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IT'S TIME FOR A NEW GOVERNANCE FRAMEWORK

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1. INTRODUCTION

Since the Asian financial crisis that broke out in 1997, building good governance has been a hot issue in Thailand. Many Thai government administrations have since enacted various rules, regulations, and laws to promote governance of the Thai state: for example, the Regulation of the Office of Prime Minister on Building Good Governance, B.E. 2542 (1999); the National Government Organization Act (No. 5), B.E. 2545 (2002); and the Royal Decree on Criteria and Procedures for Good Governance, B.E. 2546 (2003).

Furthermore, certain government organizations also proposed strategies and plans to help establish good governance. Among them are the Office of the Public Sector Development Commission, which launched the Promotion and Development Plan for Good Governance in Bureaucracy and

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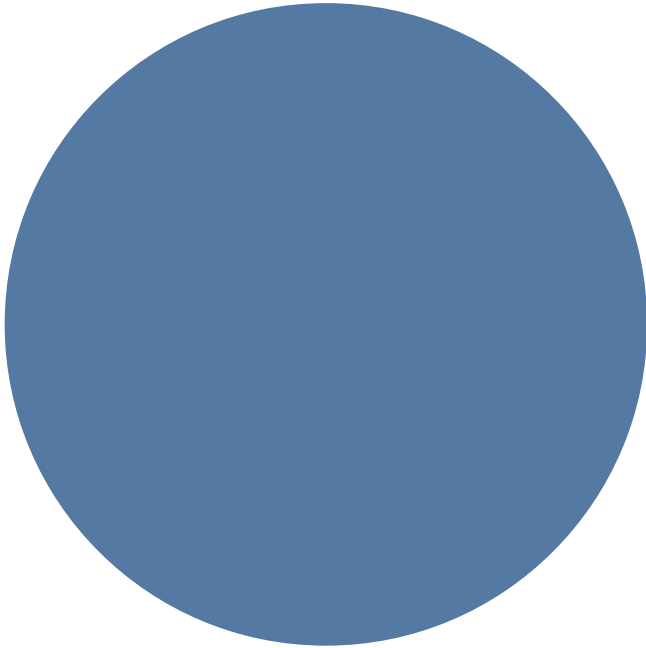


Sustainable Development, B.E. 2554 (2011) (Office of the Public Sector Development Commission 2011) and the National Economic and Social Development Board (NESDB), which launched the country's first national development plan primarily as a means to improve Thailand's governance status (NESDB 2016).

However, despite the attempts of various government administrations to boost good governance of the state, it seems as if Thailand's performance has not improved over the past two decades. Many indicators show that Thailand's governance has declined or remained stable at an unsatisfactory level during that period. To be more specific, regarding Worldwide Governance Indicators, an exercise conducted annually by the World Bank, from 2000 to 2014, Thailand's Voice and Accountability index fell from 63.5 to 25.6; its Political Stability and Absence of Violence index plummeted from 60.1 to 16.5; the Rule of Law index dropped from 65.1 to 51.4; the Control of Corruption index declined from 55.1 to 42.3; while the Government Effectiveness and the Regulatory Quality indices leveled off, ranging from 61 to 64 (World Bank 2014). Similarly, the Corruption Perception Index, ranked by Transparency International, has confirmed that corruption is

still pervasive in Thailand, as the country's score increased by only 6 points out of a possible 100 points (ThaiPublica 2015).

The present article is based on a research study, entitled Strategies to Improve Governance in Thailand, which was conducted during the 12th National Economic and Social Development Plan (TDRI 2016). It is argued in the study that the main obstacle facing the Thai state in its efforts to improve its governance is the repetitive practices and obsolete ideologies of the government itself, which dominate the governance reform process. Those practices and ideologies have been bureaucracy-centric and unfriendly to non-state actors, limiting the tools that reformists could use to promote governance reform. As a result, many reforms end up with a status that could be called "old governance," which is considerably less effective for making radical changes in Thailand's governance structure. It is suggested in this article that to constructively promote good governance in Thailand, the government needs to adopt a "new governance" framework and practices, encouraging non-state actors — especially citizens, stakeholders, and the press — to regulate and take the state into account. Such practices will make the



government more responsive, participatory, and transparent, resulting in the sustainable improvement of good governance in Thailand.

2. OLD GOVERNANCE FRAMEWORK AND PRACTICES

Even though good governance development plans have been discussed since 1997, until now the framework that Thai government administrations have used to promote good governance has not changed much; the governance reform framework has been excessively bureaucracy-centric,¹ emphasizing primarily the role of state actors while ignoring — or even excluding — the role of civil society and citizens. Under the current framework and practices, citizens and civil society are downgraded to the level of passive subjects, merely waiting passively for public goods and services to be delivered.

There is considerable evidence demonstrating that the current Thai governance structure is

excessively bureaucracy-centric or unfriendly to non-state actors. Some examples are provided below.

2.1 An overabundance of rules and regulations

The Thai government tends to address shortcomings in the legal system by creating even more laws, rules, and regulations. Too many laws and regulations enacted without careful consideration have made the state less flexible and less responsive, while increasing the costs incurred by non-state actors in operating and engaging in governance-related activities. According to Nikomborirak and Saelawong (2016), Thailand now has more than 8,000 acts (laws) in place which widely affect the people and businesses. Moreover, an even larger number of rules and regulations may have been enacted under these acts. This is because the government usually tries to fill the gaps in the legal system by topping up rules and regulations without being aware that many laws were not fundamentally necessary in the first place.

A prime case showing how an excessive number of rules and regulations is disadvantageous to non-state actors' participation is the case of accountability reform in schools. Before that

¹ Thailand is widely recognized as a bureaucratic polity: a country where the bureaucracy constitutes the most influential group in the society and is at the center in policymaking (Riggs 1966).



reform was implemented in 1999, public schools were unresponsive and unaccountable to students, parents, and communities. Thereafter, the reform enabled parents and students to participate in school management, by establishing school committees based in every school. The school committees, however, brought about no practical change, because schools had never had real autonomy from the central government. Every public school must strictly follow many rules and regulations set by the Ministry of Education. Therefore, decisions taken by school committees would eventually be denied if they conflict with the central government's rules and regulations.

2.2 An overcentralized regime

The assessment system of the Thai state is overcentralized and highly bureaucracy-centric. The performance of government agencies is evaluated largely by central government organizations (e.g. ministries) and senior bureaucrats. Citizens or clients' satisfaction is virtually ignored. Therefore, government agencies that directly interact with the people have a greater incentive to serve the interests of senior bureaucrats or the central government

instead of being accountable to citizens and clients. This assessment system rejects the principle that bureaucrats are the servants of civilians; rather, it reflects the fact that the Thai bureaucracy is just a tool for the state to govern citizens.

Moreover, elected local administrative organizations (LAO) in Thailand are relatively weak compared with unelected regional governments — which are under the Ministry of Interior. For example, executives of regional governments have the power to investigate, approve, and sanction executives of LAOs. Also, about 80 percent of LAOs' income comes from central government grants, and half of such grants are conditional. The central government specifies the plans and purposes of grants. The duty of the local government is merely to implement the plans, according to central government orders (Satitniramai 2012). This means that local governments which have close links with citizens and civil society have limited roles in pushing policies and development plans.

2.3 Official Information Act

The Official Information Act, B.E. 2540 (1997) (OIA) does not guarantee Thai citizens

the right to information, which is the basis for transparency, accountability, and civil society's participation. Instead, the Act serves only as a reference for how bureaucrats should process citizens' requests for information. Although the OIA prescribes that government organizations must disclose certain information automatically, the act itself, with its various flaws and weak enforcement, has failed to encourage transparency and participation from civil society. To illustrate, the OIA prescribes stronger penalties for those who disclose information than for those who refuse to disclose information; thus, officials possessing information have a greater incentive to refuse making a disclosure in order to avoid being penalized by the law. Furthermore, consideration about whether to disclose the requested information or not involves quite a lengthy process, and the OIA allows civil servants possessing information to exercise wide discretion. As a result, the cost of using the OIA is too high, as it discourages citizens and civil society from using the OIA as a means to enhance transparency and participation.

In short, as the name "Official Information Act" suggests, the Act has created a situation where "information" generally belongs to "officials," while citizens need to request information; whether they will be able to access that information, however, depends on the officials' discretion.

2.4 Governance-promotion agencies

The Thai government prefers to drive and monitor governance reform only through state organizations. Since 1997, numerous government organizations, offices, boards, task forces, and independent regulatory agencies have been established to support governance reform, such as Office of the Public Sector Development Commission, the Office of the Auditor General, the National Anti-corruption Commission, the Public Sector Anti-corruption Commission, the Thailand Ombudsman, the Law Reform Commission, the Transparent Bureaucracy Network, and the Ethics Protection





Department, among others.² Not only have these agencies worked separately without particular targets, but they have also had very weak links with civil society. Information on the performance of these agencies has rarely been published, and when it is, it is often delayed. This problem has hindered civil society from engaging with and monitoring the performance of such governance-promotion agencies.

2.5 Ethics promotion training

Another measure that the Thai government has used very frequently to enhance good governance is ethics promotion coursework conducted for the benefit of bureaucrats and civil servants. The government has assumed that the awareness and sense of responsibility of the officials who pass this type of training will increase, but the coursework has proved to be actually ineffective and inefficient. There are several reasons why the popular coursework has failed to improve good governance in Thailand. First, the primary target of such coursework is civil servants. It is unclear, however, how this bureaucrat-oriented coursework would establish strong accountability between officials and the people in the absence of civil society's support. Second, the content of the coursework is vague, and the term ethics is generally confusing. The lack of clarity in the coursework's content actually allows corruption to take place: it gives officials the opportunity to spend money arbitrarily in the name of loosely defined promotion of ethics.

Briefly, the bureaucracy-centric framework and practices, which are pervasive yet unfriendly to non-state actors, are portrayed in at least five cases. First, the rules and regulations enacted by the state are excessive in number, increasing the cost for non-state actors to participate in governance reform. Second, the civil servant assessment system favors the satisfaction of senior-level bureaucrats

² Although some task forces, boards and organizations have been established to promote good governance with close links to civil society — for instance, the Provincial Board of Good Governance and the Provincial Dhamrongdhama Center — the role of such organizations has been rather vague and limited.

over citizens, and the elected local government is relatively weak compared with central and regional governments. Third, Thai citizens do not have the right to information, which weakens the basis of transparency and their participation. Fourth, the governance promotion agencies do not have close links with civil society. Fifth, the promotion of training in ethics has failed to establish accountability between bureaucrats and citizens.

The unfriendliness of the Thai government to non-state actors has prevented civil society from engaging in governance reform, a situation that is disadvantageous for various reasons. First, citizens comprise the most important source of information. Without participation from civil society, it is very difficult for the state to know what goods and services citizens need, and how the state should deliver them. Second, if the link with civil society is missing, the state will have no one serving as a watchdog to monitor and incentivize the state to improve its performance. Although the Thai government has tried to raise bureaucrats' awareness and sense of responsibility by providing them with training and coursework, it has been proven that such steps have been ineffective and inefficient, as previously mentioned. A more effective choice would be to empower civil society to serve as a watchdog, pressuring the state and taking it into account. Despite these advantages, the old governance framework is still the dominant practice of the Thai state; unfortunately it has prevented non-state actors from participating in governance reform. As a consequence, the Thai state has lost a useful source of information, and has had no incentive to perform its duties properly.

Whether the Thai state has intentionally tried to retain the old system of governance or not, it seems that the bureaucracy-centric framework is still widely utilized. Therefore, the fate of governance in Thailand now relies mostly on state actors alone. However, since the government has not achieved substantial success in governance reform since 1997, is it not time to let non-state actors help in enhancing good governance? Is it not time to shift from the

“old governance” paradigm to “new governance”?

3. NEW GOVERNANCE FRAMEWORK

After approximately 20 years (1997-2016) under the old governance approach, it has become obvious that the current framework and practices of the Thai state — which as mentioned previously is bureaucracy-centric and non-friendly to non-state actors — have not worked to produce good governance in Thailand. This is because the reforms implemented have not facilitated civil society organizations and citizens to take part in governance. The absence of citizens and civil society from the process has made the reforms ineffective in at least two ways: first, the state has lost the opportunity to obtain crucial information from its citizens; and second, the state has no incentive to reform itself without citizens monitoring the process.

Instead of adhering to a repetitive and obsolete framework, the time has come for change. This article proposes a new governance framework that is based on the following principles: from now on any governance reform should be friendly to non-state actors, enabling and empowering citizens and civil society to regulate and take the state into account. Reforms should be focused on active roles for citizens, stakeholders, and the press.

It is important to note that, under the current system of “old governance,” most practices that tend to be bureaucracy-centric and unfriendly to non-state actors are not appropriate for civil society. It follows that, in order to strengthen the power of non-state actors, some foundations must be changed. The following recommendations call for the government to implement policies aimed at strengthening its governance.

3.1 Regulatory reform

Because excessive rules and regulations have a cost for non-state actors, the government should implement regulatory reform by canceling those rules and regulations which are obsolete and unnecessary. In considering what rules and

regulations are unnecessary, the state needs to view the legal system holistically, looking for those rules and regulations which are overlapping, conflicting, overdiscretionary, or outdated across related laws. Also, the process should be multidisciplinary, involving experts from various fields, such as law, economics, and political science, among others related to the selected area.³ During the process, the government should regularly conduct public hearings and share information with people to make the process more transparent and to gather information from stakeholders, as a part of its impact assessment process.

Moreover, after canceling obsolete rules and regulations, the government should assess the impacts of the newly drafted rules and regulations to ensure that the new laws will not be too costly for gaining citizens' participation. In the impact assessment process, the drafter should consider whether the current draft is the best choice, or whether there are any better alternatives. The cost and benefit of every option should be examined. If the drafted regulations are likely to become obsolete quickly, the government should specify a certain date on which the regulations would be reviewed. When the process has been completed, the government should publicize reasons behind the enactment or cancellation of drafts.

3.2 Citizen-centric assessment and strengthening local administrative organizations

The current assessment system evaluates the performance of government agencies by focusing on central government organizations and senior bureaucrats, thus making bureaucracy the center of the assessment system. Under this structure, civil servants do not need to serve or answer to citizens, since as long as civil servants follow the rules set by the center they will not be punished, a situation which thus marginalizes civil society from governance activities.

³ For instance, if the government launched a regulatory reform on health and medicine, the process should comprise the relevant laws, economics, political science, life science, biology etc.

To promote civil society engagement in governance reform, the current assessment should be amended to shift the roles of civil society instead of the bureaucracy into the center. The new assessment system should significantly reflect citizens' satisfaction in order to incentivize bureaucrats to serve the people more responsively. Good examples of this type of citizen-centric assessment are the Citizen Report Card (CRC) and Community Score Card (CSC) used by international organizations, such as the World Bank, United Nations, and Asian Development Bank. To acquire data, CRC primarily uses questionnaires in such macro-level areas as cities, while CSC collects data through focus group discussions with villagers in such local-level areas as communities. In spite of differences in means and nature, both CRC and CSC share the same purpose, which is to weigh the level of the citizens' satisfaction with the assessment process.

Furthermore, to facilitate the participation of civil society in governance reform, the Thai state should strengthen channels that citizens could use to become involved in governance activities: one of the most important channels would be LAOs. Thai LAOs are relatively weak; normally they have to comply with the regional or central governments in exchange for grants and stability. Therefore, even if citizens actively participate with LAOs, the policies and reforms will not be promoted in cases when they conflict with the regional or central governments. Hence, the state should give more autonomy to LAOs, allowing LAOs to respond to their constituents flexibly. Apart from that, in order to monitor LAOs' performance, rather than strict regulation from the central and regional governments, the state should instead establish direct links between LAOs and civil society. For example, the state should promote the local press, guarantee community rights, and encourage direct participation — such as participatory budgeting, proposing local ordinances, and voting for the discharge of local executives. Not only would such measures allow LAOs to have more autonomy, but they would also strengthen accountability between LAOs and their constituents.

3.3 Revising the Official Information Act

The Official Information Act, B.E. 2540 (1997) should be amended in order to secure the people's right to information, which is at the root of good governance. First, the government should introduce protection for officials who honestly disclose information, and impose penalties on those who are proven to have dishonestly refused to disclose information.

Second, to avoid highly discretionary decisions on whether to disclose information or not, the government should adopt internationally standardized criteria, such as the "prejudice test" of the United Kingdom's Information Commissioners' Office (ICO). The standardized criteria would help to determine how officials process requests, and thus limit arbitrary judgements. To illustrate, the ICO prejudice test is on the Office's website, and it clearly elaborates categories of information ranging from disclosable to exempt. To process the requests, officials must prove that the requested information falls into the disclosable or exempt categories by demonstrating risks and benefits in every scenario, such as when information is disclosed without alleviatory measures in order to avoid risk, or when information is disclosed with mitigating measures, or information is not disclosed at all. After the decision has been made, the result and supporting reasons throughout the prejudice test must be publicized. In addition, on the ICO website, there are some examples of results which were refused and those which were allowed to be disclosed. These measures are designed to increase transparency within the process of the ICO's decision to ensure that as much information as possible could be accessed by citizens, according to the principle of their right to information.

3.4 Links and accountability between governance promotion agencies and citizens

The Thai state has established many governance promotion agencies since 1997. In the first place, such professional agencies were supposed to strengthen the accountability of the state by monitoring — and penalizing — the

government. However, because of the unbalanced power between the governance-promotion agencies and the other actors concerned, these agencies have become too powerful and accountable to no one. As a consequence, these organizations have been perceived by the public as highly politicized, inefficient, ineffective, and sometimes even corrupt.

To solve this problem, the power relations between the governance-promotion agencies and society should be corrected, that is to say, citizens should be able to check and sanction the agencies, thus making the agencies accountable to citizens. The easiest way to create links between the agencies and civil society is to encourage the governance-promotion agencies to publicize disclosable information and information about their performance regularly and in a timely manner. Disclosure would make it easy for civil society to examine and criticize the performance of governance-promotion agencies, thus reducing the chances for corruption and politicization to occur.

3.5 Civics education

Instead of attempting to train bureaucrats through ethical coursework, the government should educate all citizens, starting while they are undergoing compulsory schooling. The ethical coursework for bureaucrats has failed to enhance good governance because the coursework has not empowered non-state actors to engage in governance activities. A better alternative would be to encourage civic education in the classroom. Although some degree of civics education has been in place in Thailand for some time, the quality of the current civics curriculum is questionable. First, the curriculum involves rote learning in the classroom rather than supporting students to learn through their everyday experience of politics, embedded in the students' own society. Second, the curriculum is more like Buddhist education; it does not produce political actors who will act as watchdogs in the political arena. Third, the curriculum is superficially democratic, with little emphasis on civil liberties, rights, and duties. Therefore, civics education in Thailand should be reformed. The new curriculum should be designed

primarily to emphasize the citizenship of students, illustrating that civics education occurs in everyday life; it is lifetime learning rather than rote learning in the classroom that will produce active citizens who can act as watchdogs and become involved in governance activities. Furthermore, good citizenship should not be strictly defined by the state; on the other hand, the new curriculum should encourage students to freely define what is good citizenship and what is good society (Nogsuan Sawasdee 2010).

3.6 Anti-strategic Lawsuits against Public Participation

One of the most powerful channels that can empower ordinary citizens is the press and media, but somewhat recently in Thailand the practice of the so-called “strategic lawsuit against public participation” (SLAPP)⁴ has become pervasive. To support the media and press in examining the performance of the state freely, the government should enact “anti-SLAPP” legislation. Anti-SLAPP laws which favor the press and media would help the press and media to prove that the issue(s) they are investigating or criticizing is (are) a public issue. If the defendants — in this case, media and the press — succeed in doing so, the law will in turn support the defendants automatically. For instance, if the plaintiffs lose, they will be responsible for paying all the defendants’ court expenses. In addition, during the judgement process, plaintiffs cannot put forward anything new related to the issues that the defendants were criticising.⁵ As such, anti-SLAPP laws promote the media and press to serve as channels for the empowerment of

civil society.

If all the recommendations discussed above are implemented, the basis of new governance will have been established in Thailand. These recommended measures would empower and facilitate civil society to engage in governance reform easily and effectively through numerous means, by reducing the overabundance of rules and regulations which are costly to non-state actors. They would serve to strengthen the channels for citizen participation such as LAOs and the press, building a citizen-centric assessment system, securing the people’s right to information, creating accountability links between governance-promotion agencies and citizens, and reforming civics education to produce high-quality citizens that are able to take the state into account.

4. CONCLUSION

In this article, it is argued that the Thai state’s strategies implemented since 1997 to enhance good governance have failed, because they are bureaucracy-centric and unfriendly to non-state actors. Without the involvement of non-state actors, the state loses crucial information and the incentive to fundamentally reform existing structures, which results in the failure of most governance reforms. Instead of adhering to the old governance practices and frameworks, it is proposed in this article that a new model called the “new governance framework,” be adopted in which citizens and civil society are placed at the center of the reform as the most important source of information and the ability to serve as the most powerful watchdog of the state. To achieve the new model, some policy recommendations have been suggested in this article to establish the essential basis for new governance, namely regulatory reform, citizen-centric assessment, local administrative organization enhancement, amendment of the Official Information Act, establishment of accountability between governance-promotion agencies and citizens, civics education reform, and the enactment of anti-SLAPP laws.

⁴ SLAPP is a lawsuit which is intended to censor and disturb critics. In many countries without anti-SLAPP laws, lawsuits become very costly for the media and the press, burdening them in expensive litigation in order to force them to abandon their criticism or investigation.

⁵ For example, if the defendant criticizes the public hearing process, which is required for any firm wanting to operate in a rural area because it may cause environmental harm to the people living in such areas, claiming it is invalid, the firm in question might want to sue the defendant. In this case, however, the firm could not presume that the public hearing process has been completed and begin operations in the area. Instead, it will have to wait until the issue has first been resolved in the court.

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