

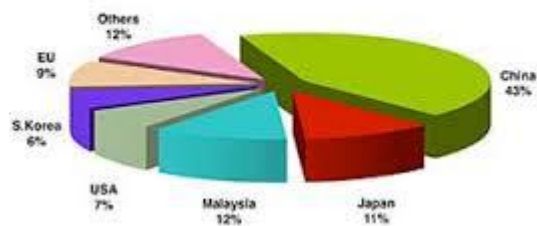
# **Principle 10 in Thailand: Development and Challenges**

**Judge Suntariya Muanpawong, Dr.Jur.  
Chief Judge of the Research Justice Division  
Secretary of the Environmental Law Division  
The Supreme Court of Thailand**

# Thailand: The Development



Thailand's Natural Rubber Export Markets



Source: Rubber Research Institute of Thailand as of Feb 27, 2012



# Thailand: The Nature and Serenity





# Thailand: The Social Violence

--Killing, Enforced Disappearance, Protests, SLAPP



# **Environmental Democracy**

**: People Participation in Environmental Governance**



Laws

Jurisprudence

Culture &  
Practice

# 1. Laws and Regulations;

## 1.1 Information Rights

Inter Law: RIO Principle 10



Constitution : ~~Basic Rights to Official Information~~



Laws: Official Info Law/Administrative Procedure Act



Regulations: --- Some PRTR Regulations

# 1.2 Participation Rights

Inter Law: Principle 10



**Constitution : Basic Rights - *Participation in EIA/HIA of Public, Communities, Health Organizations, Environmental Independent Body (NGOs and Academic)// Co-Management in Natural Resources//State Policies***



**Laws: Hearing in Town Planning Act /Right to be heard in Administrative Procedure Act/ EIA in Environmental Protection Law/ EIA in Mining Law**



**Regulations : Office of the Prime Minister Regulation on Public Involvement -- Provide the Information, Consultation/Hearing/Polling, Meeting Process Etc.**

# 1.3 Access to Justice

Inter Law- Principle 10

**Constitution: ~~Basic Right to Sue of  
Communities, when Lack of EIA/HIA~~**

Laws: Administrative Procedure Act/  
Administrative Court Process Act

Regulations: -----



# Constitution of 2007

## Part 10 Rights to Information and Petition

**Section 56** A person shall have the right to receive and to get access to public information in possession of a government agency, State agency, State enterprise or local government organization, unless the disclosure of such information shall affect the security of State, public safety, interests of other persons which shall be protected, or personal data of other persons as provided by law.

**Section 57** A person shall have the right to receive information, explanation and justification from a government agency, State agency, State enterprise or local government organization before permission is given for the operation of 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 a local community and shall have the right to express his opinions on such matters to the concerned agencies for their consideration.

The State shall organize public consultation thoroughly before the making of social, economic, politic and cultural development plan, the expropriation of immovable property, the making of town and country planning, the determination of land use, and the enactment of rule which may affect material interest of the public.

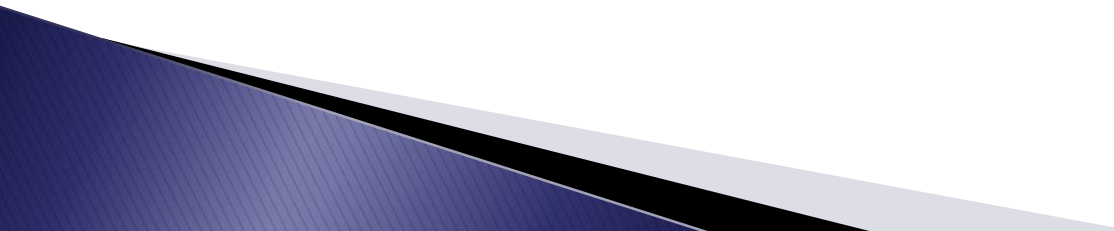
# Constitution of 2007

- ▶ Section 58 A person shall have the right to participate in the decision-making process of State official in the performance of administrative functions which affect or may affect his rights and liberties, as provided by law.
- ▶ Section 59 A person shall have the right to present a petition and to be informed of the result of its consideration within the appropriate time.
- ▶ Section 60 A person shall have the right to sue a government agency, 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.

# Constitution of 2007

## Part 12 Community Rights

Section 66 Persons assembling as to be a community, local community or traditional local community shall have the right to conserve or restore their customs, local wisdom, arts or good culture of their community and of the nation and participate in the management, maintenance and exploitation of natural resources, the environment and biological diversity in a balanced and sustainable fashion.



# Constitution of 2007

Section 67 The right of a person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.

Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organized, and opinions of an independent organization, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity.

The right of a community to sue a government agency, State agency, State enterprise, local government organization or other State authority which is a juristic person to perform the duties under this section shall be protected.



# Constitution of 2007

## CHAPTER V Directive Principles of Fundamental State Policies

### Part 10 Public Participation Policy

Section 87 The State shall act in compliance with the public participation policy as follows:

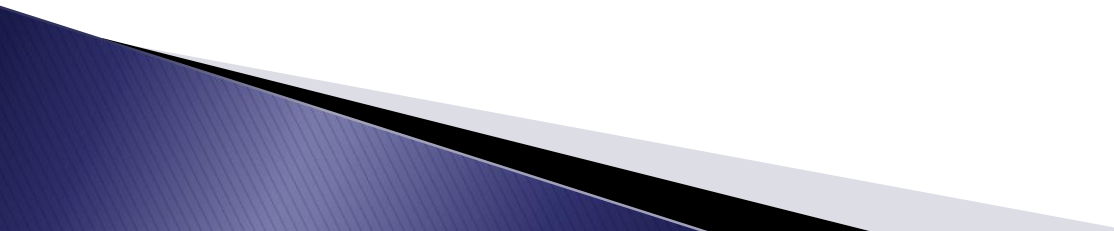
- (1) encouraging public participation in the determination of public policy and the making of economic and social development plan both in the national and local level;
- (2) encouraging and supporting public participation to make decision on politics and the making of economic and social development plan and the provision of public services;
- (3) encouraging and supporting public participation in the examination of the exercise of State power at all levels in the form of profession or occupation organization or other forms;
- (4) strengthening the politics power of the public, and preparing the laws establishing civil politics development fund for facilitating the communities to organise public activities and for supporting networks of the groups of people to express opinion and requirements of the communities in the localities;
- (5) supporting and providing education to the public related to the development of politics and public administration under the democratic regime of government with the King as Head of State, and encouraging the public to exercise their rights to vote honestly and uprightly.

In providing public participation under this section, regard shall be had to approximate proportion between women and men.

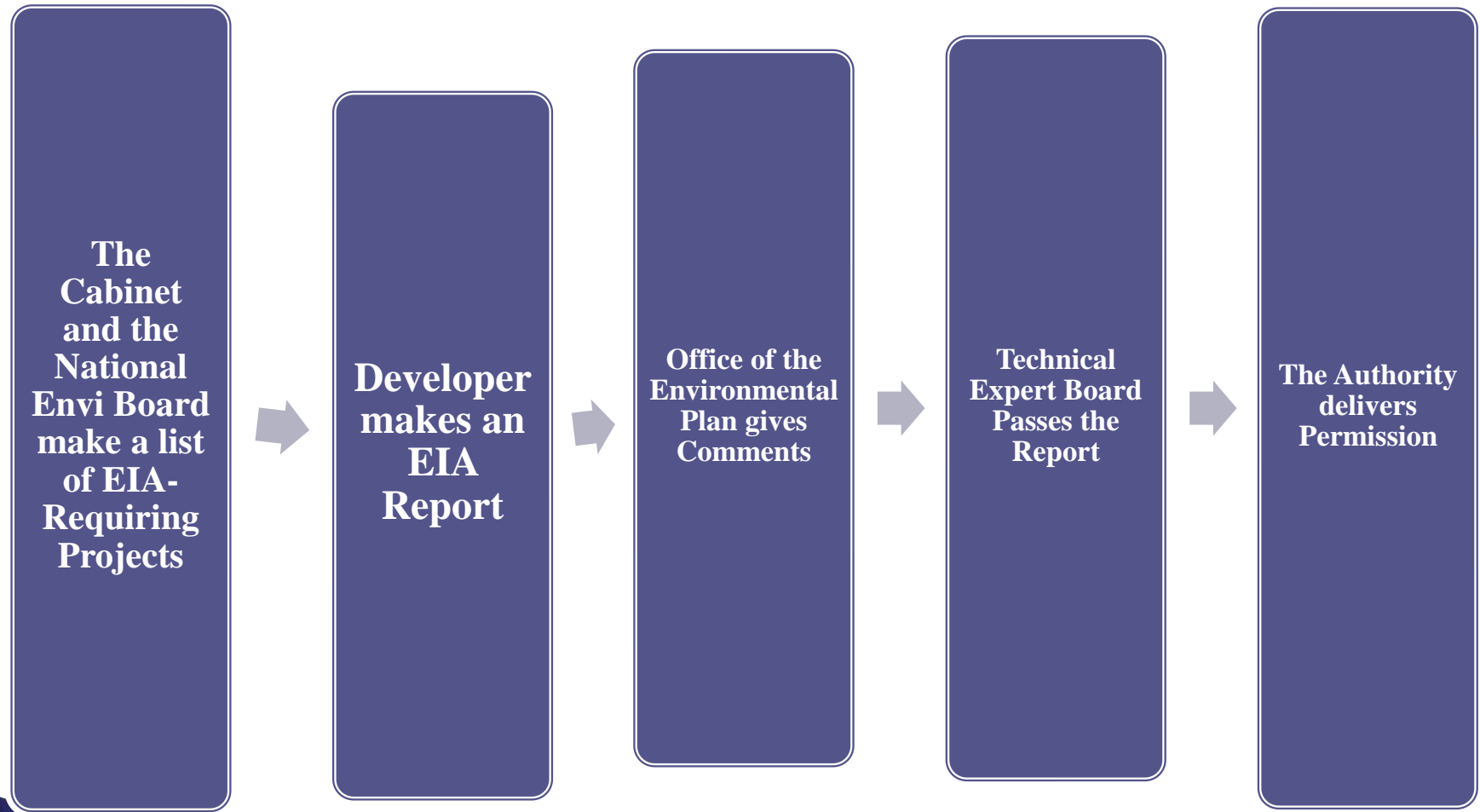
# Interim Constitution of 2014

## ► Article 4.

Subject to the provisions of this Constitution, all human dignity, rights, liberties and equality of the people protected by the constitutional convention under a democratic regime of government with the King as the Head of State, and by international obligations bound by Thailand, shall be protected and upheld by this Constitution.



# EIA in the Enhancement and Conservation of the National Environmental Quality Act



## 2. Administrative Courts Jurisprudence

### ▶ **Laws**

- ▶ Act on Establishment of Administrative Court and Administrative Court Procedure
- ▶ Recommendations of the President of the Supreme Administrative Court on the Administrative Court Proceedings concerning Environmental Issue
- ▶ Administrative Procedure Act

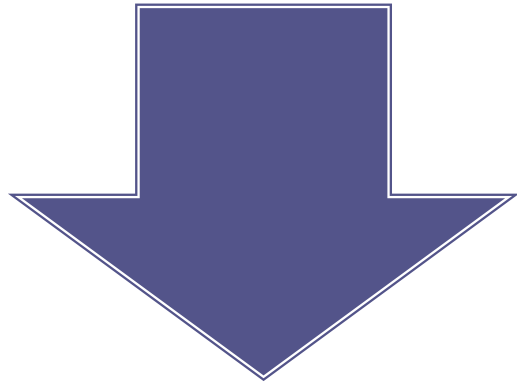
### ▶ **Problems**

- ▶ Obligation to carry out EIA/HIA: Who has the Right to Define and Classify the Seriously Harmful Projects?
- ▶ Procedural Failure: Difference between Small Failure and Important Failure? What is the Consequence? What is the Sanction?  
Administrative Sanction- Healing or Nullify? Or Monetary Remedy? Compensation from the Administration?



# Seriously Harmful Projects with no List

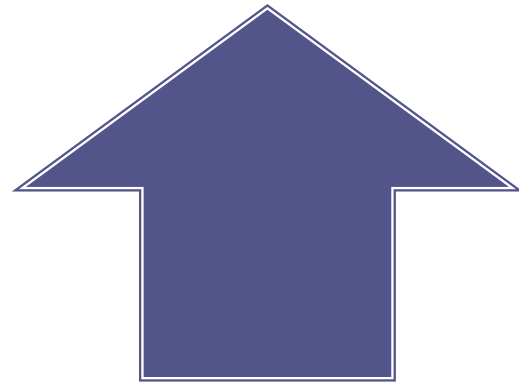
## - Who will make the List?



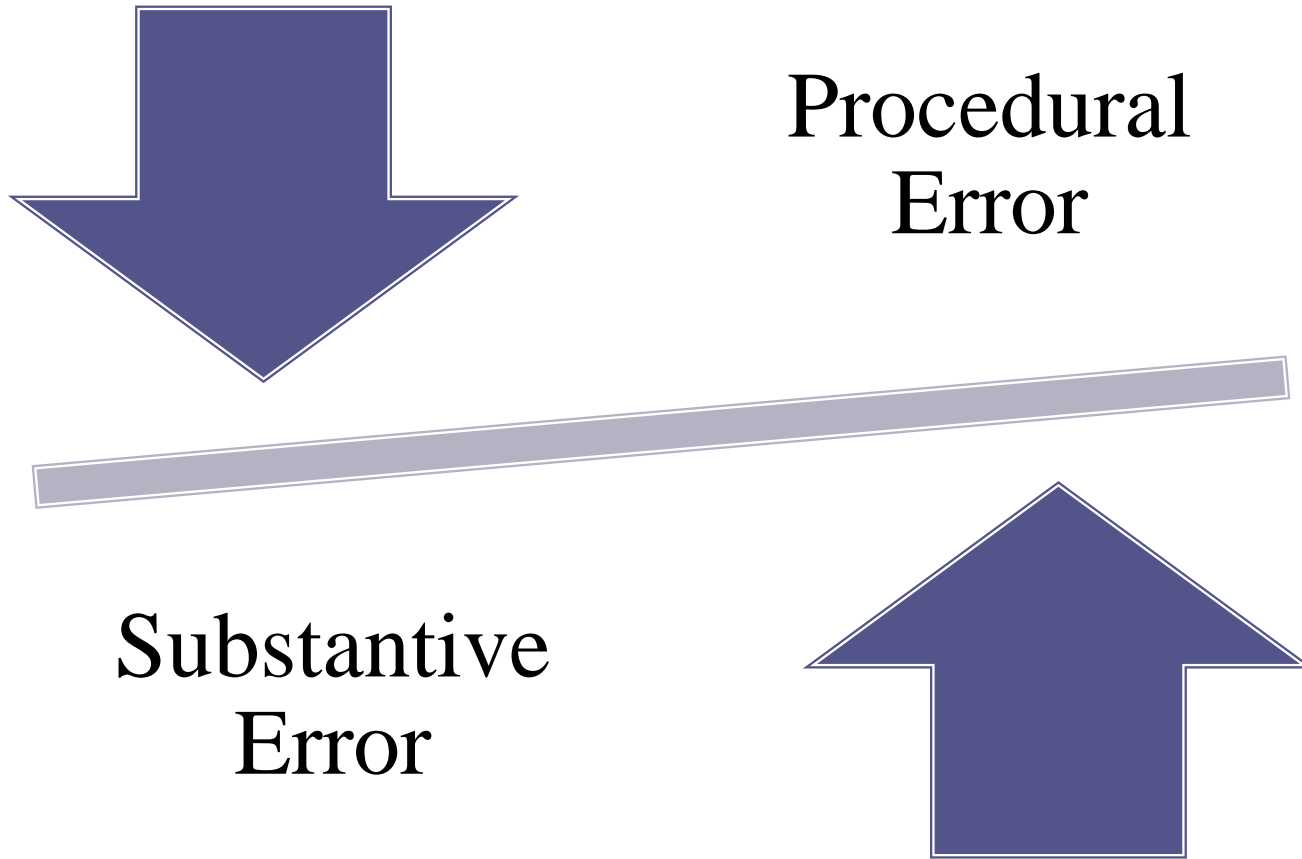
The  
Executive



The  
Judiciary



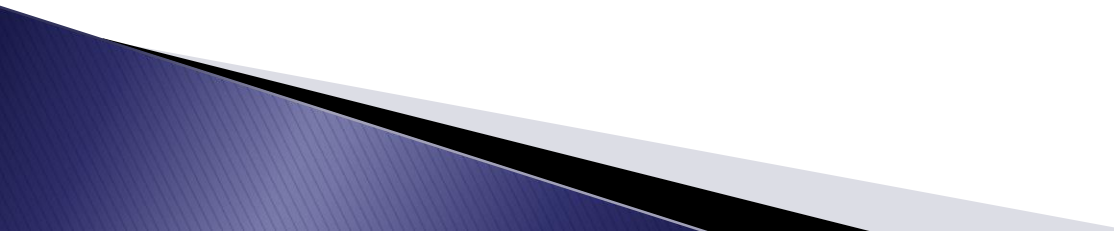
# The Judicial Review-How far?



# Administrative Procedure Act

## Section 34 — Hearing a party

(1) Before the matter is decided, a party shall be reserved an opportunity to express an opinion on the matter and to submit an explanation on the demands and information which may have an effect on its decision.



# Administrative Procedure Act

## Chapter 8 — Correction of an error in the decision

### Section 50 — Correction of an error

- (1) If a decision is clearly based on erroneous or insufficient information or on obviously incorrect application of the law, **or if a procedural error has occurred in the decision-making, the authority may correct its erroneous decision and decide the matter anew.**
- (2) The decision may be corrected to the benefit or the detriment of a party. The consent of the party shall be required for a correction of the decision to his/her detriment. However, the consent of a party shall not be required if the error is obvious and has arisen from the conduct of that party.



# 3. Culture and Practice

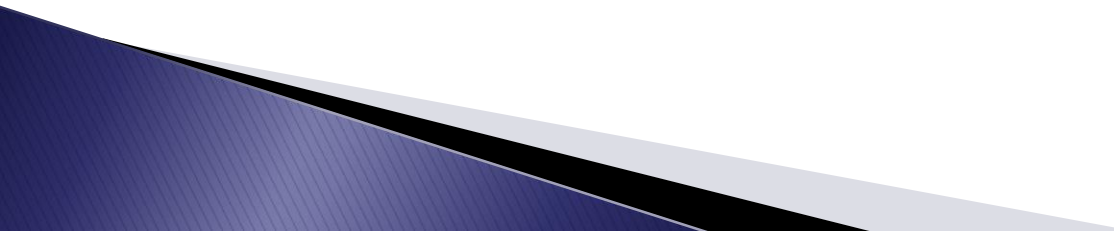
## ▶ Culture

- Effective Deliberation with Our Old Tradition: Elitism, Top-Down Culture, Military Rulers, Nepotism – Possible or not Possible?
- Wrong Attitude of the Government and of the People- Possibility to Change the Attitude?
- Culture of Dialogue?
- Environmental Democracy/Deliberative Democracy/Participatory Democracy/Direct Democracy: Technique or Philosophy/Ethics/Ideology?

## ▶ Practice

- Obligation to Hear?
- Which Groups & Stakeholders? Where? When? How long? Who conduct the Meeting? How to Announce?
- Which Info? How the Info looks like? Duration for Info Access?
- Fair Process-Equal Weapons?
- Right to talk with Reason/ Right to get Answer?/Right to stop or Change the Projects?
- Influence to the Decision?

## 4. Strategic Reform Process

- ▶ No Appropriate Reform Body
  - ▶ No Enough Role of Inter Actors
  - ▶ No Enough Knowledge of Environmental Administrative Law
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# Conclusion

	Problems	Recommendations
1. Law and Regulations	Not Enough/No Clear Obligation/No Details/No Enough Acts and No Special Act/No International Influence	Ensure Constitutional Rights/More Legislations/Enact Special Law on PP in Large Scale Projects/More Binding of the Inter Envi Laws- Principle 10,Bali G, Arhus C
2. Jurisprudence	Not so many Cases to Court, Unclear Laws, Unclear Ideas about the Judicial Review of Administrative Error, Unclear Role of Judges	Increase Legal Aids, Make Clear Laws about Procedural Error/ Capacity Building -Court and People
3. Culture and Practice	No good Culture/No Real Practice	Revisit the Values/Build New Culture, Introduce New Learning Process, Increase Quality of the Deliberation/Use Modern Tools, Expand more Channels for PP, Develop more Skill and Experiences/International Cooperation
4. Reform Process	No Strategic Reform	Set Up New Institutions- Environmental Justice Reform Body Set Strategic Reform , Center for Communication Design/Develop Proactive Role of Inter Actors/Develop Envi Administrative Law