such a compensation shall be for setting up of a reforestation fund to solve the problem.

Economic measures: include incentives to have people living around the watershed area to take a good care of the forest. Rewarding in terms of money should be made by fees and taxation paid by those residents at the end stream as a return for beneficial advantages they have received from the efforts of those upstream contributors.



Agricultural measures: include R&D to increase per rai productivity by appropriate technology to reduce deforestation for more farming lands. The Royal Forest Department and the Department of National Parks, Wildlife and Plant Conservation should officially agree how to handle those related or repeated operations. In order to effectively solve such problems reunion into one entity of the two departments should be determined to enhance integration for maximum achievements.

Issue 2: Encroachment of waterways and public areas and dredging of canals and ditches

Solutions

The state must dredge rivers, canals, particularly the main channels that drain water to the sea. These canals must be made wide and deep enough to drain water quickly to prevent floodwater from becoming trapped, which is a long-term problem that produces many difficulties for members of the public residing nearby those rivers.

The relevant public organizations must issue plans and policies that protect against encroachment of public riverfront land, water drainage locations, and natural water retention areas. Population growth and the number of construction projects should be evaluated in order to determine how to best address problems that may arise in the future. Further, the public organizations which are directly involved, such as the Royal Irrigation Department and the Marine Department, must maintain the river canals' capacity to receive and drain water into the sea. Thus, it is appropriate for these departments to effectively address the problem of encroachment of riverfront land, water retention areas, and natural water drainage areas.

As for the problem of encroachment of riverfront land, water retention areas, and natural water drainage areas,



which is usually done by influential persons, politicians, and local politicians, the relevant public organizations must come to a mutual understanding, using reason, and find a just solution that is acceptable to both sides. They should cooperate to make an agreement with the community about how to make beneficial use of the public land. However, if they are unable to accomplish this, then a complaint must be filed in court against the encroachers of public land in order to reverse the encroachment and return the land to its original condition.

Issue 3: Direction of water drainage in urban planning

Solutions

The state must set urban planning policies at every level in order to develop orderly communities which are desirable to live in and increase the quality of life. It is necessary to create laws for urban planning at the national level, the regional level, and other levels that are compatible in order to clearly determine proportionate and effective uses of land so that those uses may be carried out in a sincere manner. As for the matter of road construction, the Department of Highways and the Department of Rural Roads must coordinate with the departments and organizations involved in water management to gather up-to-date data on public works, town planning and environment to integrate into road planning strategies in order to prevent roads from obstructing the flow of water. The Department of Highways and the Department of Rural Roads should survey the areas where water is flooding roadways in order to solve the problem by increasing the sizes of culverts or bridges to allow faster drainage. If necessary, additional culverts should be constructed so that roadways will not be flooded or become embankments which block water flow. Furthermore, water gates can be added to culverts and bridges to help divert water as needed.

Issue 4: Warning system

Solutions

The government should promote the education of youth and high school and university students so that they have the knowledge to understand the importance of climatology and so that they give importance to weather forecasting and warning system. State enterprises as well as private organizations should cooperate in campaigns to raise public awareness of the importance of weather forecasting and warning systems in order to avoid damages and the loss of lives and property.

As for weather forecasting and warning systems, the Department of Meteorology should coordinate with various government organizations such as the Hydrographic Department and private organizations such as the National Disaster Warning Center in forecasting and in making use of each organization's capacities in order to obtain correct and accurate data. Should a disaster arise, the government should ensure that there is an effective warning system in place which is fast and which reaches every area, using all forms of media and communication network, especially through the radio, community radio, government radio, and television, as well as transmit news of disasters through mobile phones.

To address their lack of personnel, the Department of Meteorology should coordinate with educational institutions in offering Meteorology courses in order to produce graduates who can serve as knowledgeable, skilled, and experienced personnel able to meet the requirements of the Department of Meteorology and other organizations involved in climatology. The Department of Meteorology should to work quickly to further train their staff both domestically and abroad so that their knowledge and experience accords with international standards.



Regarding the public sector's weather predictions for water management, importance should be given to the analysis of more factors than statistical data only because at present there are changes in global climate patterns that cause changes in weather conditions and seasons, such as the El Nino and La Nina phenomenon. Therefore, forecasts cannot be made from statistical data alone as has been done in the past to end flooding problems. As the current characteristics of climate change differ from the past due to global warming, weather forecasts must make use of other sources of information to help effect the most accurate decisions. Statistical data or past information is no longer reliable for forecasting.

Issue 5: Preparations for flood evacuation and disaster relief

Solutions

The Department of Disaster Prevention and Mitigation should use the National Plan for Disaster Alleviation of 2010-2014 to manage dangers to the public and should incorporate aid from government and private organizations, including funding, staffing, and tools and equipment, for the fastest possible recovery. The government should make arrangements so that the Department of Disaster Prevention and Mitigation has access to modern communication systems and satellite systems that can be used for preventing and mitigating public disasters so that the penetration and distribution of aid for disaster victims is efficient, fair, comprehensive and not redundant.

The Department of Disaster Prevention and Mitigation and local governing authorities should be well-prepared and have regular evacuation drills so that people in affected areas will be ready to react correctly in an emergency or disaster. The organizations involved

should communicate steps and procedures, make clear signs, set up communication systems to send messages, and determine appropriate evacuation destinations, as well as provide other facilities and various services dependent on the needs of those affected.

Issue 6: Redundancy of government agencies' function arising from Ministers and Departments Reformation in 2002

Solutions

As there are many departments and agencies from different ministries involved in water management, both those which were set up before 2002 and after, there should be integration among them to determine successful water resource management strategies and to solve problems in a unified manner. A single management unit could be set up and overseen by a higher authority, such as the Prime Minister or by a committee which would have the final decision in solving problems, in a timely manner.

The problems of redundancy and overlapping of duties and of areas of responsibility found between the Forestry Department and the Department of National Parks, Wildlife and Plant Conservation cause problems for both departments. Therefore, there should be collaboration and joint problem-solving in order to reach resolutions that can be applied in practice in a reasonable and efficient way. This will be beneficial to both civil servants and the public. If possible, the government should go back and reconsider the advantages and disadvantages that have been realized in creating these separate departments, as both departments have had many management problems in recent years leading to substandard performance. Thus, in order to address this problem, the government should urgently consider the issue of rejoining these two departments.



Concerning the Department of Water Resources, new water management laws defining the roles and the authority of the department should be issued urgently so that they are more clear, and there should be staff development leading to greater relevant knowledge and experience in water management so that these skills may be put to use in the field in an efficient way. If the department is unable to bring staff competency up to a suitable standard, the department should be redefined as an academic agency concerned with water management instead of an executive agency that performs duties in affected areas.

Issue 7: Sufficient budget allocation

Solutions

The Bureau of the Budget should take into account the importance of preventing and addressing flood disasters and allocate sufficient funds to organizations involved so that they can carry out their work according to set plans. For example, the Department of Meteorology is an important organization involved in warning systems, so they should be equipped with both sufficient capacity and modern equipment as need as much accurate information as possible in order to prevent problems arising from natural disasters which may cause a great deal of damage and loss. The Marine Department is responsible for rivers and canals which are both transportation routes and important water drainage areas so the Bureau of the Budget must allocate enough funds for the dredging of waterways to allow faster water drainage into the sea. An increase in the number of officials employed to oversee the problems of encroachment of waterways and to prosecute encroachers of public property should be considered, in order to prevent the encroachment of riverfront land and land along canals, and maintain the set boundaries in their original conditions.

The Bureau of the Budget should make use of information from the Hydro and Agro Informatics Institute about prioritizing in areas that are vulnerable to flooding and drought and use this as a budget allocation guideline for water resource management in those areas.

The Bureau of the Budget must also allocate sufficient funding to compensate for the damages, both actual and mental, which happen as consequences of flood disasters, or look for ways to help indirectly, such as by promoting and supporting life and health insurance systems in order to reduce the state's expenses so that damage compensation will be more fair than in the past and less of a financial burden for the country.

Issue 8: Lack of readiness after decentralization of power to local authorities

Solutions

The transfer of authority to local governing organizations requires preparing personnel to be responsible for various duties in government administration as well as educating and training future officials, especially with academic and technical knowledge. In the preliminary phase of the transfer of responsibility to local authorities, the organization conducting the transfer must educate and mentor the local authorities in carrying out their assigned duties. They may need to create handbooks detailing the processes, resources, and other requirements needed to make the work successful, and there should be measures to follow up and monitor progress in those responsibilities that were transferred.



Issue 9: Proposed changes to and revisions of laws

Solutions

The government should move quickly to push for laws important for preventing and addressing flood crises, such as the National Law on Water Resource so that there are wide-ranging laws concerning water management and laws to promote and protect meteorological work so that it can develop efficiently and in accordance with international standards.

In addition, the state should let involved organizations consider revising or repealing Section 1308 of the Civil and Commercial Code regarding the use of land at shallow canal banks, which results in additional land. This law should be in line with the property rights granted to the deed holder of the land next to that canal and should determine whether or not deed holders have the right to claim water space in the event that their land bordering a canal is eroded. Re-examination of this law could prevent land disputes which have caused some areas of rivers and canals to narrow and which causes inconvenience for the public.



2. General recommendations from ombudsmen for solving water management problems

Ombudsmen have examined the work of the involved organizations, starting from the authorities and responsibilities of various organizations involved with water management to the problems they face and the solutions they employ, and have recommended that, to solve flood problems, agencies and departments should be divided into three groups, as follows:

1st group: Organizations involved in short-term water management or tackling immediate problems, comprising the Department of Meteorology, the Department of Disaster Prevention and Mitigation, the National Disaster Warning Center, and the Hydrographic Department.

2nd group: Organizations involved in long-term water management, comprising of the Marine Department, the Forestry Department, the Department of Public Works and Town & Country Planning, the Land Development Department, the Department of Rural Roads, the Department of Highways, and the Office of the Royal Development Projects Board (the coordinating Agency of Project Implementations), the Geo-Informatics and Space Technology Development Agency, and the Department of National Parks, Wildlife and Plant Conservation to fulfill the Royal Initiatives.

3rd group: Organizations involved in both short-term and long-term management, comprising the Department of Water Resources, the Electricity Generating Authority, and the Royal Irrigation Department.

The ombudsmen's general recommendations for water and flood crisis management in Thailand can be divided into two parts, short-term management and long-term management, with details as follows:



Part 1.

Recommendations for water and flood crisis management in solution in the short-term with details as follows:

1. The state should allow organizations involved in local water management and services such as the Tambon (Sub-district) Administrative Organizations, the Municipality, or the Provincial Administrative Organizations, to urgently proceed with water retention planning, whether dredging and improving existing reservoirs or setting aside large water storage facilities that can serve every area. They should urgently start working with watershed community areas, which have been flooded repeatedly in the recent past. This will slow down the overflow of water during the rainy season, as water will go into the reservoirs, which may serve as "monkey cheek" areas for holding water temporarily. This will also serve as a way of solving drought problems by storing water for the dry season. As for the areas in which to construct or prepare as water retention facilities or areas, it will be very important to take natural water courses into consideration. Those areas might be public spaces, or spaces may be sought through other means such as soliciting donations from inhabitants in order to purchase property, or campaigning for people to donate land to be converted into water retention areas, or by allowing charitable individuals to get involved in looking for land and in coming together to invest voluntarily, as is done during the Thai Buddhist Lent (Tod Katin) celebrations, which enables Thai people to feel mutual ownership and responsibility (including requesting use of temple grounds or land held by various government organizations). However proceeding with this work should not be left to local communities alone. There should be discussions and exchanges with involved organizations such as the Royal Irrigation Department or the Department of Public Works and Town & Country Planning, and collaboration in studying technical and engineering possibilities and

limitations in construction projects, such as on issues of size, location, and construction techniques, so that the construction of water retention facilities or reservoirs will be maximally efficient for water retention and will be practically beneficial to the public both in rainy and dry seasons. Initially, the government should campaigning for pond and artificial water reservoir construction by examining the areas for construction in the 4 following ways:

1. Construction of small water reservoirs or water sources within a household in accordance with a new theory of water and land management for agricultural use on small plots of land. This will yield the highest benefit and is in accordance with His Majesty the King's Philosophy of Sufficiency Economy. Land is divided into 4 portions, in which 30% may be set aside as water source. A small water reservoir may be constructed, allowing a supply of water year-round, water storage during the rainy season, support for crop planting during the dry season, and availability for use in periods of sparse rain.

2. Construction of small water reservoirs in areas vulnerable to flood crises and drought, incorporating information about the priorities of areas that are vulnerable to flood crises and to drought from the Hydro and Agro Informatics Institute, or related information from other organizations, into making decisions and taking action.

3. Construction of small water reservoirs or artificial water sources by examining appropriate areas for such construction, taking into account the natural water retention capacity of the soil in examined areas, and perhaps using the Land Development Department's programs for assessing soil quality as a guideline for selecting the area in the preliminary phase.

4. Promotion and support of small water reservoir construction in local communities that is prepared.



Involved government organizations should act as consultants for construction in local communities.

The ombudsmen's studies of the ombudsmen found that the solution of digging water retention reservoirs and creating water artificial water sources is in line with the studies on water resource management strategies that have been successful in Thailand, commissioned by a special Senate committee in 2003, which found that "surface water sources should be developed for storing water in various areas and should be distributed throughout every community and village, sub-district, district, and province, so that there are sufficient water sources to supply water to all the watershed areas during the dry season, while taking into account specific issues of capacity. In the construction and development of small water reservoirs, conditions of the area and the topography should be taken into account. Developments should not have consequences which cause unacceptable damage to other areas but should make water available in a sustainable way."



2. The state should prepare warning systems which are as accurate and reliable as possible in order to reduce potential damages from natural disasters. The Department of Meteorology, which is the main organization involved in facilitating this work, must integrate work with other capable organizations in promoting this information, namely the Hydro and Agro Informatics Institute, Geo-Informatics and Space Technology Development Agency, the National Disaster Warning Center, and the Hydrographic Department, by using water management forecasting. The state should give importance to the analyses of the problems and make use of statistical data. As for the warning systems, the state should seek out ways to warn the public about danger, such as transmitting information through radio waves, sending warning messages through mobile phone networks (SMS), and importantly, the state should have a way of sending warnings through government TV and radio stations whenever the likelihood of disaster has been confirmed.

Furthermore, the government should invest in cutting-edge tools and equipment for weather forecasting capable of increased advance warning time and accuracy for relating agency such as Department of Meteorological and GISTDA, in order to better inform the Royal Irrigation Department's decisions about storing or decreasing water in order to prevent floods.

3. The Department of Disaster Prevention and Mitigation should prepare efficient systems and work plans in order to alleviate public dangers and be prepared to tackle sudden disasters. They should make countrywide preparations and set master plans, including simulation drills and practices such as preparing evacuation routes for evacuees and life-support services for victims of disaster. There should be training from time to time so that the public is enabled to handle sudden disasters.



4. To deal with the encroachment of public waterways and watercourses becoming more shallow, which prevent fast and easy flow of water, the Marine Department and other capable organizations must collaborate to dredge canals and rivers. They should also prosecute those who encroach on waterways with both legal and social measures. This is so that water sources will stay wide and deep enough to be able to drain water at full capacity and fast enough to prevent water from becoming stagnant.

5. The Department of Rural Roads' construction work and road development has incorporated city planning issues concerned with natural water drainage as one part of the determining where new roads should be constructed in order to prevent possible disasters. Roads have obstructed water and led to water stagnation, as following power decentralization, the Department of Rural Roads delegated responsibility to local administrative authorities which often did not follow the rules, regulations, or standards set by the Department of Rural Roads. They also often ignored city plans during construction, and as a result, many of the roads built by the local administrative authorities ended up obstructing natural water drainage routes, or lacking the culverts necessary for water drainage. Thus, when the Department of Rural Roads, a very capable and knowledgeable organization, works with the local administrative organizations, there should be collaboration with other relevant organizations, such as the Department of Public Works and Town & Country Planning, local administrative organizations, and the Land Development Department in order to report circumstances that cause a risk of flooding to government organizations working in flood crisis prevention.

6. When roads are constructed by the Department of Highways or the Department of Rural Roads, an investigation is usually conducted into natural water courses and plans are made for constructing

culverts to drain water in order to prevent flood problems. However, over the passage of time, routes of water flow or drainage may change due to changes in land use. New construction may block drainage, leading water to flow into areas not equipped with culverts. Therefore, it is crucial that both these departments must regularly study changes in water flow in order to put the information to use in analysis to find solutions to problems in road drainage. For instance, additional culverts could be installed in some areas, or the capacity of existing culverts could be increased to drain more water. In any case, in constructing roads, local administrative organizations must also take action in the aforementioned ways.

7. Provincial governors and administrators of local governments in each province must work together to create a preliminary flood crisis prevention plan, and in doing so they must survey and record flood crisis statistics and the degree of impact to each area and make use of the data in the prevention plans. High priority must be given to preventing damages in specific areas which cannot be rebuilt or replaced when damaged, such as historical sites or cultural heritage sites, or natural areas with paleontological significance, for instance. There must be training and tests of readiness in providing relief from public dangers at least once a year.

8. The Bureau of the Budget must allocate funds to organizations which are responsible for water and flood crisis management in a balanced and reasonable way that accords with actual needs and priorities, especially to organizations responsible for warning systems as they are the first step in mitigating possible loss and damage. The state must support funding to develop knowledge and awareness and procure up-to-date equipment and technology so that the warnings will be as accurate and correct and can come as far ahead in time as is possible. Though this is



a costly investment, this investment by the state in warning systems should be considered much more worthwhile when compared with the loss of lives, personal property, and accumulated budgetary loss due to payments for damage compensation.

9. Water management and flood crises in Thailand requires all organizations to collaborate and work in an integrated and unified way, without redundancy in the division of responsibilities. Organizations must work in harmony and in the same direction in order to be effective and able to solve Thailand's water problems in the long-term sustainably. In the group of organizations working in water management, one organization should be selected to serve as a central agency, or committee with absolute decision-making authority to manage the high-risk conditions of integrating information from various organizations should be set up. There must be effective cooperation in the process, without passing the buck or fighting over responsibilities, which actions lead to greater overall loss or damage.

10. The Ministry of Agriculture and Cooperatives and the Royal Irrigation Department should advise agriculturalists to postpone the planting time of rice or other harvest crops as appropriate; for instance, crops that are harvested at the end of the rainy season should be moved to after the rainy season after a flood disaster has occurred in order to avoid losses. Flood conditions caused huge losses of profit for farmers of these crops, while in normal conditions the same farmers may harvest crops that give them profits in tens or hundreds of thousands of baht.

Part 2

Recommendations for water management and flood crises solutions in the long term:

1. In maintaining and preserving the abundance of water resources, there must be maintenance and care of forested watershed areas so that these areas remain unharmed and do not get encroached upon or destroyed. As these forests naturally absorb and store water, they prevent water from overflowing and prevent soil erosion and landslides. In recent years in Thailand there has been significant encroachment and forest clearing, which is why, at present, forested areas make up less than 30% of the country's total land area. When forests decline, droughts and floods occur more frequently. Therefore, in order to increase forested areas and regenerate forests so that they can serve as rich watersheds that continue to nourish the people of the country, the state should employ various measures to create incentives for the people to take a greater interest in planting forests.

For instance, in the case of an NGO or of an individual who does not have land for reforestation, the government can create a measure to encourage them to plant forests by providing tax cuts for participation in reforestation activities in public spaces and upstream areas, and for maintaining those areas until the newly forested area can sustain itself. People in the private sector could use their reforestation expenses to file for tax breaks (they could file for up to 100% or 200% in tax breaks, for instance).

In the case of government organizations, reforestation measures should be used to increase welfare benefits for civil servants of government organizations who plant and maintain forests until they are self-sustainable.



If the state derives benefit from these reforested areas, this may lead to good possible outcomes. For example, the state might use the forest to invest in the carbon credit market, and fund welfare funds with some of the benefits received, such as retirement funds for organizations that conduct reforestation projects.

As for communities with farmland, a measure called “Bank of Trees” may be used, in which trees are given monetary value as assets that can be used as collateral when taking out loans from financial institutions. That is, if an individual has planted a tree on his or her own property, he or she can count it as an asset to use as collateral without mortgaging the property as has been done in the past. If a mortgage payment cannot be paid, the trees can be used as payment unless their value is insufficient, in which case the land may be used as payment.

Furthermore, there should be support for education in Environmental Conservation and Ecology on different levels of study as appropriate starting from primary school until university, in order to instill in children and students the value of conservation of forests and water resources and awareness of the importance of natural disasters that severely impact human lives.

2. The government has to create a National Spatial Development Plan for the development of the country. For this, the use, protection and conservation of up to 25 watersheds must be organized, in order to preserve the country’s natural water resources, the issuing of documents giving any land rights in all protected areas must be prohibited. Some regulations may be waived for those who have already had land rights, temporary permitting their continued residence, but they must not do anything that harms the forest or environment in any way. Enemies to the forest and the environment are to be removed from protected areas

immediately and the land is to be seized by eminent domain laws and used in the Spatial Development plan or for environmental purposes. The Spatial Development plan should contain clear zoning restrictions so that there is no encroachment to drainage areas and natural waterways. The construction of buildings, structures, or any public utilities in either the public and private sectors must adhere to the rules and regulations of this master plan. Moreover, in addition to a master plan for the entire country, there must be urban planning at the regional level and the community level to be used as guidelines for activities that are compatible with each other as well as fit under the Spatial Development plan.

3. The state must review transfers of authority to local administrative organizations, especially those with responsibilities that require staff with specialized knowledge in planning and implementation. In the past, there have been many responsibilities passed on to the local administrative organizations that were not carried out efficiently and effectively, due to the lack of skilled and knowledgeable staff, which led to serious negative consequences in the development of local areas.

Furthermore, it is clear that the aforementioned long-term water management and flood crisis solutions rely on issue of structure of public administration which cannot be implemented in a short period of time, but will, rather, take quite a long time to carry out, possibly longer than in one generation. As these measures may be time consuming, the state cannot be neglectful and leave these problems in the hands of the next generation. The government urgently needs to take action as soon as possible, as the earlier the action is taken, the greater the likelihood of greater and earlier success.



2. Nominal Representative (Nominee)

Executive Summary

Background and rationale

The study on “nominal representative (nominee)” which has been assigned to the researcher by the Office of the Ombudsman based upon legal exploitation regarding immigrant problems where Thai nominees perform the role of certain juristic parties. Such a case of nominee functioning has caused more and more serious and complicated legal problems which evidently affect the economic and social life of the country including the national security at large. Therefore this study, aiming to identify causes and the highest effective solutions, has been carried out.

Accordingly, the researcher has focused on the 4 main objectives as follows:

1. To identify business activities and formats entered by certain nominees here in Thailand at present;
2. To identify negative impacts against the whole economic and social life including national security caused by nominee’s functioning in Thailand;
3. To study relevant laws and legal provisions regarding nominee’s involvement in Thailand; and
4. To provide suggestions of how to develop a specific law on nominee’s roles and supporters.

Focusing on the 4 purposes mentioned above, the researcher has expected that the study achievement will illustrate specific problems leading to clarification of nominee’s business functioning in the Thai context and its impacts on our national economic, social and security issues. It will as well indicate laws and legal provisions pertaining Thai nominee’s business performance and ways toward preparation of specific laws on nominees.

The study has so far revealed that Thailand allows immigrants to reside and seek investment profits from businesses and trading due to their scientific and technological advancement and innovation. However, more powerful foreign direct investment with strong financial gains due to exchange rates eventually put Thai businessmen toward competitive disadvantages. In order to prevent disadvantages on the Thai side and to control excessive gaining by foreign investors several laws have been enacted to obstruct free flow of foreign direct investment and trading. Consequently those foreigners have turned to legal exploitation through certain loop holes by resorting on various nominee's business models. Researching from available documents has indicated 2 major nominee's businesses which are generally practiced, namely:

1. Nominal business practices under the possible scope of stock exchanges, i.e. nominee's ownership and money laundering, foreign signatory over Thai ownership, foreign preferential right in voting or investment by a non-care Thai trader ;

2. Land and property ownership by a Thai nominee through family relationship (a Thai spouse or an offspring), renting or buying by a Thai nominee, setting up a juristic person for ownership transferring, buying land or property at a higher cost than the registered capital and more.

Practices of the two nominee forms as earlier mentioned have highly affected the economic, social and security well-being of the country. In the business area where a large number of foreigners found operating the Thai ownership might be interfered or controlled. Certain reserved occupations or professions for the Thai nationality might as well fall into the foreign hands leading to competitive disadvantages and taxation losses because of unidentified income sources. In the



case a high portion of land and property ownership are in the immigrant hand Thai people at large will lose certain ownership opportunity. Social inequality occurs in the case where discrimination has been thrown over those who follow rules and laws while their opposition enjoys benefits through loop holes exploitation or corruption. National security is unavoidably affected by those immigrants who are illegally doing their businesses which may eventually end up with international criminal cases i.e. money laundering or indirectly ruling our lands by their economic power.

By studying laws of other countries we have as well found rules and laws to control foreign businesses in their countries. The study covers 3 countries-Australia, Canada and the Federal Republic of Brazil.

1. Australia

There are several Australian legal measures to oversee and control foreign direct investment supported by Foreign Investment Review Board (FIRB) established by the Minister of Finance under the Foreign Acquisitions and Takeovers Act 1975 (FATA). FIRB also serves as an advisory body in certain cases. Foreign investment in Australia has been classified as non-permission businesses and permitted businesses under specific conditions, i.e. the one that bears impact on national security or national interest. Relevant rules and laws allow for investigation of business functioning and nominees, pre and post investment, especially in the case where the Corporations Act 2001 and FATA is applicable regarding control of voting power and control of potential voting power entitled for authorized or direct profit gaining persons.

2. Canada

Although liberalized foreign investment is fully allowed for the non-legal control sector, the Canadian still practices rigorous examination over all important sectors based upon increasing capital and technology advantages gained from certain investors. Canada resorts on various rules and laws to control and investigate foreign business performance.

3. The Federal Republic of Brazil

The Brazilian federal policy to promote foreign investment bases upon specific conditions and benefits allowed for investors in each state, especially in the agricultural sector of land use. The important federal laws are on prohibition of foreign investment, limitation or conditions on foreign business functioning which have become more rigid after the serious food crisis and fasten price increase in 2008. Since then strict controls have become evident in financial sector investment by foreigners aiming for agricultural land acquisition through business takeovers. Another applicable sanction is by enforcing land proportionate measures in external urbanization areas, etc.

This report presents information gathered during the study from questionnaires, comments and interviewing with qualified individuals. Concluded assumption reveals that many Thai people still lack proper understanding of "nominal representative" while most of the Thais take "a nominee" as a representative to enter legal contract or agreement for which the real actor is not legally permitted or cannot avoid legal binding. A nominee can either be a general person or a juristic one i.e. a spouse of Thai nationality is authorized as a nominee to hold the right over assets or to start a company while the foreign partner still lives as a Thai resident with his/her executive power over the respective business. This is mainly



to conceal the real situation on execution of the certain business. The majority of respondents agree that such a problem should be solved to protect resources and assets of the land of Thais. Foreigners should not be allowed to control the Thai economic life; legal protection is absolutely required to wipe away nominal, legal exploitation foreign business; through their partners of the Thai nationality.

In order to achieve the objectives of the nominee's role study and recommendations given by respondents and qualified interviewees the researcher herewith provides suggestions on how to control activities in the form of nominal representative of the short or fastening implication, enactment of required legislation to control nominee business which involves a longer process and other recommendations through integration of questionnaire's responses and comments given by the qualified interviewees as follows.

1. How to solve urgent problems or short term solutions

One of the problems pertaining effective monitor and control any foreign business running under nominal camouflage is disintegration among all state agencies to provide required information as well as lacking the core body to investigate and consolidate records of nominee activities. Accordingly the researcher suggests an urgent mechanism to effectively solve the facing problems in the form of the regulation issued by the Office of the Prime Minister to solve the problem of foreign nominee business by virtue of Section 1 (8) under the National Administration Act, B.E. 2534 to prescribe how to solve the nominee business performing on behalf of foreigners, covering the following matters:

1. Setting up a committee to control nominee businesses with the responsibility to propose preventive measures comprising of knowledge sharing and coordination for implementation among relevant agencies;

2. Defining the core body to ensure required integration of data base and coordination among all involved agencies. The researcher suggests a starting step by the Department of Trade Development, Minister of Commerce which has been controlling foreign businesses to support the committee in all administration works with sufficient numbers of manpower to monitor, study and prepare reports on what should be considered as nominee businesses.

2. Enactment of laws for a long term solution

Law enactment is of complicated steps and a long procedure. Legal provisions should only prescribe control and limitation of right over an individual as required. This is the reason why law development is of a complicated matter. However effective and enforceable solution of a long term outcome is only possible through legal ruling. In certain cases sanctions must be imposed for execution. Legal control over nominee businesses should comprehensively cover the following issues:

1. Revision of certain legal provision should be considered to ensure proper coverage over nominee businesses, i.e. revising definition of "alien" under the Act on Alien Businesses, B.E. 2542 to encompass an alien's executive power over a nominee business set up by him/her, having a Thai person carry out that nominee business;

2. There should be a prescribed penalty over the nominee who plays the role of an executive of the respective nominee business with a specific scope of what is a nominee business under the relevant laws;



3. There should be a universal law defining characteristics of a nominee business to facilitate monitoring mechanism for all business sectors;

4. There should be a core body acting as a responsible agency to coordinate communication on committed legal violation prior to report submission for further legal prosecution;

5. There should be a fund to finance required investigation and to reward the informants on illegal business nominee. Money to support the said fund should be derived from sales of seized assets by the court ruling so as to avoid burdening the state allocated budget.

6. There should be prescribed penalty against foreigners who are intentionally avoiding legal punitiveness as a nominee including the Thai who supports such an action. Punishment in this case should be of gradual steps depending on due damages caused by such a violation, except in the case where the wrong doer, a Thai or an alien will properly correct his/her action within the announced legal time frame.

Indispensable contents of such a new act can be summarized as follows:

1. Principles pertaining legal violation by nominee's role to serve as the core act to penalize illegal nominal functioning;

2. Definition of "nominee" and "nominee business" to clarify who is the nominee and what are the legal contract, agreement or business carried out jointly with the others involving finance, business, assets or rights over assets on behalf of a specific foreigner without indicating who is actually the owner, or running a business under the control or power of a foreigner which shall be considered as nominee businesses;

3. Illegal practices regarded as nominee functioning i.e. buying, selling, renting, transferring, transaction or assets owning with an intention to act as a nominee, or to conceal the rights over assets and rights acquiring on behalf of the respective alien including supports to foreigner through nominee performance;

4. Legal management structure which includes the following factors;

(4.1) A committee to control nominee businesses,

- the Prime Minister or an assigned Deputy Prime Minister shall be the chairman of the committee, the deputy chairman shall be the Minister of Commerce, directors shall be Permanent Secretary of Interior, Permanent Secretary of Commerce, Attorney-general, National Police Commander, Director of Economic and Treasury Bureau, General Secretary of the Board of Investment, Governor of the Bank of Thailand, Director of the land Department, Director of Law and Treaty Department, General Secretary of the Board of Stock and Stock Exchange and nine qualified experts in economics, finance, treasury, law or in any one sector appointed by the cabinet and the Director shall be a director and the secretary;

- the committee of nominee business shall be responsible to propose preventive measures against nominee businesses to the cabinet and to promote people participation for information gathering to enhance prevention and investigation against illegal nominee business;

(4.2) The committee's supporting agency

An office shall be established to control activities in the area of nominee business as an autonomous and neutral body, to implement the committee's solutions, to report and follow up with analytical



approaches and to coordinate with other related agencies on investigation of illegal practices.

5. The nominee fund

- a nominee fund shall be established to finance investigation and indication of nominee business with the starting allocation from the government's annual budget, assets or money from donators, foreign aids or international organization's contribution, money and profits earned from auction selling of illegal assets, legal money or assets earned by the fund or by other legal transaction which are not subject to submission to Ministry of Finance as part of the national income;

- an executive committee shall be formed comprising with the director of the nominee business control office as the chairperson, members shall be representatives from the Budget Bureau, the Accounting Bureau and five experts in finance, assets and property sectors, at least one from each sector appointed by the committee; all officials shall be responsible to manage the fund according to the regulations set up by the committee and approve payment for informants as well as submit financial and achievement reports to the attention of the committee;

6. Various steps of penalty shall be set up to punish violators according to levels of severity and damages caused by illegal acts, including obstruction against official operations or violation against the committee's or sub-committee's orders to have any person attend a hearing or submit certain documents or any object as required.

3. Other suggestions

In addition to the earlier suggestions on development of both urgent and long term laws for effective control over nominee business, the researcher has an observation that there should be other parallel solutions taken alongside legal controls. The cabinet should pay attention on problem management, i.e. enhancing Thai protectionism over the mother land, educating people on nominee business of various forms so that they will realize of how the negative impacts shall occur toward the economic and social life of Thailand in the future.



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