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EXPERIENCES AND CHALLENGES OF EIA LITIGATION IN THAILAND

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Selected experiences and challenges from Thailand

Access to justice regarding EIA matters in Thailand

Public participation in the Thai EIA process

EXPERIENCES AND CHALLENGES OF EIA LITIGATION IN THAILAND



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PUBLIC PARTICIPATION

○ = the constitution with green provisions

*ECNEQA = Enhancement and Conservation of the National Environmental Quality Act

1973 Uprising

1974 Constitution

1981 Ministerial Notification

1984 Ministerial Regulation

types and sizes of projects or activities
criteria, procedures, practices and guidelines

EIA specialist qualifications

1975 ECNEQA*

1978 Amendment

introduced a formal EIA process to Thailand for the first time

1991 Coup

1991 Constitution

EIA specialist qualifications

criteria, procedures, practices and guidelines

types and sizes of projects or activities

formally acknowledged the role of NGOs in promoting environmental protection

1992 ECNEQA

Ministerial Notifications

1996 Administrative Procedure Act

1997 Official Information Act

1999 Act on Establishment of Administrative Courts and Administrative Court Procedure

2005 Rule of the Office of the Prime Minister on Public Consultation

2006 Coup

2007 Constitution

- more adequate public consultation
- ad hoc EIA expert committees
- more competent EIA agency

2010 Jaiharn's Report

2014 Coup

2016 Amendment

In case of urgency, the Council of Ministers may approve a State agency in-charge to proceed with bidding of any transportation, irrigation, public disaster prevention, hospital or public housing project or activity while waiting for an EIA study.

- explicitly defines "EIA"
- explicitly acknowledges existing SEAs
- explicitly requires public participation
- requires HIA where necessary

2017 Constitution

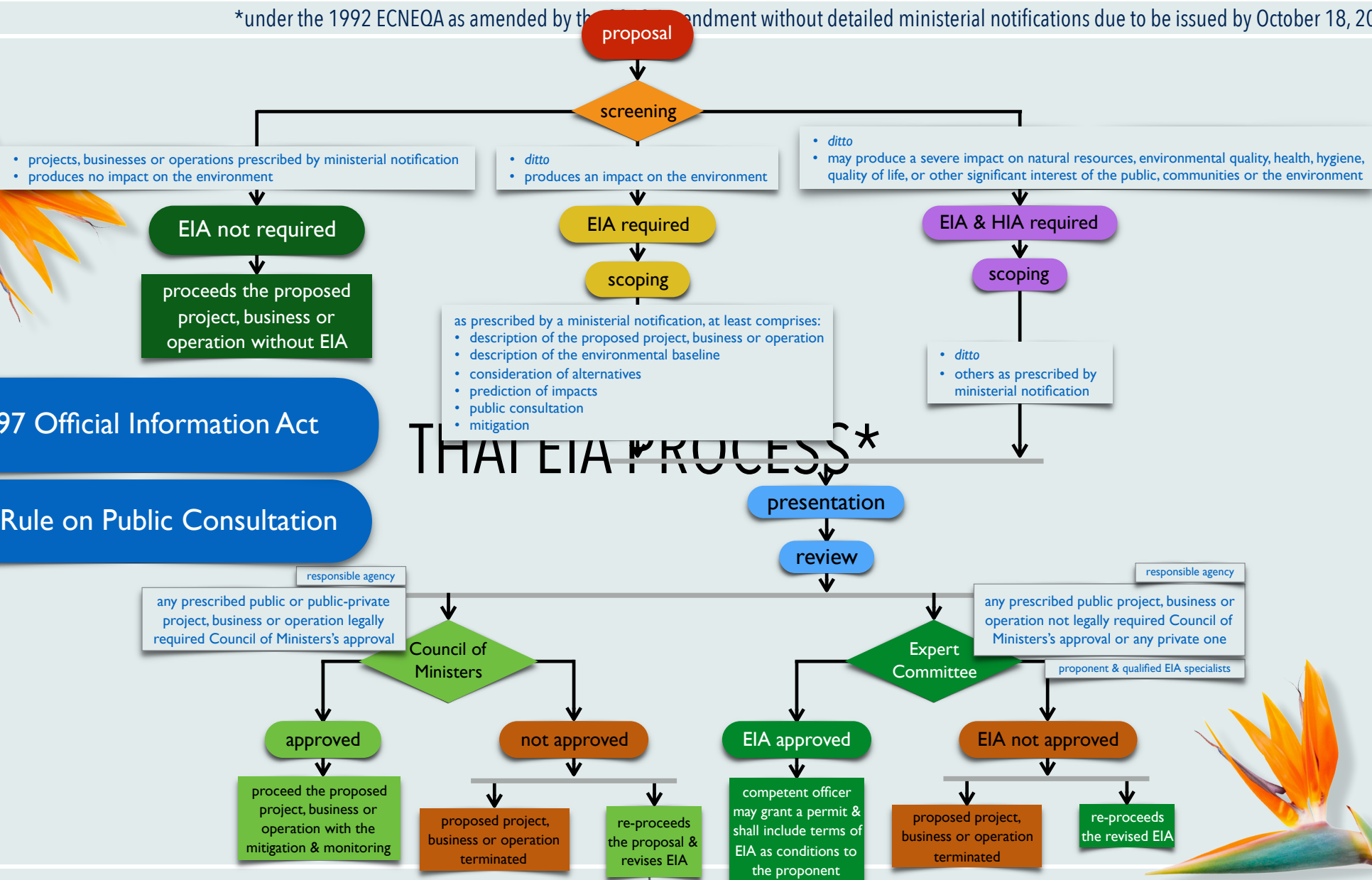
2018 Amendment

entered in force on July 18, 2018

Monument, Bangkok, during the 1973 uprising

urn, '1968 and the 'Thai Seventies,' Verso Blog (17 May 2018) <goo.gl/oxFx13> at September 9

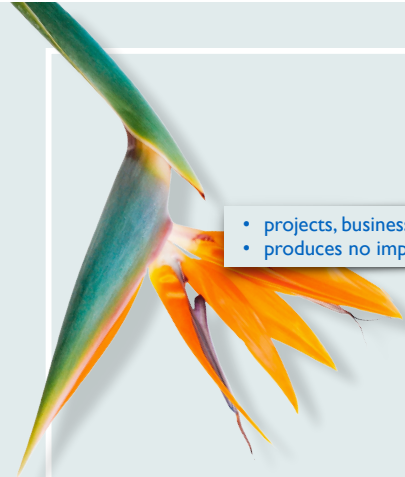
*under the 1992 ECNEQA as amended by the Environment Amendment without detailed ministerial notifications due to be issued by October 18, 2018



1997 Official Information Act

2005 Rule on Public Consultation

THIS IS THE EIA PROCESS *



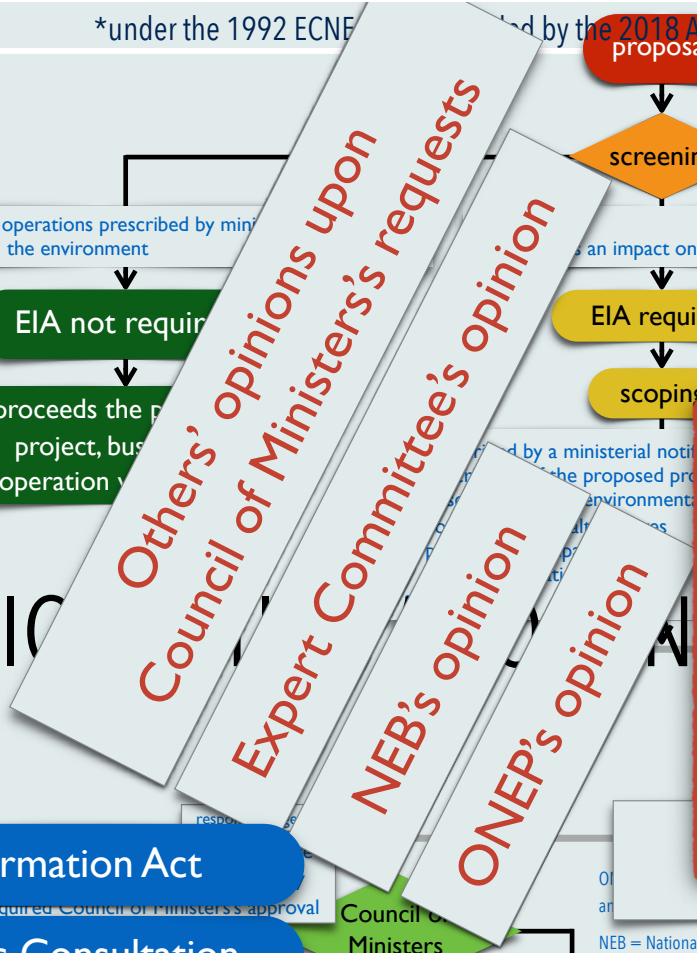
*under the 1992 ECNEQA as amended by the 2018 Amendment Act without detailed ministerial notifications due to be issued by October 18, 2018

- projects, businesses or operations prescribed by ministerial notification
- produces no impact on the environment

1992 ECNEQA as amended by the 2018 Amendment Act, s48 paras 2 and 3 require public participation in EIA process, details yet to be prescribed by ministerial notification

Under a 2018 Amendment Act's transitional provision, the 2017 Notification of the Ministry of Natural Resources and Environment Determining Criteria, Procedures, Practices and Guidelines for the Preparation of an Environmental Impact Assessment Report for a Project or Activity That May Cause Severe Impacts to the Communities Regarding Environmental Quality, Natural Resources or Health is still in force

PUBLIC



1997 Official Information Act
2005 Rule on Public Consultation

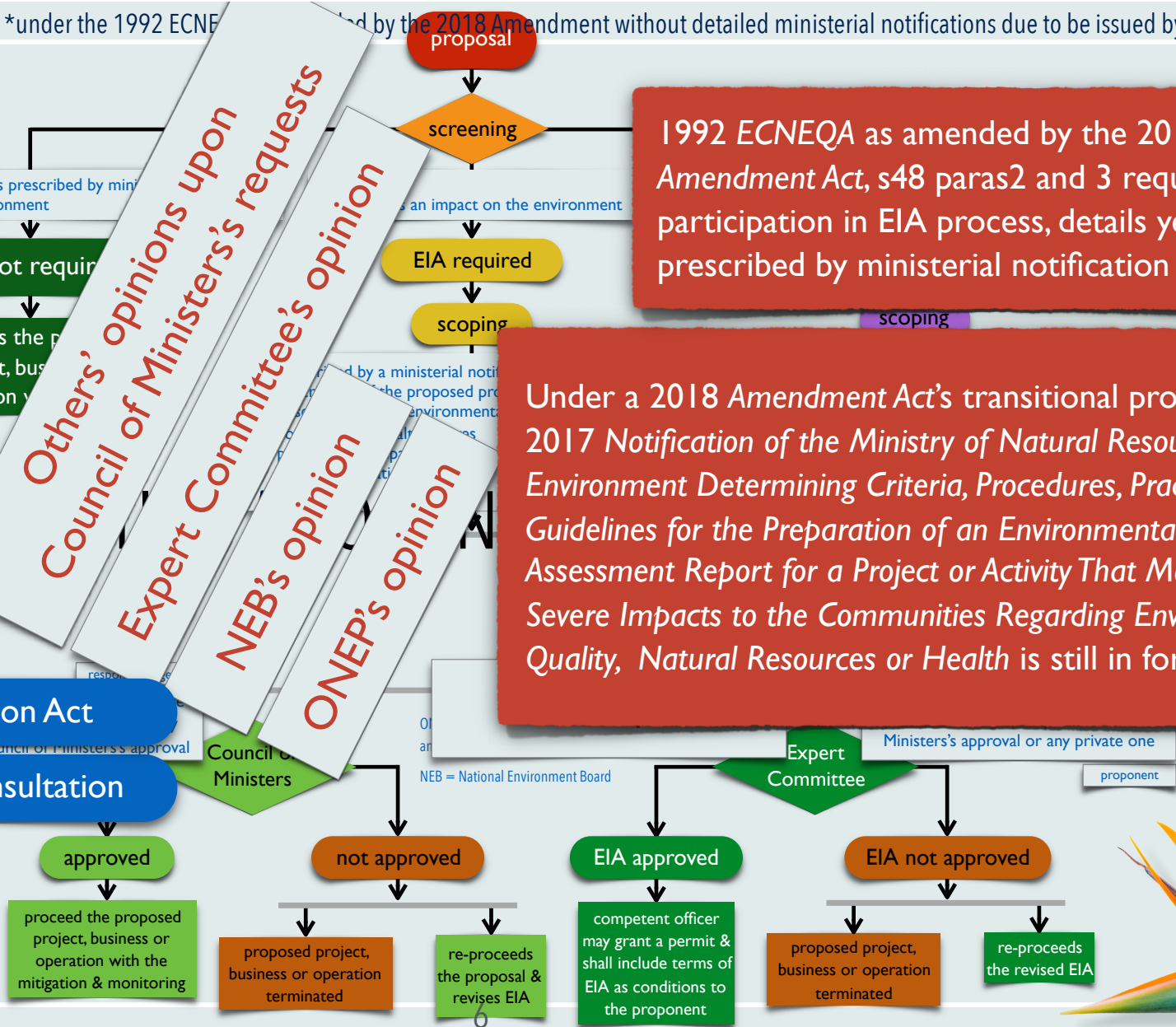




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ACCESS TO JUSTICE

1999 Act on Establishment of Administrative Courts and Administrative Court Procedure

Administrative Court

S3 defines "plaint"

S9 provides the competence of the Courts

public entity v private entity

DISPUTES

public entity v public entity

f Justice

Constitutional Court

COURT OF THAILAND

Military Court

details yet to be prescribed by ministerial notification

1992 *ECNEQA* as amended by the 2018
Amendment Act, s48 paras2 and 3

a 2018 Amendment Act's transitional provision



2017 Notification of the Ministry of Natural Resources and Environment
Determining Rules, Procedures, Practices and Guidelines for the Preparation of
an Environmental Impact Assessment Report for a Project or Activity That May
Cause Severe Impacts to the Communities Regarding Environmental Quality,
Natural Resources or Health

scoping

reviewing draft
EIA report

public participation

scoping

reviewing draft EIA report

public participation

An official or his or her superior may revoke an administrative act under the rules specified in section 51, section 52 and section 53 irrespectively of whether the period of appeal or dispute under this Act or any other laws has lapsed.

- The revocation of an administrative act giving rise to a right or an advantage (beneficial administrative act) shall be made within ninety days as from the date the official or his or her superior knows the ground for revocation of such administrative act, except in the case where the administrative act was issued with the assertion of a falsehood or the concealment of a fact which should be revealed or by threat or bribery.

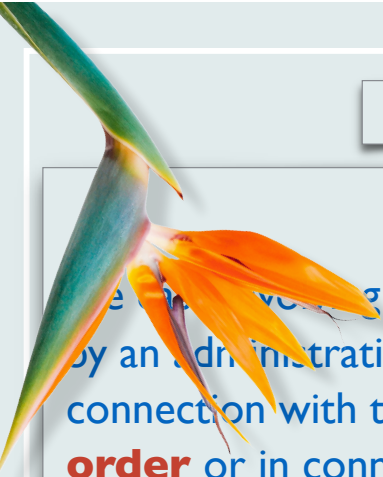
An unlawful administrative act may be revoked, whether in whole or in part, either retroactively or prospectively or with effect for the future as prescribed. In case of a beneficial administrative act, the revocation shall be in accordance with the provisions of section 51 and section 52.

§§49-50

scoping


reviewing draft EIA report

public participation



the case involving a dispute in relation to an unlawful act by an administrative agency or a State official, whether in connection with the **issuance of a by-law or an order** or in connection with any other act, **by reason of acting without or beyond the scope of powers and duties or inconsistently with the law or the form, process or procedure** which is the material requirement for such act or **in bad faith** or in a manner indicating **unfair discrimination** or causing an **unnecessary process** or an **excessive burden** to the public or amounting to an **undue exercise of discretion**

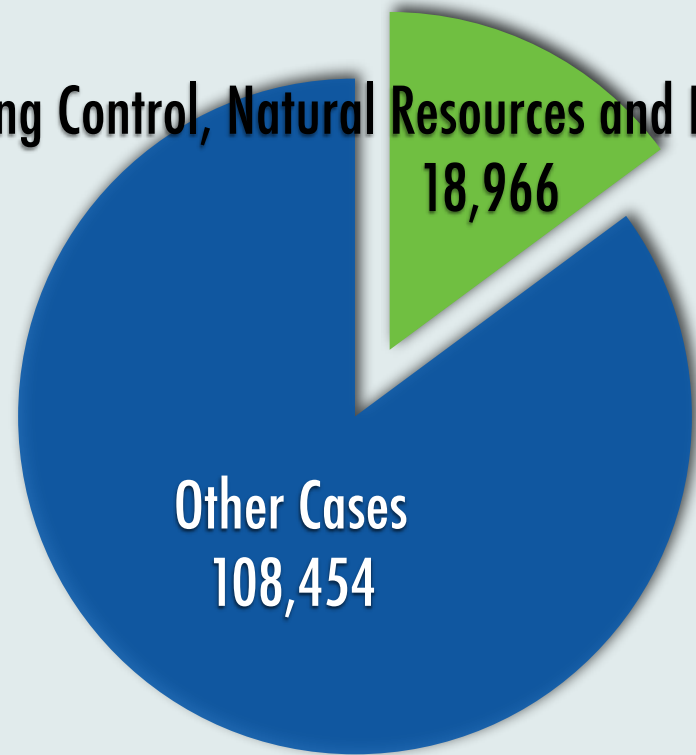
§9

- the case involving a dispute in relation to an administrative agency or a State official **neglecting official duties** required by the law to be performed or performing such duties **with unreasonable delay**
 - the case involving a dispute in relation to a **wrongful act or any other liability** of an administrative agency or a State official **arising from the exercise of power** under the law or from a by-law, an administrative order or any other order, or from the neglect of official duties required by the law to be performed or the performance of such duties **with unreasonable delay**
 - the case involving a dispute in relation to an administrative contract
- 



1999-July 2018
127,420
aggregated cases

Building Control, Natural Resources and Environmental Cases

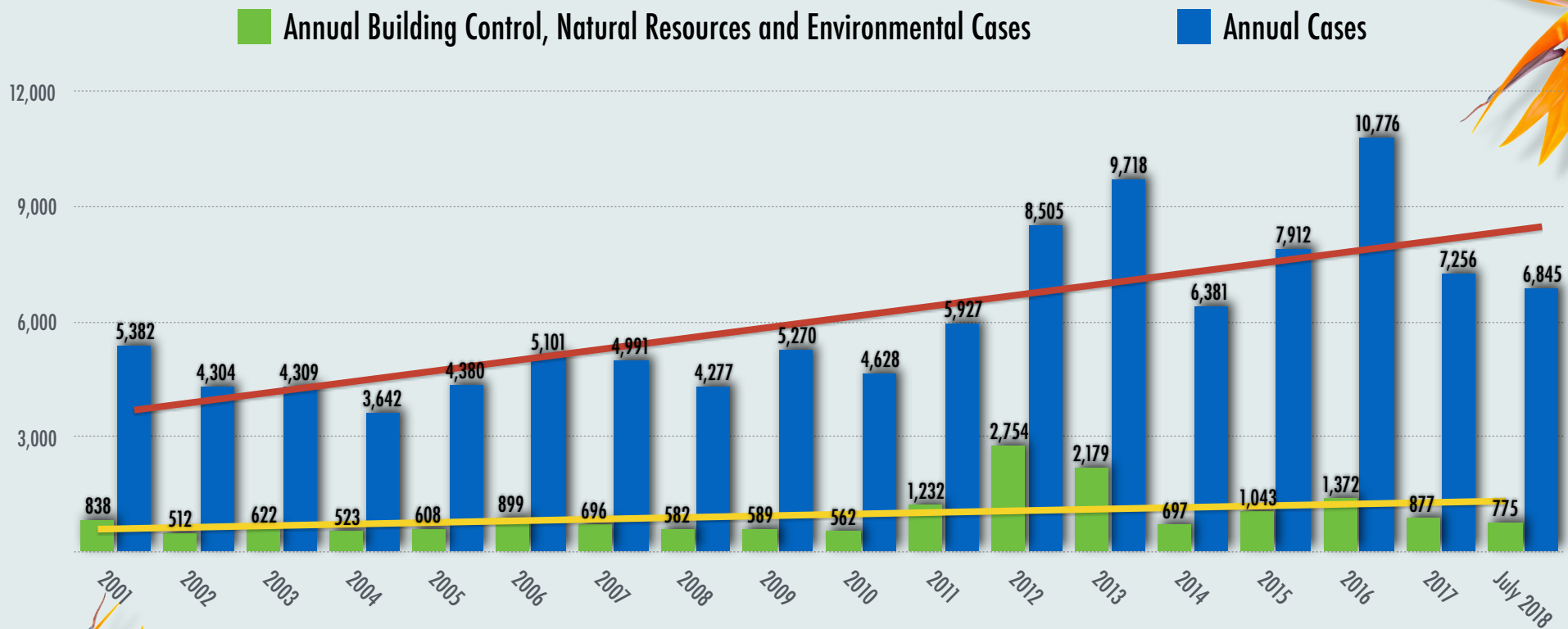


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ADMINISTRATIVE COURTS OF THAILAND

1999-July 2018 Aggregated Building Control, Natural Resources and Environmental Cases Against Other Aggregated Cases



ADMINISTRATIVE COURTS OF THAILAND

2001-July 2018 Annual Building Control, Natural Resources and Environmental Cases Against Annual Cases



**Supreme Administrative Court
Judgment No A218/2009**

Revocation of Expert Committee's resolution to disapprove the EIS of the Baiyok Sky Project

**Supreme Administrative Court
Judgment No A244/2010**

Screening and public participation criteria of the municipal solid waste project

**Supreme Administrative Court
Judgment No A49/2011**

Compliance with the rules on public participation

**Supreme Administrative Court
Judgment No A963/2013**

Revocation of the EIS and permit of the Thai-Malaysia Pipeline Project





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SELECTED EXPERIENCES AND CHALLENGES



**Supreme Administrative Court
Judgment No A218/2009**

Expert Committee's resolution is an 'administrative act,' hence can be challenged in the Administrative Courts

**Supreme Administrative Court
Judgment No A244/2010**

Screening and public participation criteria are 'rules,' hence can be challenged in the Administrative Courts

**Supreme Administrative Court
Judgment No A49/2011**

Responsible State agencies shall comply with the rules on public participation

**Supreme Administrative Court
Judgment No A963/2013**

EIS approval and permit issuance are 'administrative acts,' hence can be challenged in the Administrative Courts

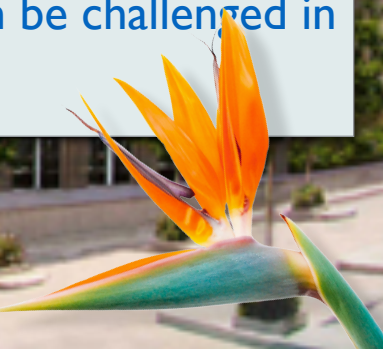




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DISCUSSION

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WHERE THERE IS LITTLE OR NO PUBLIC OPINION, THERE IS LIKELY TO BE BAD GOVERNMENT, WHICH SOONER OR LATER BECOMES AUTOCRATIC GOVERNMENT.

- WILLIAM LYON MACKENZIE KING