



Journal of Human Rights and Peace Studies

journal homepage: <https://www.tci-thaijo.org/index.php/HRPS/index>



Development of Environmental Human Rights in Thai Constitutions 1932 – 2017

พัฒนาการของแนวคิดสิทธิมนุษยชนด้านสิ่งแวดล้อมในรัฐธรรมนูญไทย ระหว่าง พ.ศ. 2475 - 2560

Punyathorn Jeungsmarn¹

Email: ajeungsmarn@gmail.com

ARTICLE INFO

ABSTRACT

Article History:

Received: 29-Sep-2023

Revised: 27-Dec-2023

Accepted: 29-Dec-2023

Keywords:

Environmental human rights, Environmental rights, Human rights, Constitutional rights

This study explores the emergence and development of environmental human rights in the Thai constitutions between 1932 and 2017 through documentary research and text analysis of the 20 constitutions Thailand has had since 1932. For this study, environmental human rights do not include rights of the environment but include both substantive and procedural forms of human rights related to environmental protection. The study's result shows that before the 1974 Constitution, environmental human rights existed incidentally as part of other rights afforded to the citizens of Thailand. Texts related directly to environmental protection first appeared in the 1974 Constitution. The most extensive development of the procedural environmental rights occurred in the 1997 Constitution. Afterwards, no substantive rights have been included. The study points out that Thailand has no constitution that unambiguously recognizes substantive environmental human rights. It should be noted that the scope of this study does not include the implementation of constitutional text and, therefore, does not preclude the possibility that substantive rights could be interpreted from the text in actual legal practices.

¹ *Independent Researcher/ Thailand*

บทคัดย่อ

คำสำคัญ:

สิทธิมนุษยชนด้านสิ่งแวดล้อม,
สิทธิด้านสิ่งแวดล้อม, สิทธิ
มนุษยชน, สิทธิตามรัฐธรรมนูญ

งานวิจัยชิ้นนี้มุ่งศึกษาพัฒนาการของแนวคิดด้านสิทธิมนุษยชนด้านสิ่งแวดล้อมในรัฐธรรมนูญไทยระหว่าง พ.ศ. 2475 – 2560 โดยสิทธิมนุษยชนที่มีนัยยะสำคัญในมิติด้านสิ่งแวดล้อม ไม่ว่าจะเป็นสิทธิเชิงเนื้อหา (substantive right) หรือสิทธิเชิงกระบวนการ (procedural right) ผลของการศึกษารัฐธรรมนูญทั้ง 20 ฉบับพบว่า แนวคิดด้านการคุ้มครองสิ่งแวดล้อมเริ่มปรากฏอย่างเป็นทางการเป็นรูปธรรมในรัฐธรรมนูญฉบับปี 2517 ในขณะที่สิทธิมนุษยชนด้านสิ่งแวดล้อมเชิงกระบวนการเริ่มปรากฏอย่างเป็นทางการเป็นรูปธรรมในรัฐธรรมนูญปี 2540 หลังจากนั้น ไม่พบว่ามีพัฒนาการเกี่ยวกับสิทธิมนุษยชนด้านสิ่งแวดล้อมเชิงเนื้อหาในรัฐธรรมนูญในระดับก้าวกระโดด งานวิจัยชิ้นนี้สรุปว่า เนื้อหาของรัฐธรรมนูญไทยยังไม่เคยมีภาษาที่รับรองสิทธิมนุษยชนด้านสิ่งแวดล้อมเชิงเนื้อหาอย่างไม่มีข้อกังขา ควรกล่าวไว้ว่าขอบเขตของการศึกษานี้ไม่ได้ครอบคลุมการนำภาษาในรัฐธรรมนูญมาใช้ในการฟ้องร้องและตัดสินคดีความด้านสิ่งแวดล้อม และไม่ได้ปฏิเสธความเป็นไปได้ว่า การตีความภาษาในรัฐธรรมนูญไทยอาจนำไปสู่การรับรองสิทธิด้านสิ่งแวดล้อมเชิงเนื้อหาในทางปฏิบัติ

Introduction

On July 26, 2022, the United Nations General Assembly passed a resolution recognizing that the right to a clean, healthy, and sustainable environment is a human right (United Nations General Assembly, 2022). While the significance of environmental human rights in states' constitutions remains debatable, studies have demonstrated its rationale and positive impacts. In her influential book *Silent Spring*, Rachel Carson suggests the importance of guaranteeing that citizens be secured against lethal poisons be included in the United States Bill of Rights (Carson, 1962/1994). Hayward (2005) explains that constitutional-level provisions can enshrine the importance of environmental protection in society, promote coordination of environmental policies across domestic agencies and between states, untether the importance of environmental protection from the impact of short-sighted thinking that may influence legislative decisions in liberal democracies, and encourage the involvement of citizens in environmental protection. May (2006) presents cases for and against constituting fundamental environmental rights, with former arguments including addressing shortcomings

in international law. After analyzing 192 national constitutions, Boyd (2010) suggests that including a constitutional right to a healthy environment enhances environmental law enforcement and prevents rollbacks. Jeffords and Minkler's (2016) quantitative study support the argument that federal statutory environmental laws were strengthened after constitutional environmental rights enactment in many cases. Therefore, the merits of studying environmental human rights in the constitutional context are supported by their potential positive impacts on environmental protection.

This study aims to contribute to the broader academic discourse on environmental human rights in national constitutions by exploring the emergence and development of environmental human rights in the texts of the Thai constitutions between 1932 and 2017. Thailand is unique as a case study for environmental human rights in constitutions as it has had up to 20 constitutions. Domestic and international circumstances influence the development of each constitution. While this study will make rudimentary comments on historical trends and correlations, it does not aim to provide comprehensive historical studies on the key factors influencing the development of environmental human rights. Instead, it will focus more on each constitution's characteristics and legal status of environmental human rights.

Research questions

How have environmental human rights developed in the texts of the 20 constitutions that have been promulgated in Thailand between 1932 and 2017?

Objectives

The article aims to

- (1) contribute to the broader academic discourse on the status of environmental human rights in national constitutions,
- (2) outline the development of environmental human rights in Thai constitutions between 1932 and 2017, and
- (3) illustrate what types of environmental human rights exist in the Thai constitution and what types of rights are still lacking.

Literature Review

While in the political and legal realm, the United Nations General Assembly's affirmation of the right to a clean, healthy, and sustainable environment as a human right may prove to be authoritative in the future, the conceptualizations of environmental human rights remain varied across different states and different constitutions throughout history (see for instance the appendices in May (2006)). Likewise, there is no definitional consistency in the academic realm. Nevertheless, this section will review the conceptualization of environmental human rights and provide a frame within which this study can function.

It may be useful to start with the broadest frame. In the introductory chapter of Turner's (2019) *Environmental Rights: The Development of Standards*, Turner outlines a brief history of 'environmental rights'. In this introduction, Turner (2019) portrays 'environmental rights' as a field that emerges from the convergence of human rights and environmental law. With this broad concept, Turner considers early texts from Rachel Carson (1962/1994) and Christopher Stone (1972) foundational to the specific concepts of environmental rights. Turner's citing of Carson's "*Silent Spring*" as a significant text in the emergence of environmental rights echoes Boyd (2010), who states that the text appears to be the first suggestion that

there should be a 'human right to a healthy environment.' However, by citing Stone (1972), whose text argues that natural objects should also have rights, Turner's 'environmental rights' has become a field that covers not just human rights but also what Lewis (2018) calls 'the right of the environment.' Turner's conceptualization of the field focuses attention on the 'development of the discourse, drafting and practice relating to those human rights used for environmental protection,' thus including both the role of scholars – such as Carson and Stone – as well as institutional development in the realm of human rights law, e.g., the Stockholm Declaration. Turner (2019) points out that international legal instruments can influence governments to include specific rights and obligations in national constitutions.

Taking on Turner's broad conceptualization of 'environmental rights' (including both Carson's and Stone's writings as emerging conceptions) and Lewis' use of the term 'rights of the environment,' we may begin by considering environmental rights as a broad field including both the rights of the environment and environmental human rights. The former includes rights that are afforded to natural objects or nature. This rights body has appeared in legal documents and re-explored extensively in La Follette & Maser's *Sustainability and the Rights of Nature: An Introduction* (2017). However, for this study, we will consider the other category of environmental rights, namely environmental human rights.

As an emerging concept, the ontology of environmental human rights is as questioned as the epistemology surrounding it. Whether environmental human rights exist depends on how one approaches the existence of human rights itself. For instance, if we take the United Nations General Assembly as the authoritative voice, then environmental human rights exist in the form of 'the right to a clean, healthy, and sustainable environment,' made official in

the June 26, 2022 resolution (United Nations General Assembly, 2022). However, such rights have also existed in the constitutions of nations before the resolution (May, 2006). Should the authoritative voice be given to nation-states since they are ultimately sovereign?

The tension between the voices of the United Nations as an intergovernmental agency and nation-states as the sovereign power over specific geographical areas aside, even when these two entities, with different claims to authority, engage with each other in the field of environmental rights, the unity between environmental rights and human rights is not necessarily a given. For instance, Tang & Spijkers (2022) present an anecdote of a declaration made at the United Nations Environment Assembly to commemorate the fiftieth anniversary of establishing the United Nations Environment Programme in March 2022 in Nairobi. The declaration includes the phrase 'recognizing that a clean, healthy, and sustainable environment is important for the enjoyment of human rights,' which is suggested to have been a result of a watering down of the initial text that considered the right to a healthy environment to be a human right in itself and not just a prerequisite for 'the enjoyment of human rights.' It is suggested that the weakening resulted from protests from the United States and Russia. Here, we see a different dynamic of how environmental human rights develop – the reverse of what Turner suggested vis-à-vis the case of the Stockholm Declaration – where nation-states influence the development of international environmental human rights standards.

Taking a less institutional approach, Hayward (2005) demonstrates that the "right to an adequate environment" as a moral right is on par with other established human rights long before the UN resolution. However, he also points out that as a positive right, the status of

the ‘right to an adequate environment’ is not equivalent to other established human rights. Woods (2010) interprets and presents the views of Hancock (2003), stating that Hancock appears to argue that two environmental human rights, specifically the right to an environment free from toxic pollution and the right to ownership of natural resources, are already implicit in and are required to guarantee the rights outlined in the Universal Declaration of Human Rights and the existing human rights covenant.

Since the ontology and scope of environmental human rights are still being debated, it would be prudent for this study to consider the broadest set of rights related to environmental protection to be environmental human rights. This study employs Lewis’ suggestion to distinguish between substantive rights, which ‘provide environmental guarantees or possess environmental dimensions,’ and procedural environmental rights, which include rights that are relevant to environmental protection but where the focus of the action is on the lack of due process rather than preventing the harm (Lewis, 2018). Such procedural rights include the right to know, the right to participate in decision-making, and the right to receive compensation for environmental harm (Lewis, 2018). Substantive environmental human rights would be formulated similarly to the United Nation's 2022 resolution, which says individuals have the right to a certain standard of environmental cleanliness, not merely the right to a procedure that will protect the environment. By focusing on framing two substantive and procedural rights, we find that institutions and texts do not merely influence the development of environmental human rights but the practice and implementation of those rights. In practicing and implementing those rights, the distinction between procedural and substantive rights becomes clear, as shown in the following.

Shelton (2010) argues that certain proponents of procedural environmental human rights may be too optimistic in believing that ensuring public participation in due process could achieve a high level of environmental protection. Her study presents the case of a dumpsite in Sweden that supports the idea of the shortcomings of sole reliance on the decision-making process (Shelton, 2010). The lack of substantive environmental standards in international conventions such as the Aarhus Convention has been argued to reduce the scope of public deliberations (Mason, 2010). On the other hand, certain scholars have also argued that the uncertain scope of substantive environmental rights would render judicial implementation difficult (Zhu et al., 2017). In any case, returning to Mason's (2010) study, the indeterminate coupling of substantive and procedural rights in the Aarhus convention (which primarily concerns procedural rights) can render implementing said rights inconsistent, reflecting the importance of distinguishing between the two. Lewis (2018) further cautions against viewing procedural rights as giving rise to substantive rights.

This study will explore the emergence and development of environmental human rights in the Thai constitutions through the abovementioned frame. In this study, environmental human rights refer to any rights related to environmental protection and do not include the rights of natural objects such as forests or rivers. In order to distinguish between effectiveness and types, environmental human rights in this study are further divided into two categories: substantive environmental human rights and procedural environmental human rights.

It should be noted that there have been several studies on environmental human rights in Thailand, especially in the Thai academia. These include, for instance, Lertdhamtewe's

comprehensive study (2015), which also proposes reforms of environmental rights to the Supreme Court. Langkarpint's (2017) study is comparable to the present paper. However, the organization of its content is less diachronic, focusing on covering different types of rights to compare with environmental human rights in other countries. Some studies focus on specific environmental rights issues, including the impact of Article 44 of the 2017 constitution, the community's right to manage, maintain, and utilize natural resources, and the shift in rights to judicial procedures that occurred in the transition from the 2007 to the 2017 constitutions (Jaroenpan, 2019; Intachaiwong, 2017; Deearam & Leelitthum, 2020; respectively). All these studies and others constitute an important field of discourse to which this paper hopes to contribute modestly. The studies mentioned above cover the many aspects of how environmental human rights develop – touching upon international influences and national influences, as well as practice, implementation, and interactions with other laws.

Conceptual Framework and Research Methods

Based on the frame and scope set in the previous section, this study explores the emergence and development of environmental human rights in the Thai constitutions between 1932 and 2017. Based on the concept of environmental human rights described in the literature review, the research explores how that concept develops within the text of the Thai constitutions throughout the history of Thailand's constitutions. The study is scoped to include mainly textual evaluation and analysis of the Thai constitutions to identify substantive and procedural rights elements. Focusing on a diachronic approach, this paper aims to portray changes in a single concept as present in a consistent form of legal text (over time) with observations of historical trends that may influence those changes.

The period of 1932-2017 covers the timeframe between Thailand's first constitution (1932) and its latest (2017). For this study, I will consider only the documents that the Thai government considered *ratthathammanun*, the Thai word for constitution. The source for listing the constitutions and official PDF texts used in this study is the website "parliamentmuseum.go.th".

All in all, 20 constitutions were listed in this website and are given here with the dates when they were in force: (1) 1932 Constitution no. 1 (interim): June 27, 1932 – December 10, 1932; (2) 1932 Constitution no. 2: December 10, 1932 – May 10, 1946; (3) 1946 Constitution: May 10, 1946 – November 8, 1947; (4) 1947 Constitution: November 9, 1947 – March 23, 1949; (5) 1949 Constitution: March 23, 1949 – November 29, 1951; (6) 1952 Constitution: March 8, 1952 – October 20, 1958; (7) 1959 Constitution: January 28, 1959 – June 20, 1968; (8) 1968 Constitution: June 20, 1968 – November 17, 1971; (9) 1972 Constitution: December 15, 1972 – October 7, 1974; (10) 1974 Constitution: October 7, 1974 – October 6, 1976; (11) 1976 Constitution: October 22, 1976 – October 20, 1977; (12) 1977 Constitution: November 9, 1977 – December 22, 1978; (13) 1978 Constitution: December 22, 1978 – February 23, 1991; (14) 1991 constitution no. 1: March 1st, 1991 – December 9th, 1991; (15) 1991 Constitution no. 2: December 9th, 1991 – October 11th, 1997; (16) 1997 Constitution: October 11th, 1997 – September 19th, 2006; (17) 2006 Constitution: October 1st, 2006 – August 24th, 2007; (18) 2007 Constitution: August 24th, 2007 – May 22nd, 2014; (19) 2014 Constitution: July 22nd, 2014 – April 6th, 2017; (20) 2017 Constitution: April 6th, 2017 – present day.

Documents considered at one point to be the law of the land but not given the direct designation of a constitution will not be included here. For instance, the Three Seals Law, a

code compiled in 1805 under the reign of Rama 1st will not be considered. Where constitutions are reused, they are not considered to be different constitutions. For instance, the period between the coup d'état of 1951 and the promulgation of the 1952 constitution saw the government of Field Marshal Plaek Phibunsongkhram return to the second 1932 constitution. However, that document is only counted once as the second constitution of Thailand. In some cases, the document included in this study is given a different official designation but bears the characteristics and power of a constitution. For instance, the 1959 constitution promulgated after the coup d'état by Sarit Thanarat earlier in 1957 was called *thammanun kan pokkhong* but is counted as a constitution in this study.

The study involved a thorough reading and textual analysis of the 20 documents and subsequent coding for any mentions of environmental protection measures. A word search relying on terms such as “environment” or “natural resources” is not employed, since the study aims to study procedural rights in addition to substantive rights, and procedural rights sometimes are described with no direct mention of terms such as “environment” or “natural resources”. Therefore, the first reading is also meant to identify specific terminologies to look out for in the second round of coding. The second round of coding involved designating whether the texts identified reflect the enshrinement of environmental human rights or not, and if so, whether they are classified as substantive or procedural. The analysis of the coded texts involved textual and contextual analysis relying on literature reviews of the constitution-making processes and the historical context of the period.

Research results and discussion

This section will outline the emergence and development of the concept of

environmental human rights in the Thai constitutions between 1932 – 2017, by dividing them into different periods.

Period 1: 1932 – 1972

During this period, environmental human rights appeared as procedural rights and are probably incidental. Some of the constitutions of this period saw the recognition of rights to compensation in cases of expropriation of land by the state for the extraction of natural resources: this would be relevant to cases of displacement through mining, for example. Nevertheless, environmental human rights during this period wavered between non-existent and highly limited.

The first constitution of the Kingdom of Thailand was promulgated in 1932 in the direct aftermath of the June 24th constitutional revolution led by the People's Party or *Khana Ratsadon*. The first constitution served the immediate purpose of the revolution and dealt with the power of the monarchy, the power of the people's representatives, and procedural matters relating to parliament. 'The people' are recognized as the holders of the highest power in the country in the very first article. However, no section explicitly outlines the freedoms and rights of the people. The right to vote is promised to be fully recognized once half of the population is educated at the primary level. Scholars have identified the 1971 constitution of France as bearing similarities to this constitution (Chaiching, 2016).

The second 1932 constitution, promulgated on December 10, added a section 2 outlining the 'rights and duties of the Siamese people'. There is no direct mention of environmental human rights in this section. However, the 'complete freedom' over properties, residences, 'open meetings,' and vocations may be interpreted as including procedural

environmental human rights. All of these rights are framed as the ‘freedom to...’ and all are included in a single article (Article 14) with no detailed explanation. Therefore, while these rights can form a framework of procedural environmental rights or rights that are closely related to environmental human rights, the lack of detail could make interpretations of these rights within the context of environmental protection difficult.

The short-lived 1946 constitution is often said to be heavily influenced by the thinking of Pridi Banomyong, one of the core civilian members of Khana Ratsadon, and has the reputation of being the most democratic constitution Thailand had had up to that point (Kasetsiri, 2020). Many of the changes to the constitution concerned the legislative branch and the separation of powers and reflect the influences of Western liberal democratic thinking (Kasetsiri, 2020). However, Section 2 concerning rights and duties remains largely similar to its 1932 predecessor but adds Article 15 concerning the right of individuals to submit complaints to the government within the bounds of the law. While this law does not arise from environmental protection concerns, it forms an important part of procedural environmental rights.

The 1946 constitution would be replaced by the 1947 constitution after a period of intense turmoil, which saw the death of the monarch, the exile of Pridi, and the return of military leader Phibunsongkhram. In spite of this monumental change in political context, the section on the rights and duties of citizens once again remains largely unchanged from its predecessors.

The 1949 constitution, on the other hand, saw the most extensive changes to the rights and duties section up to that point in history, including the separation of citizen’s rights and

citizen's duties into two separate sections. The citizen's rights section contains similar rights to those in the previous constitution. However, rights that were once placed together in one Article are treated in separate articles, with each being given a more detailed explanation.

In some cases, the explanation makes certain rights more relevant to environmental protection and environmental human rights. For instance, the freedom to own property, once placed in the same article as other civil and political rights (e.g., freedom of speech, freedom of residence, freedom of assembly, etc.) in the previous three constitutions receives an extensive treatment in Article 34 of the 1949 constitution. In paragraph 3 of the Article, the right of property owners to be fairly compensated in the case of expropriation of land by the government to extract natural resources is recognized. While this would not be considered a substantive environmental right, it is closely related to one of Hancock's (2003) two environmental human rights, namely the ownership of natural resources (Woods, 2010) and could be considered a procedural right. Finally, the 1949 constitution also, for the first time, recognized the right of citizens to sue government agencies (Article 44), which is a significant procedural right.

In addition to rights given to citizens, the 1949 constitution also makes the duties of citizens a separate section. However, no duty in this section is closely related to environmental protection enough to warrant mentioning. More notable is the addition of another section called the 'guidelines for state policies'. Some articles under this section appear to lay the groundwork for the recognition or implementation of environmental human rights. For instance, Article 68 states that private enterprises must not infringe on the freedom of individuals, and Article 72 affirms that the state should promote public health. The former

could lay the groundwork for industrial regulation, and the latter could do so for pollution control. However, once again, no direct mention of environmental protection can be found.

Following a coup by the navy in 1951, the December 1932 constitution was brought back into force. That constitution would be amended to become the 1952 constitution. Still, the 1952 constitution includes property rights as explained in Article 34 of the 1949 constitution, as well as the right to sue government agencies, which first appeared in the 1949 constitution. However, it is notable that the 1952 constitution does not include the provision that private enterprises should not infringe on individual freedom. The 1952 constitution was eventually abolished in 1959, after Field Marshal Sarit Thanarat instigated a military coup. The 1959 interim constitution by the coup group is one of the shortest constitutions to date, including no explicit discussion of citizen's rights, and contained the infamous Article 17, which effectively allowed Sarit to take any action without oversight so long as the action was meant to fix a threat to peace and security.

Drafting the following constitution would take another nine years, resulting in the 1968 constitution. During those nine years, the rule of Sarit cemented Thailand's bureaucratic polity system, which the new constitution did not resolve (Neher, 1971). In fact, the years between 1968 and 1973 would be characterized by political conflicts that eventually led to the 1973 popular uprising. The relevance of environmental human rights during the term of the 1968 constitution remained the same, as much of the text on the rights of citizens was not substantively altered from the pre-coup constitution. In 1972, Field Marshal Thanom Kittikachorn led another coup and promulgated another constitution, which, similar to the one resulting from Sarit's coup, contained no explicit text on citizen's rights.

Scholars have suggested that the development of environmental human rights in this period was due to international influences. Lertdhamtewe (2023) suggests that the Thai constitutions between 1932 and 1949 were influenced by other countries' constitutions, such as those of France, the United Kingdom, and the United States. This argument is supported, for instance, by Chaiching (2016), who cited another scholar discussing the similarity between the constitution of France and the first 1932 constitution. Lertdhamtewe (2023) further suggests that the constitutions between 1949 and 1991 were influenced by the Universal Declaration of Human Rights 1948. This influence would explain why the 1949 constitution saw the most extensive changes to the rights and duties of the citizen's section. Lertdhamtewe (2023) also suggests that the ongoing Cold War conflict influenced the amendment of the constitution to make the right of ownership of land more stringent to show that Thailand was not a socialist state. Taking his argument in tandem with the intensification of the right of ownership, this shows how procedural environmental human rights could be incidentally advanced.

Period 2: 1973 - 1996

This period began with the 1973 uprising, which brought about a relatively participatory process of constitution drafting, resulting in the 1974 constitution. This constitution saw the clearest advancement of rights related to the environment thus far, as concurred by Lertdhamtewe (2015).

On October 14, 1973, a popular uprising led by students, labor groups, farmers, and other citizens overthrew Thanom's government and forced military leaders into exile. King Rama 9, who appeared to support the popular movement, appointed Sanya Dharmasakti, the

former Rector of Thammasat University and former President of the Supreme Court, as the prime minister. The drafting process for the new constitution would begin at the end of that year, when King Rama 9 appointed a 2,347-member National Assembly – consisting of people from different occupational backgrounds – on December 10, 1973 (Kotamee, 2019). That National Assembly, in turn, elected a 299-member National Legislative Assembly.

The legacies of the royally appointed National Assembly and the Legislative Assembly are conflicted. However, the drafting process of the 1974 constitution still occurred mainly in the public eye and under surveillance and pressure from the popular movement. These factors make the 1974 constitution the most progressive up to that point in Thai history. The constitution also decentralized the power of government by including a whole section on local administrative organizations, as well as emphasizing the principles of self-administration and including a system of local elections (Klein, 1998).

The 1974 constitution was the first to include text specifying environmental protection. This is apparent from the textual analysis conducted for this paper but has also been noted by Lertdhamtewe (2015, p. 51). However, it is not written out as the individual's right in the section detailing these rights, which, in the lens of environmental human rights, did not change substantively. For instance, the text on property rights remained almost the same except for some minor alterations (e.g., adding that compensation should be given "in due time" to those whose land is expropriated).

The protection of environmental human rights is added as part of the duties of the state in Article 77, which states that "the state ought to maintain balance in the environment and the beauty of the environment, including forests, headwaters, rivers, and bodies of water."

Article 78 adds that the state ought to search for natural resources for the economic benefit of the people without ‘going against the principle of conservation.’² Article 93 states that ‘the state ought to maintain and preserve the environment to keep it clean, and eliminate toxic substances that damage the health and hygiene of the people.’

This is the first time environmental protection measures are explicitly mentioned in the Thai constitution. Undoubtedly, this signifies greater awareness of the status of environmental law. The difficulty in classification is that this is framed as a state duty rather than exactly as the individual's right. If the duties of the state could be directly translated to the rights of the citizens, then the 1974 constitution could be said to have included substantive environmental human rights.

Notably, five months after the 1974 constitution was promulgated, in February 1975, the government of Sanya Dharmasakti also promulgated Thailand’s first Enhancement and Conservation of the National Environmental Quality Act (henceforth called the National Environment Act). The act saw the creation of the National Environment Board, a governmental body drawing on various ministries, which is the channel through which national environmental policies are determined and enacted. The National Environment Board is an institution that continues to exist today.

Lertdhamtewe (2015) points out that the 1974 constitution was promulgated after the Stockholm Declaration of 1972, which Turner (2019) suggests is what many consider the beginning of environmental law. The influence of international instruments may coincide with

² The term used in Thai is *anuraksakam*. I could not find the direct translation of this term. However, *anorak* means ‘to conserve’, and *kam* means ‘action’ in this context.

domestic democratization to create one of the most environmentally advanced constitutions.

Despite its wide-ranging influence, the 1974 constitution was short-lived. The massacre of Thammasat University students on October 6, 1976, by right-wing paramilitary groups and state actors was followed by a coup from another military clique. The two constitutions that followed the coup (1976 and 1977) saw extensive rollbacks of human rights and citizen's rights. The texts on citizens and human rights found in the 1974 constitution would mostly return in the 1978 constitution. The two key provisions in Articles 77 and 83 of the 1974 constitution were combined into Article 65 of the 1978 constitution, stating succinctly that 'the state ought to maintain balance in the environment and ought to eliminate toxic substances that damage the health and hygiene of people.'

The 1978 constitution was used for another 13 years until a coup from the military led to the promulgation of another interim constitution in 1991. Once again, the interim constitution included no explicit provision on the rights of citizens or any other human rights. However, the second constitution promulgated in 1991 returned to the style and text of the 1978 constitution (at least with regard to the section on rights, duties of the citizens, and guidelines for state policies). The succinctly stated provision for the state to protect balance in the environment and eliminate toxic substances also returned, but with the addition that the state must appropriately manage soil and water resources.

Period 3: 1997-present day

Another period of political turmoil followed the coup, leading to the Black May massacre in 1992. Between 1992 and 1997, democratic politics returned, and successive governments during this period contributed to the push for constitutional reform. This change

led to the formation of the 99-member Constitutional Drafting Committee representing individuals from 76 provinces, plus 23 political, administrative, and legal experts nominated by academic institutions (Klein, 1998). Between January and October 1997, public hearings on the draft of the constitution were conducted at provincial and national levels (Klein, 1998). The drafting process plays a significant role in the civil society sector (Drussel, 2009). The 1997 constitution was promulgated in October of that year.

The impact and innovation of the 1997 constitution have been well-documented in the literature, including, *inter alia*, changes in the voting system, ensuring that senates must be elected rather than appointed (Drussel, 2009), systemization of the judicial branch and the advent of an administrative justice system (Leyland, 2008), and creation of independent organizations such as the National Human Rights Commission and the National Counter Corruption Commission (Drussel, 2009). Most relevant to this research, this constitution is said to contain a far more comprehensive range of individual rights and liberties than any past constitution (Nanakorn, 2002). The importance of the 1997 constitution in developing environmental human rights has also been noted in the literature (Lertdhamtewe, 2015).

The 1997 constitution indeed saw the section on the rights and freedom of citizens extended to include far more content than in the past. While the 1974 constitution included passages affirming the state's duties to protect the environment, the 1997 constitution is the first to include environmental human rights in the section on the rights of citizens:

Article 46. Individuals who have joined together to form a local community have the right to conserve or restore local wisdom and traditions, as well as good arts or cultures of local communities and the nation. They have the right to participate in the

management, maintenance, and use of natural resources and the environment in a manner that is balanced and sustainable in accordance with the law.

Article 56. The right of individuals to participate with the state and communities in maintaining and making use of natural resources and biodiversity and in protecting, enhancing, and conserving the quality of the environment to ensure continuous and normal conduct of life in an environment that will not cause danger to their health, welfare, and quality of life, shall be protected, in accordance with the law.

The implementation of projects and activities that may cause severe impact on the environment shall be prohibited unless a study and assessment of the impact on the environment has been conducted and where independent organizations, consisting of representatives from private environmental groups and representatives from higher education institutions that conduct studies on the environment have provided opinions before the implementation of the project or activities. All this will be conducted in accordance with the law.

The right of individuals to sue government agencies, state enterprises, local government agencies, or other organizations of the state to perform their duties in accordance with paragraphs one and two shall be protected.

Article 46 ensures that local communities have the right to preserve their natural resources and environment. In contrast, Article 56 principally ensures that citizens have the right to participate in the state's decisions on the use of natural resources and the environment. Article 56 further recognizes the right of citizens to use legislative action to force the state to perform its duties. This is further emphasized in the right-to-know or the right to

receive information about activities or projects that may cause environmental impact, as stated in Article 59. These rights are supported in Article 79, outlining the state's duties.

Notably, the rights and freedoms section of the 1997 constitution does not explicitly include substantive environmental human rights. One could argue that the right to use natural resources could be interpreted as the right to have a clean environment since a polluted environment would not be conducive to the use of resources. However, if we were to take Hancock's conception that ownership of natural resources (Woods, 2010) is an important substantive environmental human right, then "use" cannot be "equated" with "ownership." Once again, the right is for citizens or communities to play a role in using natural resources, not owning natural resources. Should ownership be discussed, the issue would fall under a different article on private ownership, within which environmental human rights may be implicitly included but incidentally. It should be noted that no provision is made for indigenous groups to have ownership over resources but only to participate in their management, maintenance, and utilization. The precarious position of indigenous groups in Thai constitutions is noted by Lertdhamtewe (2015). The impact of the state's governance of natural resources without considering the local context is also discussed in Intachaiwong (2017).

Additionally, the final part of Article 56 states that individuals have “the right to participate ... to ensure continuous and normal conduct of life in an environment that will not cause danger to their health, welfare, and quality of life, shall be protected, in accordance with the law.” This seems to hint towards a kind of substantive right. However, the article's framing suggests that the right to participate and the guarantee that the environment will not

cause danger to citizens' welfare are the expected results of public participation. In other words, these rights remain within the bounds of procedural rights. It is possible that Lertdhamtewe's (2015, p. 56-57) suggestion that this particular article contains substantive environmental human rights might have stemmed from different linguistic interpretations. Furthermore, in actual legal practice, lawyers and courts could make similar interpretations, although this falls beyond the scope of the study.

Based on the textual analysis in this study, the 1997 constitution makes no direct and unambiguous mention of substantive environmental rights. There is no text, for instance, stating outright that individuals have 'the right to an adequate environment' to use Hayward's (2005) formulation. Therefore, while the structural and content changes in the 1997 constitution show the rise of a rights-based approach to environmental protection, the rights outlined in the text of the law are limited to procedural rights and not substantive rights.

Like the 1974 constitution, the duty of the state section of the 1997 constitution – here written as the guideline for state policies – contains text that may be interpreted as guaranteeing substantive environmental rights. Specifically, Article 79 of the constitution reads:

The state must promote and support citizens to participate in the conservation, maintenance, and use of natural resources and biodiversity in a balanced manner and to participate in the promotion, maintenance and protection of the quality of the environment in accordance with the principles of sustainable development, as well as control and eliminate pollution that affects the health, welfare, and the quality of life of the citizens.

The lack of punctuation in Thai has made this passage, especially the last phrase, challenging

to interpret. Is it the state's duty to control and eliminate pollution or to promote and support citizens to participate in the control and elimination of pollution? I ultimately interpret the Article to mean that it makes it the state's duty to control and eliminate pollution. This is because in listing what citizens should be participating in, both previous phrases begin with “to participate”, but not the last phrase, indicating that the final phrase is the state's duty, not the citizens.

Much like the 1974 constitution, the emergence of the 1997 constitution saw international and domestic influences coincide. On the one hand, there is the participatory approach of the drafting process (Klien, 1998; Drussel, 2009), and on the other hand, there is the influence of the Rio Declaration in 1992 (Lertdhamtewe, 2015), which popularized the concept of sustainable development. The influence of the Rio Declaration can be seen in the emergence of the rights of access to information and community rights in the 1997 constitution.

After nine years in force, the 1997 constitution was abolished following a coup in 2006. The 2006 constitution follows the format of previous coup groups' constitutions by significantly rolling back provisions on citizens' rights. Since the coup in 2006 targeted the highly popular government of Thaksin Shinawatra, whose success had been attributed to changes brought about in the 1997 constitution, the 2007 constitution drafting process was quite different from that of the 1997 constitution. Drussel (2009) has illustrated how the drafting process of the 2007 constitution involved less public participation, prioritized the views of bureaucrats, and saw significant military pressure.

In any case, despite some changes in placements within the text, the content of the

texts on procedural environmental rights in the 1997 constitution was carried over into the 2007 constitution. However, some notable additions were made. For instance, the 2007 constitution requires not only an environmental impact assessment but also an environmental and health impact assessment. It also includes the need for public hearing processes to take place before a project or activity can begin. These provisions introduce new mechanisms into the public participation process (Suwanteep et al., 2016), and are thus quite notable. The promulgation of health impact assessments alongside the promulgation of the National Health Act in 2007 has implications that deserve their own study, and fall beyond the scope of this study.

The text of the 2007 constitution divides the guidelines in the state policy section into various sub-sections, one of which is sub-section 8 ‘guidelines for state policies regarding land use, natural resources and the environment’. The content of the 2007 constitution bears the same keywords about the state's duty outlined in Article 79 of the 1997 constitution, such as control and elimination of pollution and sustainable development. However, the text does make it more straightforward that these are the duties of the state. As demonstrated by Lertdhamtewe (2015), the 2007 constitution also expanded upon the environmental provisions of the 1997 constitution. The additional details regarding health impact assessments and the associated additional details in the section outlining the right of citizens to sue government agencies should be noted as progress that builds on the base of the achievements in 1997.

In 2014, the most recent coup in Thai history was staged. The 2014 constitution follows the format of other coup-originated constitutions. Aside from lacking explicit provisions on

citizen's rights, the constitution included the now infamous Article 44, which, like Sarit's Article 17, gave the coup leaders extensive powers to take administrative action almost unchecked. However, unlike Article 17, Article 44 has led to the promulgation of laws that reduce environmental protection. This issue deserves its own treatment. The subsequent constitutional drafting process influenced the military regime's use of laws that limit open debate (McCargo et al., 2017). Aside from not including provisions on substantive environmental human rights, Langkarpint (2017) further notes that the 2017 constitution saw a regression in certain areas of environmental human rights.

Conclusion

This study describes the emergence and development of environmental human rights in Thai constitutions between 1932 and 2017. It points out international and domestic historical trends to illustrate how certain aspects of environmental human rights may have developed. Notably, historical correlations show that the biggest milestones in the advancement of environmental human rights – 1974 and 1997 – have been periods of democratization. It should also be noted that both periods of democratization occurred shortly after advancements in international institutions and legal instruments on environmental rights, such as the Stockholm Declaration of 1972 and the Rio Declaration of 1992. It should also be noted that environmental human rights appear to regress in periods of dictatorships and emergency decrees, with the most recent constitution emerging out of a semi-democratic period, seeing regression as well (Langkarpint, 2017). Nevertheless, following periods of regression, when more democratic constitutions are promulgated, previous progressive environmental human rights can resurface in new constitutions, illustrating the

longevity of environmental human rights concepts in constitutional afterlives.

One of the limitations of this study is that its scope does not include a complete historical analysis. Indeed, anecdotal studies that would allow a case-by-case analysis of the effectiveness of these constitutional texts in actual environmental litigation would be far more conclusive, but this again falls beyond the scope of this study. The limitation of the textual analysis of Article 56 of the 1997 constitution is apparent. Several cases of local people suing for environmental restoration, such as the case of Klity Creek, as well as the more recent cases of Namphu Creek and Nong Phawa village, illustrate the possibilities that constitutions that do not include strong linguistic references to substantive rights may still give rise to the enforcement of such rights.

This study can, however, opine that there are some differences, if not in qualitative terms, at least in quantitative terms, between affirming the duty of the state and affirming the rights of the individual. If, by the 1997 constitution and its predecessor, the state has the duty to promote and protect the environment, it remains entirely up to the state through what it means and to what extent they will perform this duty. If a citizen is affected by environmental degradation and reports the issue to the state, the state could simply perform its constitutional duty to the extent it chooses. However, when the state has performed its duty, but the citizen is still affected by a degraded environment, the state has fulfilled the requirement of the constitution. Nevertheless, the citizen continues to be affected.

Including substantive environmental rights, such as the right to a clean, healthy, and sustainable environment, would allow the citizen in this example to continue to call on the state to perform its duty until this right is realized. In other words, including substantive rights

in the section on the rights of citizens would be a goal-oriented approach rather than a process-oriented approach. Conversely, I argue that while the content of the state's duty is written in the 1997, 2007, and 2017 constitutions, due to its process-oriented quality, it is more of a set of procedural rights than a substantive right.

I conclude that the current Thai constitution does not, and previous constitutions have never had a strong and unambiguous text recognizing substantive environmental human rights. Looking back at the United Nations General Assembly's resolution in 2022, which ensured that the right to a clean, healthy, and sustainable environment is a human right, the international community seems to be pushing towards the inclusion of substantive environmental human rights in environmental law. On September 22, 2023, at the 78th Session of the United Nations General Assembly, the recently inaugurated Thai Prime Minister Srettha Thavisin made a statement mentioning Thailand's 'sincere commitment to the advancement of human rights at home and abroad' (Thai PBS World, 2023). Going forward, part of that commitment may require including a 'clean, healthy, and sustainable environment' as an environmental human right in the new Thai constitution, the drafting process of which will likely occur in the near future.

Acknowledgement

The author wants to thank Mahidol University International College (MUIC) professors who have laid the groundwork for his understanding of human rights and social science research methods. He thanks his superiors and colleagues from the NGO Ecological Alert and Recovery – Thailand (EARTH) and the Environmental Justice Foundation (EJF) for his experience working with communities and policy-makers and seeing environmental human

rights at work.

The author extends his thanks further to the academics, activists, thinkers, and other civil society actors both in Thailand and abroad who have contributed to the protection of the environment, and sincerely hopes that this paper will help to shed some light on the notion of environmental human rights and its emergence in the Thai constitution through history.

Biography

Punyathorn Jeungsmarn is an independent researcher, writer and environmental activist. He studied Social Sciences at Mahidol University International College (MUIC) and graduated in 2021. He has worked in two environmental non-governmental organizations, tackling issues ranging from pollution and waste management to community rights.

References

Boyd, D. R. (2010). *The environmental rights revolution: Constitutions, human rights, and the environment* [Doctoral dissertation, University of British Columbia].

<https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0058239>

Carson, R. (1994). *Silent spring*. Houghton Mifflin Company. (Original work published in 1962).

Chaiching, N. (2016). *Khōfan fai nai fan ‘an lūachūa: Khwām khluānwai khōng khabuānkān patipak patiwat Sayām (PhōSō 2475 - 2500)* [Dare to Dream the Unbelievable Dream: The Movement Against the Siamese Revolution (1932-1957)]. Fah Diew Kan. [In Thai].

Chairat, P. (2006). *Kānphatthana lak kotmaī phūa khumkhroṅg sitthi læ sērīphāp khōng chon*

chāo Thai nai khadi pokkhrōṅ praphet singwætloṃ kān phangmuāng ‘ākhaṅ rōnggān lāe hēt duātroṅ ramkhaṅ [Development of laws to protect the right and freedom of Thai people in administrative environmental cases – urban plans, buildings, factories, and disturbances]. Vinyou-chon. <https://library.coj.go.th/en/book/22132/book-22132.html> [In Thai].

Deearam, Y., & Leelitthum, S. (2020). *Sitthi kānmi suānrūam khōṅ prachāchon nai kān raksā singwætloṃ: Kōṅ nīchai si thathi fō ‘ongkha dī* [People participation right of environmental protection: Right to take legal action]. *DRURDI Research for Community Service Journals*, 6(2), 149-161. <https://so02.tci-thaijo.org/index.php/DRURDI/article/view/252198>. [In Thai].

Drussel, B. (2009). Thailand's Elusive Quest for a Workable Constitution, 1997-2007. *Contemporary Southeast Asia*, 31(2), 296-325. <https://www.jstor.org/stable/41487386>

Hancock, J. (2003). *Environmental human rights: Powers, ethics and law*. Ashgate.

Hayward, T. (2005). *Constitutional environmental rights*. Oxford University Press.

Intachaiwong, O. (2017). *Sitthi chumchon nai kānchātkaṅ kān bamrung raksā lāe kānchai prayōt chāk sapphayakōṅ thammachāt lāe singwætloṃ* [Community rights in management, maintenance, and utilization of natural resources and environment]. *Law and Local Society Journal*, 1(1), 171-193. <https://so04.tci-thaijo.org/index.php/llsj/article/view/156658>. [In Thai].

Jaroenpan, R. (2019). *Phalo kra thop to'asi thathi naphun than dan singwætloṃ čak kānchai 'amnāt 'oḱ kham sang khana raksā khwām sangop hæng çat læ kham sang huānā khana raksā khwām sangop hæng çat tāṃ mātrā 44* [The impact on fundamental environmental rights through the exercise of power to issue the order of the National Council for Peace and Order (NCPO Order) and the Order of Head of the National Council for Peace and Order (Head of NCPO Oder) under section 44]. *Journal of Political Science and Public Administration, Khon Kaen University*, 4(1), 111-140. <https://so05.tci-thaijo.org/index.php/PSPAJ-KKU/article/view/213382>. [In Thai].

Jeffords, C., & Minkler, L. (2016). Do constitutions matter? The effects of constitutional environmental rights provisions on environmental outcomes. *Kyklos*, 69(2), 294-335. <https://doi.org/10.1111/kykl.12112>

Kasetsiri, C. (2020, November 4). *Ratthamanun 2489 kap kān toṣu čak fā ya 'am nā čōṇi yom* [The 1946 constitution and the resistance from the authoritarians]. Pridi Banomyong Institute. <https://pridi.or.th/th/content/2020/11/485>. [In Thai].

Klein, J.R. (1998). *The constitution of the Kingdom of Thailand, 1997: A blueprint for participatory democracy*. The Asia Foundation. <https://aceproject.org/ero-en/regions/asia/TH/AsiaFoundationThailand.pdf>

Kotamee, I. (2019, October 14). *'Saphā sanām mā' læ khō thokthiāng khōṅg phu kum 'amnāt lang heṭkān 14 tula 2516* [The racecourse council and the arguments of the power holders after the October 14, 1976 incident]. Way Magazine.

<https://waymagazine.org/racecourse-council/>. [In Thai].

La Follete, C., & Maser, C. (2017). *Sustainability and the rights of nature: An introduction*. CRC Press; Taylor & Francis Group.

Langkarpint, K. (2017). Sitthi nai singwætloṃ nai ratthammanūn khōṅ prathēt Thai suksā pīapthīap kap kotmāi tāṅprathēt [The right to healthy environment in constitution of Thailand: Comparing law with foreign countries]. *Naresuan University Law Journal*, 10(1), 47-61. <https://doi.org/10.14456/nulj.2017.3>. [In Thai].

Lertdhamtewe, P. (2015). *Ratthammanūn kap kān raprōṅ læ khumkhroṅ sitthi naphūn thān dān singwætloṃ : Rāiṅān kānsuksā wichai* [The constitution and the recognition and protection of basic environmental rights: Research report]. Office of the Constitutional Court. https://digital.library.tu.ac.th/tu_dc/frontend/Info/item/dc:48438. [In Thai].

Lertdhamtewe, P. (2023). *Sitthi manutsayachon nai ratthammanūn Thai* [Human rights and the constitution-making in Thailand]. *King Prajadhipok's Institute Journal*, 20(3), 134-178. https://so06.tci-thaijo.org/index.php/kpi_journal/article/view/256838. [In Thai].

Lewis, B. (2018). *Environmental human rights and climate change: Current status and future prospects*. Springer Nature Singapore Pte Ltd.

Leyland, P. (2008). The emergence of administrative justice in Thailand under the 1997 constitution. In T. Ginsburg, & A. H.Y. Chen (Eds.), *Administrative law and governance in Asia: Comparative perspectives*. Routledge.

Mason, M. (2010). Information disclosure and environmental rights: The Aarhus convention.

Global Environmental Politics, 10(3), 10-31. https://doi.org/10.1162/GLEP_a_00012

May, J. R. (2006). Constituting fundamental environmental rights worldwide. *Pace*

Environmental Law Review, 23(1), 113-182. <https://doi.org/10.58948/0738-6206.1075>

McCargo, D., Alexander, S. T., & Desatova, P. (2017). Ordering peace: Thailand's 2016

constitutional referendum. *Contemporary Southeast Asia*, 39(1), 65-95.

<https://www.jstor.org/stable/44683885>

Nanakorn, P. (2002). Re-making of the constitution in Thailand. *Singapore Journal of*

International & Comparative Law, 6, 90 - 115.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/singa6&div=8&id=&page>

=

Neher, C. D. (1971). Thailand: Towards fundamental change. *Far Eastern Survey*, 11(2), 131-

138. <https://doi.org/10.2307/2642712>

Shelton, D. (2010). Developing substantive environmental rights. *Journal of Human Rights and*

the Environment, 1(1), 89-120. <https://doi.org/10.4337/jhre.2010.01.05>

Stone, C. D. (1972). Should trees have standing? - Towards legal rights for natural objects.

Southern California Law Review, 45, 450 - 501.

Suwanteep, K., Murayama T., & Nishikizawa, S. (2016). Environmental impact assessment

system in Thailand and its comparison with those in China and Japan. *Environmental*

Impact Assessment Review, 58, 12-24. <https://doi.org/10.1016/j.eiar.2016.02.001>

Tang, K., & Spijkers, O. (2022). The human right to a clean, healthy and sustainable environment. *Chinese Journal of Environmental Law*, 6(1), 87-107. <https://doi.org/10.1163/24686042-12340078>

Thai PBS World. (2023, September 23). *Full statement delivered by Thai PM at the UN General Assembly*. <https://www.thaipbsworld.com/full-statement-delivered-by-thai-pm-at-the-un-general-assembly/#:~:text=Thailand%20believes%20now%20is%20the,we%20build%20our%20better%20future.>

Turner, J. (2019). Introduction: A brief history of environmental rights and the development of standards. In J. Turner, D. L. Shelton, J. Razzaque, O. McIntyre, & J. R. May (Eds.), *Environmental rights: The development of standards* (pp. 1-16). Cambridge University Press. <https://doi.org/10.1017/9781108612500.001>

United Nations Environmental Programme. (2022, July 28). *In historic move, UN declares healthy environment a human right*. <https://www.unep.org/news-and-stories/story/historic-move-un-declares-healthy-environment-human-right>

United Nations General Assembly. (2022, July 26). *The human right to a clean, healthy and sustainable environment: Draft resolution (A/RES/76/300)*. <https://digitallibrary.un.org/record/3982508?ln=en>

Woods, K. (2010). *Human rights and environmental sustainability*. Edward Elgar Publishing.

Zhu, X., Wang, S., & Eva-Maria, E. (2017). Development of environmental rights in China: Substantive environmental rights or procedural environmental rights. *Frontier of Law in China*, 12(1), 24-56. <https://doi.org/10.3868/s050-006-017-0003-6>