

Is a Culture of Accountability Developing in Thailand?

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I. Background

Thai political development

After the overthrowing of absolute monarchy in 1932 Thailand's democratic development has been in a slow pace. Since then, military officers attempted a number of coups and the latest was in February 1991 where it ended up with the dissolution of the 1978 constitution.

The election under democratic system was new to the Thais at the time. Canvassers from rich and powerful political parties intervened heavily during each election trying to get vote from voters using all kinds of method such as paying money, giving consumption products, life threatening, or even assassination. The elected representatives used to be viewed as uneducated, incompetent, and corrupted. Politicians, ministers, and high level government officers who are connected to powerful political parties are normally seen as 'unusually rich' group. When there is a request to declare their wealth, the answer is normally unclear and there is no proving of their income. This is one of the reasons for the military junta to overthrow the government by coup from time to time.

Thai administration since the earliest times has been complex. Few recent political leaders have come "from the people". They have either been military men or from the ruling elite. The administration has often been controlled by interest groups, which in turn have dominated the political, social, and economic systems of the country. This has lead to a one-way communication, top down, from those that represent the ruling class and the remainder of Thai society, and a lack of transparency. Constitutions had been changed or abolished as it suits the administration at the time.

Generally, Thais are very submissive and passive to the ruling class. They could not appeal their grievance to the ruling people easily. If the administration governed with justice, people would be very happy to continue their daily life believing that they must did something good in their previous life. On the other hand, if the people were governed by tyranny, they had to bear with the ruling class because they considered that this must be the sin that they did earlier. They wait until power was transferred to other ruling hands, which may or may not be good. Due to the strong belief in Buddhism teaching says "*As the seed, so the fruit. Whoever does good, receives good, Whoever does bad, receives bad.*" This incident is believed to be the first step of development of misusing the power and social injustice. Thai people and society had been accepting the way that the administrative class exercised and dominated their power to the governed class.

In January 1997, the Constitution Drafting Assembly has been elected to draft the Constitution. These 99 representatives comprise of 76 representatives from every province, 8 public law experts, 8 political and public administration experts, and 7 officials who have extensive experiences in drafting constitutions and laws as well as Master regulation on bureaucratic administration. The Constitution Drafting Assembly's output creates unprecedented and radical changes to the Thai political system and administration as a whole. This remarkable performance in drafting the present constitution urges the Thai to be aware in basic civil rights¹ that they have not been informed or realized before.

¹ For example, the constitution states

Section 59. A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organization before permission is given for the operation of

The present constitution was put into force on 11th October 1997. This Constitution emphasizes reform mechanisms to control the behavior of any political representative of the people and of government agencies. Moreover, the constitution stresses on basic human rights and people participation in every step of development planning as well as promotes better service to general public.

There have been a number of attempts to extract control of the administration from these entrenched power groups, by empowering organizations under successive constitutions.

The mechanisms include methods to balance and control administrative power through the establishment of Constitutional Court, Administrative Court, National Committee on Human Rights, State Audit Commission, and Ombudsman as well as methods to balance and control political power through the establishment of National Election Commission and National Counter Corruption Commission.

Problems and demand for accountability

Apart from monstrous collapse of government and private financial sector, lack of government transparency, obsolete laws and regulations, lack of monitoring and control mechanism, both governmental and private sectors unanimously accepted that ineffective corporate governance was one of the causes of Thailand's economic crisis in 1997 which was the hardest hit of the Thai history.

Democratization and globalization are introduced and applied worldwide. Therefore, government as well as bureaucratic system after the crisis were demanded to be more transparent, effective, efficient, and more dedicated and considerate to the benefit of the nations rather than to its own political party. Terms '*Corporate Governance*' '*Good Governance*' '*People's participation*' '*Human Rights*' '*Civic Society*' etc. have been brought up to public to urge their political awareness. New roles of administration have been kept under public observation.

Current government and the political and bureaucratic reform policy

Prime Minister Thaksin Shinawatra delivered the policy of the current government to the National Assembly on Monday, 26 February 2001. It is the policy of the Government to promote the country's political development towards participatory democracy in order to give the people the opportunity for greater self-government and protection of their own rights.

The Government is trying to commit to improve efficiency, create greater transparency and eliminate corruption in public administration and services, with a view to enhancing social justice and national development at present and in the future. The following policy guidelines are some of the attempt that the current government tries to implement.

1 Political Reform

any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

Section 60. A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions, which affect or may affect his or her rights and liberties, as provided by law.

Section 61. A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time, as provided by law.

Section 62. The right of a person to sue a State agency, State enterprise, local government organization or other State authority which is a juristic person to be liable for an act or omission done by its Government official, official or employee shall be protected, as provided by law.

- (1) Expedite the enactment and amendment of laws in accordance with the provisions of the Constitution so that the people's constitutional rights and freedoms are truly protected.
- (2) Promote the implementation of human rights principles in public administration and the learning of human rights and civic duties in educational institutions.
- (3) Enable the constitution-based non-government agencies to function efficiently, transparently and with accountability.
- (4) Promote and support the establishment of various forms of organizations and among private individuals, and encourage such organizations to participate in political activities as well as to present their opinions and assessments concerning important government projects
- (5) Encourage the Thai people and private organizations to cooperate closely with people and non-governmental organizations (NGOs) abroad, with a view to forging a constructive relationship between the countries and the peoples.

2 Public Sector Reform

- (1) Reform the public sector in order to improve efficiency and streamline the governmental structure in line with the current situation and to enable the public sector to better serve national economic and social development.
- (2) Revise the public sector's role from operator and controller to supporter and facilitator. Support the activities and roles of the private sector and the people by enabling them to actively participate in the process of public reform in order to lay down clear and continuous guidelines for operations.
- (3) Improve the public administration process by utilizing information technology. Information Act will be amended to truly serve the people's needs.
- (4) Accelerate measures to improve the quality of government officials, inculcating in them a favorable attitude towards public service.
- (5) Revise various laws, regulations, operation procedures, and guidelines in order to achieve flexibility, effectiveness, transparency, and accountability in public administration.
- (6) Accelerate the reform of the budgeting process, making it an efficient tool for the allocation of resources in a way that is consistent with national development policies and strategies.
- (7) Promote the public agencies to play a greater decision-making role as well as institute an efficient and transparent inspection system.

3. Prevention and Suppression of Corruption

- (1) Undertake all measures of punishment necessary - whether disciplinary, administrative, civil, criminal or tax-related - in a manner that is resolute, swift and fair to both corrupters and those involved in protecting them.
- (2) Push for the amendment and revision of legislation, develop the monitoring system to ensure that those found guilty of corruption are severely punished.
- (3) Compensation should also be paid to the public sector and the people who have been affected by such corruption.
- (4) Conduct a serious campaign against corruption.
- (5) Encourage the people to join together in forming people's organizations and to play a participatory role in the prevention and suppression of corruption and malfeasance.
- (6) Reform the process of budgetary allocation and spending as well as the public procurement system with a view to enhancing transparency and efficiency in approving the budget.

II. Accountability Development

A. Private sector and Non-governmental Organizations:

After the 1997 economic crisis, International Monetary Fund (IMF) offered economic rescue package with amount of US\$ 17.2 billion to supplement the turbulent economy. On the other hand, the package brought along very tight fiscal rules and monetary regulations such as increase taxes, cut government spending, raise interest rates. As a result, Thailand confronted with rapid economic contraction, rising social stress, and growing political pressure. There were demands for effective corporate governance. Reforms that enhance corporate governance in Thailand are moving in four directions. They are

1. Strengthening of laws and regulations to protect local and international investors.
2. Improving institutional set-up of public companies.
3. Heightening requirements on disclosure and transparency.
4. Promoting voluntary adoption of good governance.

Strengthening of laws and regulations involves the enactment of the Anti-Money Laundering Act and the amendment of Public Companies Act to ensure protection of the rights of shareholders, to specify the duties and liabilities of directors, to require companies to follow accounting standards, to specify sanctions for violations, to ensure the origin of capital inflow and outflow, and to promote legal operation of trade liberalization policy that causes perfect competition among suppliers, customer satisfaction policy, etc.

B. Public sector:

1. Public Sector Reform

The government is now in the process of restructuring public sector and it is expected to be finalized by the end of September 2002. Few weeks ago, the government submitted a draft Public Sector Reform Act for the consideration of the Parliament. One of the main purposes for restructuring public sector is to solve the problems of duplication and gap of responsibilities among several ministries which sometime make it difficult to find the agency which is responsible for a specific event because there are many agencies involved. The Prime Minister himself referred to this situation as 'no host.' It is hoped that, after the restructure, the agencies responsible for similar tasks will be merged or grouped together as a cluster which is make it easier to identify the responsible agency.

2. Prime Minister Office's Regulation on the promotion of better administrative system and good governance

The Council of Ministers adopted the National Agenda on the Establishment of the Good Governance at its meeting on May 11, 1999. Consequently, the Office of the Prime Minister's Regulation on Good Governance was issued on June 30, 1999, by former Prime Minister, Mr. Chuan Leekpai.

The prime objective of this regulation is to ensure a good governance by introducing directions for government agencies to perform their tasks with the emphasis on the following six basic principles:

1. Rules of Law
2. Ethics
3. Transparency
4. People Participation
5. Accountability
6. Efficiency and Effectiveness

Under this regulation, numbers of strategies and measures have been laid down as directions and guidance for the implementation of governmental agencies in order to fulfill these objectives.

3. Official Information Act

The Act enables citizens to gain access to official information, to enhance the solving of corruption problem, to encourage political participation, and to create goodwill for government officials to operate in a transparent manner.

There are two cases on Official Information Act between citizens VS Ministry of University Affairs. In 1998, Sumalee Limpawat, whose daughter was refused admission to elementary level at Kasetsart University Demonstration School, questioned the transparency of the school admission procedure. In 1999, Kiattisak Jeerathiennat had a similar experience at Chulalongkorn University Demonstration School. After two years of effort, both parents were finally granted the right to information. The cases inspired many other parents to check the transparency of educational institutions of all levels.

4. Roles of Independent State Agencies under current constitution

National Counter Corruption Commission

The National Counter Corruption Commission has the following duties:

- (1) To inquire into facts, summarize the case and prepare opinion to be submitted to the Senate, Supreme Court of Justices Criminal Division for Persons Holding Political Positions
- (2) To inquire and decide whether a State official has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office in order to take further action.
- (3) To inspect the accuracy, actual existence as well as change of assets and liabilities of the persons holding positions.
- (4) To submit an inspection report and a report on the performance of duties together with remarks to the Council of Ministers, the House of Representatives and the Senate annually and publish that report for dissemination.

Constitution Court

Constitution court oversees and decides the organic law, bill, decree, and ordinance on contrary or inconsistency with the current Constitution. In the case where the Constitutional Court is of the opinion that the legal submission or objection is not essential for decision, the Constitutional Court may refuse to accept the case for consideration. The decision of the Constitutional Court applies to all cases but not affect final judgments of the Courts.

Administrative Court

Administrative Court has the powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between a State agency, State enterprise, local government organization, or State official under the superintendence or supervision of the Government on one part and another such agency, enterprise, organization or official on the other part, which is the dispute as a consequence of the act or omission of the act that must be, according to the law, performed by such State agency, State enterprise, local government organization, or State official, or as a consequence of the act or omission of the act under the responsibility of such State agency, State enterprise, local government organization or State official in the performance of duties under the law, as provided by law.

National Election Commission

The Election Commission has the following duties:

- (1) to issue Notifications determining all activities necessary for the execution of the laws

- (2) to give orders instructing Government officials, officials or employees of a State agency, State enterprise or local government organization or other State officials to perform all necessary acts under the laws.
- (3) to conduct investigations and inquiries for fact-finding and decision on arising problems or disputes under the laws.
- (4) to order a new election or a new voting at a referendum to be held in any or all polling stations when there occurs convincing evidence that the election or the voting at a referendum in that or those polling stations has not proceeded in an honest and fair manner.
- (5) to announce the result of an election and the voting in a referendum.

National Human Rights Commission

The National Human Rights Commission has duties as follows:

- (1) to examine and report the commission or omission of acts which violate human rights or which do not comply with obligations under international treaties to which Thailand is a party, and propose appropriate remedial measures to the person or agency committing or omitting such acts for taking action. In the case where it appears that no action has been taken as proposed, the Commission shall report to the National Assembly for further proceeding;
- (2) to propose to the National Assembly and the Council of Ministers policies and recommendations with regard to the revision of laws, rules or regulations for the purpose of promoting and protecting human rights.
- (3) to promote education, researches and the dissemination of knowledge on human rights.
- (4) to promote co-operation and co-ordination among Government agencies, private organizations, and other organizations in the field of human rights.
- (5) to prepare an annual report for the appraisal of situations in the sphere of human rights in the country and submit it to the National Assembly.

National Human Rights Commission shall also have regard to the interests of the country and the public. The National Human Rights Commission has the power to demand relevant documents or evidence from any person or summon any person to give statements of fact including other powers for the purpose of performing its duties as provided by law.

State Audit Commission

The duties of the State Audit Commission are as follows:

1. to audit the statement on receipts and payments of each fiscal year and the statement on the financial status of each fiscal year and to give opinion whether they are in compliance with the law and are correct ;
2. to audit the currency reserve account each year and to give opinion whether it is in compliance with the law and is correct ;
3. to audit the receipts and payments, the custody and disbursement of money and use of other properties belonging to or being the responsibility of the audited agency and to give opinion whether they are in compliance with the law , rules, regulations or resolutions of the Council of Ministers, and may examine the disbursement of money and use of other properties, and to give opinion whether they are in compliance with the objectives , are economical and worthwhile and reach the target. In the case where an audited agency is a state enterprise, such opinion shall be given with due consideration of the generally accepted auditing standards.
4. to examine in connection with the collection of taxes, fees and other incomes of the audited agencies and to give opinion whether it is in compliance with the laws, rules, regulations or resolutions of the Council of Ministers.

For the exercise of these powers the Auditor General and competent officials have the power to enter any premises between sunrise and sunset or during office hours in order to examine, search, seize or attach any account, register, document or other evidence, or attach any property concerned or presumed to be concerned with an audited agency in so far as it may be necessary.

Ombudsman

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 the law of a Government official, an official or employee of a State agency, State enterprise or local government organization;
 - (b) performance of or omission to perform duties of a Government official, an official or employee of a State agency, State enterprise or local government organization, which unjustly causes injuries to the complainant or the public whether such act is lawful or not;
 - (c) other cases as provided by law;
- (2) to prepare reports and submit opinions and suggestions to the National Assembly.

In the case where the Ombudsman is of the opinion that the provisions of the law, rules, regulations or any act of any person under section 197(1) begs the question of the constitutionality, the Ombudsman shall submit the case and the opinion to the Constitutional Court or Administrative Court for decision in accordance with the procedure of the Constitutional Court or the law on the procedure of the Administrative Court, as the case may be. The Constitutional Court or Administrative Court, as the case may be, shall decide the case submitted by the Ombudsman under paragraph one without delay.

Thailand has shown her interest to set up the Ombudsman institution since early 1970's. Through a lengthy efforts of politicians, scholars and the people and the enactment of the 1997 Constitution, the first Thai Ombudsman was appointed by His Majesty the King on April 1, 2000. In fact, the Constitution allows to have up to 3 Ombudsmen. Now, the Senate is in the process of selecting another two Ombudsmen.

The procedures for the selection of the Ombudsman can be briefly described as follows :

1. The House of Representatives appoints a selection committee to propose a list of qualified nominees to the House of Representatives.
2. The House of Representatives selects the nominees for presenting to the Senate
3. The Senate makes a final decision on the selection of the Ombudsman
4. His Majesty the King appoints the Ombudsman

The number of complaints in the beginning year of operation 2000 was minimal, only 312 cases. This was understandable because not many people knew about the Ombudsman. In 2001, the Office received 787 complaints, more than twice the number in the previous year. In January and February 2002, 251 and 210 cases have been received, respectively. If this trend continues, there is a possibility that the number of the complaints will reach 3000 in 2002, 4 times the cases in 2001. Therefore, there is a tendency that the Office will be drastically expanded, both in terms of staff and budget.

III. The Ombudsman's Contribution to the Accountability

The Ombudsman's contribution to the development of accountability during the past 2 years could be described as follows:

1. People participation through Public education program

The Ombudsman has put every possible effort to bring the existence of the office to the attention of the people through a wide range of activities both in Bangkok and the provinces. The Ombudsman has been invited, from time to time, to speak about the Ombudsman institution in universities, academic institutions, government agencies, seminars, conferences, etc. He has been interviewed by media such as newspapers, magazines, radio and television on the jurisdiction and roles of the Ombudsman. Other executives and senior staff of the Office of the Ombudsman have participated in a number of seminars, conferences and workshops in various places all over the country to talk about the work of the Ombudsman.

The Office of the Ombudsman has organized a program on “The Ombudsman Meet the People in the Provinces” on a quarterly basis. Until now, the said program has been conducted in the South (Songkhla Province), Northeast (Khon Kaen Province) and North (Chiang Mai Province). This program will continue in other provinces. The prime objective of the program is to let the people in the province, at the grass root level, know what the Ombudsman is doing, how the people could lodge the petition with the Ombudsman and what they could expect from the Ombudsman. The invitations were extended to local officials, businessmen, technocrats, NGO leaders, farmers, students and interested persons to participate in this program. In average, about 500 people attended the program. Pamphlets, posters, and documents were distributed to participants and the public. The people may take this opportunity to submit a complaint to the Ombudsman.

Public education activities through newspapers, radio and television are made on regular basis to make sure that more and more people have opportunity to know about the Ombudsman’s mandate.

2. Ombudsman’s resolutions

Up to February 2002, the Ombudsman has received 1,560 complaints, out of which 365 were out of jurisdiction. 259 were resolved, and the rest is under the investigation.

Some of complaints, which have been resolved by the Ombudsman and contributed to the accountability development, could be cited as follows

Case No.1

A piece of land owned by one farmer in Nakorn Pathom Province was appropriated by the Irrigation Department for the construction of land drainage system in 1993. He was entitled to the compensation of US\$ 200. Having contacted the irrigation officials for several times since 1993, he could not succeed in getting compensation. Therefore, he turned to the Ombudsman. Upon the receipt of his complaint, the Ombudsman has asked the Irrigation Department for clarification. Finally, on October 1, 2001, the farmer telephoned the Office telling that he has already received the compensation plus the interest in the amount of nearly US\$ 225.

Case No.2

A man in Chonburi Province was arrested and prosecuted on a criminal charge. After the case was finished, he asked the police for his gun which was confiscated during his capture, but he was refused. He came to the Ombudsman and, shortly after, the police returned the gun to him.

The above two cases indicated that the government officials failed to perform their duties as assigned, because they lacked accountability. Their service deliveries were not made within a reasonable period, because they had problems with efficiency and effectiveness. Therefore, there is a need for outsider apart from executive side, like the Ombudsman, to observe their performances.

IV. Conclusion

The Ombudsman is intended to be an arm of the Parliament to supervise the government administration through the investigation on the complaints from the public against administrative injustice and mal-administration. However, the Ombudsman is not working against the government. Instead, while the Ombudsman is helping people to solve their problems, the Ombudsman is also helping the government to improve its credibility, good governance and, ideally, to have sustainable accountability.
