

Civil Service Reform and the Quest for Better Governance: The Thai Experience*

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INTRODUCTION

Part of the cause of the 1997 East Asian crisis has been attributed to bad governance in both the public and the private sectors, i.e., cronyism, corruption, and nepotism. However, one cannot help but wonder whether the whole issue of governance has been raised simply as a convenient explanation for the unexpected collapse of various East Asian economies a decade ago. After all, there was very little mention of governance before the crisis.

Regardless of how and why the issue of governance came to attention, there is no denying that corruption and nepotism are still deeply rooted in some East Asian countries. Money politics grease the wheels of democracy, while personal connections open up new opportunities in a capitalistic market. All seemed to work well as long as the money kept flowing in and everyone – politicians, businessmen, and citizens – got a share of the expanding economic pie, until the start of the crisis in July 1997.

While it would be somewhat far-fetched to attribute the crisis in Thailand to bad governance per se, weaknesses in public and private sector governance no doubt contributed to micro- and macroeconomic mismanagement. Connected lending and reckless investment burdened the economy with a high volume of non-performing loans (NPLs). The Bank of Thailand's squandering of billions of dollars of hard-earned foreign reserves in a fruitless attempt to defend the Baht dealt a final blow to the country's financial system and its economy. After the start of the crisis, a number of committees were set up to investigate what went wrong and who should be held responsible for the grave damage to the economy.

In a nutshell, governance refers to the exercise of political, economic, and administrative authority in the management of a country's affairs at all levels. It includes the State, the private sector, and civil society. The State creates a political and legal environment conducive to economic and social development, while

the private sector generates jobs and creates income. Civil society defends the rights of the people against the potential abuse of power by the State or by large businesses. Thus, good governance – like a three-legged stool – is supported by a good balance of power among the three groups.

This paper focuses exclusively on capturing the experience and lessons learned in fostering better governance in the Thai bureaucracy. Indeed, the bureaucracy lies at the heart of a country's state machinery. Politicians come and go, but civil servants remain. Politicians may be corrupt, but they have to rely on the administrative power of the bureaucracy for implementation of their projects and programs. Businesses may be reckless or deceitful, but they are subject to the oversight of state regulatory bodies. Hence, state bureaucracy appears to hold the key to good governance. Unfortunately, civil service can be vulnerable to political and big business influences. A high-ranking civil servant can be enticed by the promise of a promotion by a Minister or the payment of a large sum of money by a businessman. Thus, building good governance in the bureaucracy is indeed no easy task.

This paper addresses key governance problems in the Thai bureaucracy and recent attempts to improve governance standards, in the hope that the experience and lessons learned here will be of some relevance to other developing countries facing similar political, legal, and institutional constraints.

The outline of the paper is as follows. Section 1 provides the governance conceptual framework upon which the assessment of the Thai bureaucracy in section 2 is based. Section 2 is divided into two parts. The first part illustrates the governance ranking of the Thai bureaucracy according to the International Institute for Management Development (IMD) in order to provide a general comparative assessment of where the Thai bureaucracy stands in relation to its counterparts in other countries. The second part addresses the key governance problems of the Thai civil service and the measures taken to elevate the governance standards during the past

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decade. The final section summarizes the lessons learned and makes recommendations on the way forward.

1. GOOD GOVERNANCE: THE CONCEPTUAL FRAMEWORK

What does good governance mean for the civil service? It means that the civil service would need to operate with transparency, due process, accountability and participation. Transparency prescribes clear rules and procedures to ensure objectivity and impartiality, and demands disclosure to enable public scrutiny. Due process implies fairness and impartiality among the parties concerned. Accountability refers to the extent to which decision makers, or those who exercise state authority, can be held responsible for their actions, decisions, and performance. Finally, participation is closely associated with the democratic process, whereby all stakeholders are given equal voice in the management of affairs.

It is widely believed that any process or procedure that is transparent, fair, impartial, accountable, and participatory will be efficient and equitable. Transparency and participation ensure that administrative decisions and actions are made in the interest of the public rather than a particular interest group or individual. Due process ensures that individual rights regarding fair treatment are ensured and protected. Accountability, on the other hand, ensures that actions and decisions are taken with due care.

Unfortunately, the civil service in most developing countries operates in an environment that is not so conducive to good governance. Public information is rarely available, as can be easily judged by the dearth of information available on most governmental organizations' websites. Participation by non-governmental organizations, in particular civil society or consumer groups, is a new phenomenon for many civil servants

whose definition of participation often is limited to input received representatives from well-established business organizations and government-nominated experts. While the availability of appellate bodies, administrative courts or courts of justice can help to ensure due process in the bureaucracy and the accountability of civil servants making binding administrative decisions, a lengthy and cumbersome legal process often denies complainants of the right to be treated fairly. At the same time, ineffective judiciary processes fail to penalize officials that make decisions based on private rather than public interests.

2. GOVERNANCE IN THE THAI BUREAUCRACY

2.1 Governance Indicators

According to the perception indicators surveyed by the IMD, corruption and bribery remain widespread in Thailand. This indicator appears to correlate roughly with the level of income of a developing country. As can be seen in Table 1, India, Indonesia, and the Philippines, the three countries with lower scores for bribery and corruption than Thailand, all have lower per capita income. The relationship is less prominent with regard to the level of political interference in the bureaucracy. Thailand's score, interestingly, is lower than that of Indonesia. However, what is most interesting is that, when it comes to bureaucracy's efficiency in terms of facilitating business activity, Thailand's score is on par with that of Taiwan and South Korea whose level of income per capita is significantly higher. These indicators show that the Thai civil service operates in an environment where corruption and bribery are rampant and where bureaucracy is subject to considerable political influence. Nevertheless, these negative factors have not posed serious obstacles to business activity.

Table 1 Civil Service Governance Indicators, 2006

Country	Public Service	Bureaucracy	Bribery and corruption
	The public service is not independent from political interference (=0), and is independent (=10)	Bureaucracy hinders business activity (=0), and does not hinder (=10)	Bribery and corruption exist in your economy (=0), and do not exist (=10)
Hong Kong	6.04	6.62	7.57
India	2.59	2.79	1.69
Indonesia	2.95	1.83	1.32
Malaysia	4.90	4.87	4.85
Philippines	1.60	1.67	1.04
Singapore	5.11	6.67	8.19
South Korea	3.79	3.63	4.23
Taiwan	3.78	3.78	4.48
Thailand	2.91	3.64	1.88

Source: IMD. *World Competitiveness Yearbook 2006*.

2.2 Transparency

Thai laws often grant administrative authorities a wide margin of discretionary power in both interpretation and implementation of the law. Bowornsak (2004) likened this legal tradition to the writing of a blank check by the legislative body and giving it to the administrative body.¹ Under such circumstances, transparency in administrative procedures becomes particularly vital in ensuring that the bureaucracy uses its broad power in order to serve public rather than personal interests.

As mentioned previously, transparency implies clear rules and procedures, and public disclosure of information.

- *Procedural Rules*

As mentioned above, most Thai laws do not prescribe clear administrative rules and procedures pertaining to the implementation of the law. Rather, the issue is left to the implementing authority to decide how certain sections of the law are to be interpreted, how complaints are to be handled, and on which criteria decisions are to be made, etc. In the absence of clear rules for implementation and procedural guidelines, the administrative process can be unpredictable and subjective. It should also be noted that in many cases when relevant rules, orders, announcements or decisions exist, they are rarely advertised or information about them disseminated to the public, with the result that the public remains unaware of them.

- *Public Disclosure of Information*

The passing of the Official Information Act in September 1997 marked the first great leap toward better governance within the bureaucracy. With this law, citizens may request access to information in possession or control of a state agency that previously may have traditionally been “off-limits.” These include official decisions and orders that concern the public, Council of Ministers resolutions, agreements and concession contracts made between government organizations or state-owned enterprises and private companies and concessionaires.

With greater access to official information, citizens are better able to evaluate and scrutinize the government’s management of affairs, demand fair treatment from the State and to participate in the decision-making process. Academics and newspaper reporters are probably the two groups of individuals who have exploited and benefited from this law. Ordinary citizens who believe that they have not been given fair or adequate treatment by the bureaucracy have also resorted to the Act in order to obtain justice.²

However, the shortcoming of this law is that it lacks provisions for legal sanctions in cases of non-

compliance. As a result, many state bureaus have not proceeded with the required declassification and public disclosure of certain official documents. Officials are also reluctant to disclose information when requested by a citizen and drag their feet in complying with disclosure orders by the Public Information Board. Indeed, it will take a while until the culture of transparency slowly penetrates the thick wall of the old tradition of state secrecy and exclusivity.

2.3 Due Process

Due process of the administrative branch of government in Thailand is prescribed by the Administrative Law. Thailand’s relatively advanced Administrative Law 1996 and its Public Information Act 1997 help guarantee a certain level of transparency and objectivity in the application of administrative power. For example, the Administrative Law:

- Prohibits officials (i.e., plus their family and other relatives) with financial and non-financial interests from being involved in administrative procedures.
- Requires that all parties involved in the proceedings be given the opportunity to present evidence and offer counter-evidence to the administrative officials.
- Requires that all administrative decisions that have a bearing on the private sector be recorded, along with details describing the minority views and opinions as well as the signatures of every commissioner. The decisions must also be made publicly available according to the Public Information Act 1997.
- Requires that all government agencies set a specific time frame for responding to inquiries or complaints.

Unfortunately, many state authorities fail to comply with some of the provisions stated above. For example, Nipon (2003)³ found that certain commissioners of the Thai Trade Competition Commission responsible for enforcing the Thai Trade Competition Act B.E. 2542 were deliberating in cases in which they had a clear conflict of interest. The Commission’s decisions are at best arbitrary in the absence of convincing supporting evidence. Minority views are rarely recorded, and minutes of the Commission’s meetings are extremely brief, plus they do not provide any information on the issues discussed with regard to the cases being deliberated. Indeed, such problems are not unique to the Trade Competition Commission; they are commonplace among most state authorities.

Despite its relative comprehensiveness, the Thai Administrative Law fails to establish clear communication rules for state officials involved in making administrative decisions; such rules are vital if impartiality of

the procedure is to be ensured. Specifically, it is silent on rules concerning off-the-record communication between officials deliberating a case and the parties directly involved in a proceeding.⁴ Thus, officials are able to arrange private meetings with the parties concerned, where the information and views submitted or exchanged are unrecorded. Such a lacuna in procedures leaves the administration particularly vulnerable to lobbying.

Deunden and Somkiat (2002)⁵ also found that the Administrative Law concentrates mainly on procedures concerning the issuance of an administrative order that is binding on the specific disputing parties, but it does not cover procedures involving the establishment of administrative rules or regulations that have general application to private businesses and individual citizens. As a result, a rule passed by a state authority can easily favor a particular interest group, while disadvantaging another group. It can also be unnecessarily burdensome and costly to comply with, while failing to deliver the intended result.⁶

2.4 Accountability

A civil servant can be held legally accountable for his or her misdeeds in two ways. In the case of an alleged corrupt practice, the person will be examined by the National Counter Corruption Commission, a body established under the Constitution of 1999. On the other hand, if the civil servant violates the due process requirements set out by the Thai Administrative Law – should he or she participate in the decision-making process despite personal vested interests in the matter – he or she shall be examined by the Administrative Court.

Unfortunately, these two organizations have not been able to handle the tide of cases, with the result that a sizable backlog of cases has built up over the years since the establishment of these bodies, as can be seen in Tables 2 and 3.

After the 1997 financial crisis, much emphasis has been focused on the establishment of a “performance-based” system in order to hold state entities more accountable for their performance. Ideally, performance indicators could act as a “whistle blower” if they could reveal the underlying problem that has yet to be unearthed. The Office of the Public Sector Development Commission (OPDC) has been trying to implement all sorts of performance measurement techniques, such as the Balanced Score Card and the Key Performance Indicators (KPI).⁷ The Thai experience reveals that performance assessment, while certainly desirable, is extremely difficult to implement in practice. Among the myriad implementation problems, the following are the major ones.

The first and most fundamental problem is the sheer lack of data required to produce the indicators. In the absence of time-series data on the variables required to measure performance, it is nearly impossible to construct any meaningful indicators. For example, if one would like to measure the effectiveness of the Department of Export Promotion’s spending in organizing trade fairs to promote Thai exports, one would need to identify the Thai export companies that participated in such fairs and track down the orders that they have received from the customers that attended the trade fairs. Because it is very rare that a government agency would need to justify its spending on the basis of “value for money,” it is not surprising that such data do not exist.

Table 2 Counter Corruption Cases with the National Counter Corruption Commission

Unit: number of cases

Status of cases	2000	2001	2002	2003
Accepted*	3,875	4,938	6,176	7,140
Completed	1,116	1,099	1,201	1,306
- rejected accusation	1,095	1,055	1,132	1,191
- guilty	21	44	69	115
In process	2,759	3,839	4,975	5,834

* Figures include cases in process from the previous year and new cases in the current year.

Source: The Office of the National Counter Corruption Commission.

Table 3 Administrative Court from 1996 to 2004

Administrative Court	Cases accepted	Cases completed	Cases in process
Supreme Administrative Court	3,821	1,792	2,029
Central Administrative Court	9,451	6,272	3,179
Regional Administrative Court	16,378	10,971	5,407
Total	20,378	10,971	5,407
Percentage	100.0	53.83	46.17

Source: Administrative Court.

Second, variables and indicators are collected and calculated by the parties whose performance is to be evaluated rather than by an independent third party. Indeed, self-evaluation lends itself to potential manipulation of the data.

Third, finding the right indicators is a very complex task. Many indicators used to measure performance are either input or procedural indicators, rather than the outcome indicators. For example, in measuring the effectiveness of a government-sponsored training program arranged for small businesses, the performance indicators used are usually timely disbursement of the allocated funds and the number of attendees. It is also important to note that if the indicators capture only "some" but not "all" of the state body's responsibilities, then it is possible to manipulate the indicator by mobilizing resources toward the evaluated activities, and thereby, abandon other services or activities whose performance is not measured. Under such a circumstance, the performance-based scheme could seriously harm the governance and efficiency of the state entity.

2.5 Public Participation

Public participation requirements regarding the administrative procedures of the Thai bureaucracy are stipulated in the Rule of the Office of the Prime Minister on Public Consultation by Public Hearings 1996. The rule has many shortcomings. First, compliance with it is not mandatory. A hearing can be held only if the Minister or Provincial Governor is of the opinion that implementation of any project under his or her authority and duty may cause adverse economic, social, or cultural impacts. An individual adversely affected may ask the Minister or Provincial Governor to organize public hearings, but the latter need not oblige. Second, there are no penalties in cases of non-compliance. Third, the rule specifies only that the hearing needs to be carried out before the actual physical implementation of a project. Hence, in many cases, the projects have already been approved by the Cabinet. Worse, the rule allows the government to proceed with the expropriation, procurement, and signing of contracts during the course of the public hearing process. Indeed, this only fuels discontent among stakeholders that oppose the project and leads to hostile confrontation. Fourth, the rule is so formal and rigid that it cannot accommodate public participation under a different social and economic environment.

At the implementation level, public consultation is perceived not as a means to provide accurate and impartial information about the project, to learn about the concerns of different stakeholders, and to exchange views and provide explanations, thus narrowing the gap between proponents and opponents. Rather it is perceived as a forum for deciding whether or not a project should be carried out. As a result, very little information or evidence is provided for informed discussion. During the past several years, the Office of the Civil Service

Commission has been working on a draft "public consultation act," but to date, no such law has yet been promulgated.

3. CONCLUSION AND RECOMMENDATIONS

To conclude briefly, as the implementing body for all government policies, state laws and regulations, the civil service is at the heart of the governance problem. At the same time, it is the key to the solution. **It is of utmost importance that the Thai civil service be sufficiently shielded from potential exploitation by corrupt politicians or lobbying by large businesses with vested interests.** At the end of the day, politicians are rarely held accountable for corrupt practices as they often make verbal demands and never written ones. Likewise, the counter corruption law targets the recipient, rather than the donor, of a bribe. Thus, like politicians, businessmen bribing officials rarely face legal sanctions.

Transparency, due process, accountability and public participation all serve to protect the integrity of the civil service. Clear and well-advertised procedural rules are not amenable to rigging. Public disclosure of administrative procedures and decisions would help to mobilize public scrutiny in case any abnormality occurs. Due process such as communication rules would limit the channels by which vested interests could exert their influence. Greater accountability may imply that more civil servants could become "sacrificial lambs" for politicians' corrupt practices. In the end, however, accountability would serve to protect the integrity of the bureaucracy against political interference, as in many cases politicians would be dragged into the investigative procedure. Finally, public participation is an important tool for exposing all the undesirable dealings that can occur in an administrative procedure.

To give an illustrative example, the secretary-general of a debt-restructuring agency is finding it hard to resist political demands to give generous debt write-offs for politically connected firms. Perhaps he would not face such a problem if: (a) clear rules or guidelines have been established and made public on how much debt write-off a firm could be given; (b) details on the debt-restructuring schemes of every firm have been made available on the Internet so that the public could scrutinize whether politically connected firms are getting more favorable treatment than others; (c) executive officers must declare all potential conflicts of interest so that it would be more difficult for the government to send representatives of interest groups to serve as directors or CEOs in the Debt Restructuring Office; (d) allow firms in a similar line of business to participate in the process of designing a debt-restructuring package for the industry to ensure fair treatment; and (e) monitor the progress of the structured firm in order to evaluate the "value for money" spent on the restructuring in order

to vindicate restructuring decisions taken by the authority.

Unfortunately, implementing good governance measures is not so easy in practice as state organizations often face political and institutional constraints at the policy level as well as information constraints at the implementation level. Nevertheless, the Thai experience reveals that there are certain “crucial steps” that can lay a firm foundation for the betterment of state governance. These are:

- (1) *Ensure access to public information.* At the most basic level, the enactment and enforcement of a public information act would be required. In the Thai case, the law would need to ensure quite a bite and allow a high level of compliance monitoring to be effective.
- (2) *Establishment of clear governance rules for all administrative procedures.* At the basic level, this would require the enactment and enforcement of a public administrative law that would lay down the basic foundation of a “due process” for all administrative procedures.
- (3) *Ensure greater public disclosure of all state rules and regulations* pertaining to any administrative procedure, rule or decision. At the moment, most state agencies list only laws that provide the public with a legal mandate and authority. They do not list numerous subordinate laws such as Royal Decrees, ministerial decrees, commission orders, etc., that are relevant to the administrative procedure and rarely disclose minutes of the meetings, key decisions taken, annual performance reports (if they exist), etc., that can be useful for public scrutiny.
- (4) *Allow public participation* in key public policies or rules at the policy, rather than the implementing, stage. However, mere participation can be meaningless if there is no two-way communication. The public needs to be well supplied with accurate and timely information regarding the issue at hand in order to stimulate informed and objective

discussions about that issue. The bureaucracy also needs to collect and make public (on the Internet) of public concerns as well as respond to those concerns with convincing supporting data.

ENDNOTES

- ¹ Bowornsak Uwanno. 2004. *Administrative Law Manual*. Bangkok: Thai Bar Association.
- ² For example, disclosure of marked entrance examinations for an elementary school was petitioned when the practice of favoritism was suspected.
- ³ Nipon Poapongsakorn. 2003. “Institutional Arrangements for the Competition Authority in Thailand.” <http://www.apeccp.org.tw/doc/APEC-OECD/2003-12/005.pdf>.
- ⁴ This is known as the “ex parte” rule, which states that no party or participant in the proceeding shall submit ex parte communications to the administrator of the law and its employees regarding any matter pending before the authority. For example, the ex parte rule governing members of the United States House of Representatives is available at <<http://www.house.gov/ethics/ethicschap7.html>>.
- ⁵ Deunden Nikomborirak, and Somkiat Tangkitvanich. 2002. “Building Credibility for a Telecom Regulator.” <http://www.info.tdri.or.th>. (in Thai)
- ⁶ For example, a price control limit was placed on a 250 ml bottle of water in the belief that the producers were charging an excessive price for the product. As the controlled price was too low for the producers to make a profit, all producers ceased production of the 250 ml bottle and produced 500 ml or litre bottles instead. The result is that consumers can no longer buy the smaller bottle and are forced to buy the heavier and more expensive alternative.
- ⁷ Details about OPDC’s performance evaluation framework for state departments and organizations in the year 2007 can be viewed at [http://www.tris.co.th/kpr/OPDC_Evaluation_Framework_50_for_Government_%20Units_\(27_07_06_09_40\).pdf](http://www.tris.co.th/kpr/OPDC_Evaluation_Framework_50_for_Government_%20Units_(27_07_06_09_40).pdf). (in Thai only)

