



Guidelines for protection of environmental rights regarding the sea and shore: Studying coastal structure project on coastal areas in Songkhla and Prachuap Khiri Khan Provinces

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Abstract

This research article aims to study the scope of environmental rights regarding the sea and shore and the problems of rights violations and limitations in the protection of these rights resulting from construction projects in coastal areas in Songkhla and Prachuap Khiri Khan provinces in order to propose guidelines for protection of these rights. This study is a qualitative research study conducted by methods of documentary research, in-depth interview, and focus group discussion. The ethics of this study has been approved by a qualified research ethics review committee for research involving humans. There are two issues obtained from the result of the study. First, the environmental rights regarding the sea and shore refer to the rights of all persons to access and utilise marine and coastal resources. Second, rights violations have occurred from state policies that are not consistent with the principles of sustainable development, from problems of overlapping duties and powers between organisations, and from a lack of necessary provisions of relevant laws. Consequently, the state should; (1) integrate policies and allocate duties and powers of relevant organisations to be in line with the principles of sustainable development; (2) amend the provisions of the Constitution and the Act on the Promotion of Marine and Coastal Resources Management, B.E. 2558 (2015) to guarantee relevant rights; and (3) proceed with decentralisation of powers and budgets to local administrative organisations to facilitate participation with the state in managing their own coastal areas.

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Introduction

The coastal area serves as the interface between land and water, which are components of the earth's surface. It is essential to the earth as a source of living things and is an area that accommodates a variety of natural resources and ecosystems (Crossland et al., 2005, p. 1). In addition, a coastal area is also important for the economy, transportation, and as a residential and recreational area. These are all basic factors for both the present and future generations living in these areas to have a good life (Commission of the European Communities [CEC], 2000, p. 7). However, changes in coastal areas resulting from geological processes and coastal geologic processes and the rapid growth of the world population have led to a high volume of occupation and exploitation of coastal areas in various forms at a speedy rate beyond the capacity of the areas to tolerate. As a result, coastal areas have been experiencing severe erosion and accelerated degradation (Iammayura & Sooksom, 2013, pp. 26–30; Coastal Area Management Division of the Marine and Coastal Resources, 2018, pp. 9–11).

As the coastal area is of such importance, states usually designate coastal areas to be public domain of the state. This results in the guarantee of the public's right to access to the shore equally as public domain of the state (Sooksom, 2017, pp. 126–127.) and in bringing environmental human rights under international law to be applied for guaranteeing relevant rights of people and communities to access and utilise the coastal areas. These rights consist of the right to a healthy environment and other interrelated human rights including the right to access to information, the right to participate in public affairs of the state, and the right to environmental justice (Knox & Morgera, 2022, p. 6).

The emergence of environmental rights regarding the sea and shore has a relationship with the concept of national development in various dimensions, which occurs all over the world, known as “sustainable development”. The sustainable development approach has been used in management of coastal areas, leading to establishment of several important coastal management principles (Duxbury & Dickinson, 2007, p. 319). Finally, it led to the principle of management of coastal areas called “integrated coastal management (ICM)” or “integrated coastal zone management (ICZM)”. One important objective of this principle is that it is aimed to be used for managing the problem of coastal erosion (Portman et al., 2012, p. 195).

The total length of coastline in Thailand is approximately 3,151.13 kilometres, covering the coastal areas of 23 provinces (Coastal Resources Conservation Division of the Department of Marine and Coastal Resources, 2020, pp. 2–11). From a survey of the coastal erosion situation by province conducted by the Department of Marine and Coastal Resources, it was found that, in 2020, coastal areas had continuously been experiencing problems of coastal erosion with a total length of approximately 822.81 kilometres, of which 733.62 kilometres had been restored, whereas the other 89.19 kilometres had not. Coastal erosion is evident in Songkhla and Pattani provinces with the distance of more than 10 kilometres in each province having faced coastal erosion. Meanwhile, each of other provinces has the problem of coastal erosion for the length of less than 10 kilometres (Department of Marine and Coastal Resources, 2023).

Lessons learned from the filing of administrative cases regarding coastal erosion that occurred between 2008 and 2022 show that there have been cases in Songkhla province, namely, Sakom Beach Case, Samila-Chalatat Beach Case, Muang Ngam Beach Case, and Maharaj Beach Case, and in Prachuap Khiri Khan Province, namely, Aoi Noi Beach Case and Khlong Wan Beach Case. The details in the complaints of these cases clearly show that the implementation of state projects on coastal areas and beaches in various forms has had a significant physical impact on coastal areas and beaches. It is difficult for the areas to be restored to their pristine state, and damages have extensively occurred to the lives and properties of people living in the areas. At the same time, the implementation of projects by the state does not place serious importance on the environmental rights regarding the sea and shore, leading to situations where cases were submitted with the Administrative Courts (Iammayura et al., 2019).

In this sense, projects of the state with an aim to protect and preserve these areas for happiness of future generations should not be opposed. However, the essence of coastal area development carried out by government agencies should be linked to the environmental rights regarding the sea and shore clearly guaranteed by the 2017 Constitution. These rights call for all government agencies to implement projects under the “principle of legality of administrative acts” (Pakeerut, 2021, pp. 279–280) in terms of process, step, and procedure of operation, including the reasons and necessity for carrying out the projects under the principle of proportionality or the principle of reasonableness (Pakeerut, 2021, pp. 294–300).

It appears that the recognition of environmental rights regarding the sea and shore enshrined in the provisions of the 2017 Constitution and the establishment of various measures and mechanisms in accordance with the Act on the Promotion of Marine and Coastal Resources Management, B.E. 2558 (2015) (“2015 APMCRM”) have created security and confidence for the citizens that coastal areas would be protected as public domain of the state allowing all Thai citizens to have equal access to and utilisation of coastal areas. However, the extent to which the above-mentioned security is in the state of stability and certainty depends on legal consciousness of government agencies and awareness of the importance of the rights and liberties of all Thai people. Hence, the research questions of the study are: what are the environmental rights regarding the sea and shore and to what extent these rights cover; what effects on the environmental rights regarding the sea and shore have occurred as a result of the continuous operations of construction projects on the coastal areas in Songkhla and Prachuap Khiri Khan; and what guidelines for protection of environmental rights regarding the sea and shore for the issues in question should be proposed. This research project, therefore, aims to study the scope of environmental rights regarding the sea and shore and the problems of rights violations and limitations in the protection of these rights resulting from construction projects in coastal areas in Songkhla and Prachuap Khiri Khan provinces, which are the case study areas, in order to propose guidelines for protection of environmental rights regarding the sea and shore. This is in order to gain knowledge and guidelines for increasing efficiency in protecting the environmental rights regarding the sea and shore in Thailand and for the state practice to be in line with international obligations to which Thailand is a party.

Literature Review

Principles of Sustainable Development as a Foundation of Environmental Rights regarding the Sea and Shore

As individuals’ human rights are intertwined with the environment in which they live, environmental degradation, therefore, has the effect of interfering with the enjoyment of human rights. On the other hand, respecting, protecting, and promoting the exercise of human rights results in environmental protection and sustainable development (Knox, 2018, para. 1). For this reason, states have a duty to guarantee the right

to a healthy environment for their citizens through the provisions of their constitutions or laws (Human Rights Council, 2019, para. 13), including through legal interpretation and legal principles laid down by judiciary (Knox & Morgera, 2022, p. 4).

In 2018, John H. Knox, a Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, has prepared and submitted with the Human Rights Council a special report on human rights and environment entitled *The Framework Principles on Human Rights and the Environment* (Human Rights Council, 2018). The report sets out 16 framework principles of the duties of the Member States regarding the protection of the rights of individuals to live in a safe, clean, healthy and sustainable environment. The report affirms the relationship between humans and the environment that human beings are part of nature and individuals’ human rights are intertwined with the environment in which they live. Such rights and other rights under international law are also interrelated, and there is a need for these rights to be complemented by the enforcement of a wide range of multilateral environmental agreements under the international environmental law (Human Rights Council, 2021, paras. 1–3).

According to the principles of sustainable development, sustainable development is a development that meets the demands of the current generation without compromising the ability to develop future generations. Sustainable development emphasises that humans must take into account the limits of natural resources and that balancing economic, social, and environmental developments must be undertaken (Office of International Cooperation on Natural Resources and Environment of the Office of the Permanent Secretary of the Ministry of Natural Resources and Environment, 2013, p. 12). In this sense, sustainable development contains “the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.” (United Nations, 1987, para. 1) Next, the principles of sustainable development were applied to the management of coastal areas. In 1992, the United Nations adopted the United Nations Declaration on Environment and Development or the Rio Declaration. This Declaration stipulates that the Member States have an obligation to protect and develop coastal areas by having integrated management of coastal areas and developing coastal areas on a sustainable basis (United Nations, 1992, paras.17.1–17.2).

Turning to ICZM, it is “a dynamic, multi-disciplinary and iterative process to promote sustainable management of coastal zones. It covers the full cycle of information collection, planning (in its broadest sense), decision making, management and monitoring of implementation”, and it “uses the informed participation and co-operation of all stakeholders to assess the societal goals in a given coastal area, and to take actions towards meeting these objectives.” (CEC, 2000, p. 25) For the part of “integrated” in ICZM, it “refers to the integration of objectives and also to the integration of the many instruments needed to meet these objectives. It means integration of all relevant policy areas, sectors, and levels of administration. It means integration of the terrestrial and marine components of the target territory, in both time and space.” (CEC, 2000, p. 25)

Meaning and Scope of Environmental Rights regarding the Sea and Shore

As there are no legal definitions of the environmental rights regarding the sea and shore either in international or Thai laws, this research article brings the meanings of “environment” and “marine and coastal resources” given by the 2015 APMCRM, along with the international human rights principles, to create the definition of the environmental rights regarding the sea and shore. Lertdhamtewe (2016, pp. 44–59) has summarised that fundamental rights according to the international environmental law consist of four rights which are the right to a healthy environment, the right to environmental justice, women’s and children’s rights, and community rights. This is consistent with the work of Knox (2015, pp. 526–535) arguing that the states have substantive obligations to guarantee the right to a healthy environment for people and communities, including the vulnerable groups, without discrimination, and also have procedural obligations by guaranteeing the rights to environmental justice, including the right to access to information, the right to participate in public affairs regarding environment-related activities, the right to access to justice. A similar opinion has also been found from the work of Knox and Morgera (2022, p. 6), which has depicted that the environmental human rights cover the right to live in a safe, clean, healthy and sustainable environment and this right is systematically interrelated with other human rights such as the right to access to information, the right to participate in public affairs, and the right to environmental justice. Currently, these rights have been applied for protection of the environment in various contexts, including the context of coastal area conservation.

Therefore, “*environmental rights regarding the sea and shore*” in this research article refer to the rights of all persons to access and utilise marine and coastal resources, both living and non-living natural environments, and including physical man-made environment and social and cultural environment. By exercising these rights, persons are able to access information and participate in public affairs in managing the marine and coastal environment, in order for them to have a good quality of life in the marine and coastal environment that they live in and use. The scope of study of this research article is limited to five important rights, namely, the right to a healthy environment, the right to access to information, the right to participate in public affairs regarding environment-related activities, the right to access to justice, and community rights.

Methodology

This research article has three objectives, namely: (1) studying the scope of environmental rights regarding the sea and shore (“Objective 1”) ; (2) studying the problems of rights violations and limitations in the protection of these rights resulting from construction projects in coastal areas in Thailand (“Objective 2”), and (3) proposing guidelines for protection of environmental rights regarding the sea and shore from the operations of construction projects in coastal areas in Songkhla province, namely, Samila-Chalatat Beach, Muang Ngam Beach, and Maharaj Beach, and in Prachuap Khiri Khan province, Pranburi Beach, Sam Roi Yot Beach, and Mae Ramphueng Beach (“Objective 3”). This is for the reason that there are issues relating to the exercise of the environmental rights regarding the sea and shore under the constitutional provisions in these areas. These issues are the exercise of the rights of the stakeholders, which are the right to a healthy environment, the right to access to information, the right to participate in public affairs regarding environment-related activities, the right to access to justice, and community rights, and the characters of the exercise of these rights are of uniqueness in each area. The methodology of the study is as follows:

Participants

To fulfil Objective 2, the researcher has applied the method of in-depth interview with 5–25 informants according to Creswell (2007, p. 121) and by means of purposive sampling. The informants were divided into two groups; (1) people utilising coastal areas in the case study; and (2) state officials working for

the government agencies with duties and powers related to construction projects in coastal areas. Group (1) of the informants were people utilising coastal areas in the case study; the case study areas were divided into three areas in each province; three persons were selected per area; and the total number of informants were 18. The selection criteria were based on two considerations which were (1.1) geographical consideration which limited the stakeholders to those who lived no more than 5 kilometres from a construction project situated on a case study area, and (1.2) usage consideration in combination with a consideration on the distance from a case study area, which resulted in the selection of informants such as those who used coastal areas for recreational purpose and lived no more than 30–40 kilometres from a case study area. Additionally, these stakeholders in group (1) were those who had been affected by the construction projects where their operations were either completed, ongoing, or ceased, and these situations would be associated with the issues of the exercise of the five constitutional rights within the scope for this study. Group (2) of the informants were state officials with duties and powers related to construction projects in coastal areas, divided into three groups with the total number of 10 informants. These were (2.1) one informant from the government agency with a duty to implement construction projects in the case study areas, namely, the Department of Public Works and Town & Country Planning, (2.2) three informants from the government agency with a duty to conserve, restore, and manage marine and coastal resources in the case study areas, namely, the Department of Marine and Coastal Resources, and (2.3) six informants from the local administrative organisations with a duty to conserve coastal areas where construction projects were operated.

To meet Objective 3, the researcher organised a focus group discussion for a specific group of 20 people for obtaining comments on recommendations concluded from the study. This group of informants were different from the informants for in-depth interviews as it consisted of experts and persons from government agencies and private sectors who were involved in relevant planning, policy-making, and law enforcement in various dimensions.

Data Collection

This study is a qualitative research study. The data have been collected by three methods: (1) documentary research for the study to fulfil Objective 1, (2) in-depth interview for the study to fulfil Objective 2, and (3) focus group for the study to fulfil Objective 3.

The research project was certified for approval of human research ethics on 5 July 2022 by the Center for Social and Behavioral Sciences Institutional Review Board, Prince of Songkla University. The number of the Certificate of Approval of Human Research Ethics is PSU IRB 2022 - LL - Law - 017 (Internal).

Data Analysis

First, the researcher carried out documentary research by collecting data from law textbooks and various documents related to protection of environmental rights regarding the sea and shore for designing and creating interview forms for in-depth interviews and for supplementing data analysis and data processing of the research project. After that, the researcher conducted in-depth interviews with the informants who were groups of people utilising coastal areas in the case study. After having received information from documentary research, from photographs of the areas, and from the in-depth interviews, the researcher analysed and processed all data. Finally, the researcher organised a focus group discussion for a specific group of 20 people, which consisted of experts and those involved in the main issues of this research project. This is in order to obtain recommendations that are based on both academic principles and facts as best as it could be.

Results and Discussion

Scope and Protection of Environmental Rights regarding the Sea and Shore in Thailand

By applying the method of documentary research, the data were collected from law textbooks and various documents related to protection of environmental rights regarding the sea and shore. It was found that currently the protection of environmental rights regarding the sea and shore in Thailand is based on the principles of the Sustainable Development Goals (SDGs) as shown in the Master Plan for Marine and Coastal Resources Management B.E. 2560–2579 (2017–2036) and the Department of Coastal Marine Resources acts as the main agency responsible for managing marine and coastal resources to be in the pristine and sustainable state (Public Sector Development Group of the Department of Marine and Coastal Resources, 2023, pp. 41–42). The Department of Coastal Marine Resources also plays an important role in providing the National Policy and Plan Committee on Marine and Coastal Resources

Management advice on making national policies and plans on marine and coastal resources management (Strategy and Planning Division of the Department of Marine and Coastal Resources, 2021, p. 1). Furthermore, the state also guarantees various rights for achieving the sustainable management of marine and coastal resources. This research article limits the scope of study to only five important rights.

Right to a healthy environment

The people's right to a healthy environment was guaranteed at the constitutional level for the first time under section 56 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), and then section 67 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). However, under the 2017 Constitution, there are no provisions that clearly guarantee this right as it used to be in the past.

Right to access to information

The 2017 Constitution guarantees the right to access to information under section 41 (1) in conjunction with section 59, and the right to freedom of opinion and expression under section 58 paragraph two of the 2017 Constitution. However, in practice in Thailand, it was found that the main issue of nearly all lawsuits concerning coastal erosion caused from government projects (the Sakom Beach Case, Khlong Wan Beach Case, Samila-Chalatat Beach Case, Ao Noi Beach Case, Muang Ngam Beach Case, and Maharaj Beach Case) is a dispute regarding the people's right to access to information. Moreover, as there has been no legislation at the parliamentary level directly ensuring people's rights to receive information and to express opinion about the project according to the public consultation process under the 2017 Constitution, the process has been carried out according to the "Rule of the Office of the Prime Minister on Public Consultation, B.E. 2548 (2005)". It is still unclear regarding a project, what type or size is required for public consultation to be organised. In addition, the agencies responsible for particular projects are able to hold such public consultation in a variety of modes. This leads to the situation where different ways of public consultation organisation are applied to each project (Iammayura & Sooksom, 2013, p. 52).

The right to participate in public affairs regarding environment-related activities

The constitutional right to participate in public affairs regarding environment-related activities is guaranteed under section 58 paragraph one of the 2017 Constitution.

This right is based on the precautionary principle, which is applied to the operations of state activities that affect nature. Such operations are required to be controlled, to use the best possible technologies for reducing risks and severe impacts on nature, to avoid any activity that is likely to cause irreversible damages, and to carry out a thorough inspection before undertaking any activity that is likely to cause severe risks to nature (Choeychid, 2016, pp. 55–56).

Currently, operations of construction projects in coastal areas are subject to the criteria, procedures, and conditions for preparing and submitting a report of Environmental Impact Assessment ("EIA report") according to the Notification of the Ministry of Natural Resources and Environment. From 2012 onwards, there had been Notifications that the following coastal structures were subject to the requirement of preparing an EIA report, (1) seawalls adjacent to and along a coastline with a length of 200 metres or more, (2) groynes, jetties, and training walls in any size, and (3) offshore breakwaters in any size. However, later, the Minister of the Ministry of Natural Resources and Environment issued the Notification of the Ministry of Natural Resources and Environment dated 20 December 2013, removing the construction of seawalls adjacent to and along a coastline with a length of 200 metres or more from the list of projects that are subject to the requirement of preparing an EIA report. Therefore, seawalls could be built adjacent to and along a coastline without any requirement to submit such a report. The National Human Rights Commission of Thailand was of the opinion that such actions were inconsistent with the people's right to public participation and in contrary to the state's duties in managing, maintaining, and utilising natural resources, environment, and biodiversity in a balanced and sustainable manner (Office of the National Human Rights Commission of Thailand, 2020). Nevertheless, there has been an issuance of the Notification of the Ministry of Natural Resources and Environment (No. 7) B.E. 2566 (2023) prescribing that the construction of seawalls in any size is a project that is subject to the requirement of making an EIA report at the approval stage or the stage of applying for permission for the project, as the case may be. Thus, this problem has come to an end.

Right to access to justice

1. The right to make a complaint guaranteed under section 41 (2) of the 2017 Constitution. It is to be noted that this provision provides a person the right to make a complaint to the official only in cases

where he or she has found violations of environmental laws, but does not give the right to file a plaint as an injured person on behalf of the state. This should also be read in conjunction with section 97 of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992) stipulating that the power to manage natural resources and environment belongs to the state. The citizens, therefore, merely have the right to make a complaint but not the right to sue the accused persons.

2. The right to file a lawsuit under section 41 (3) of the 2017 Constitution. On this issue, the Thai Administrative Courts do not recognise the right of people to submit the case with the court to request for damages from those who have destroyed marine and coastal resources. This is on the grounds that marine and coastal resources belong to the state, and, hence, citizens are not the ones who have been aggrieved or injured, entitling them to submit a case with the Administrative Court. This is in accordance with section 97 of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992), as can be seen from the Sakom Beach Case.

3. The right to receive from the state compensation or damages under section 58 paragraph two of the 2017 Constitution. The exercise of this right can be done only in the situation where grievance or injury has occurred as a direct result of project implementation that an EIA has been done.

Community rights

The 2017 Constitution guarantees the community rights under section 43 of the 2017 Constitution. Besides, there is also a recognition of the “rights of coastal communities” specifically in the 2015 APMCRM. However, the recognition of community rights under this Act is different from the recognition under the 2017 Constitution. The 2017 Constitution recognises the existence of communities without any requirement of reference to or reliance on the recognition of other legislation, but rather on the grounds of its self-recognised or self-certified status and its natural entitlement to rights regardless of having the status of juristic persons or having met the requirement of registration (Prokati, 2007, p. 100). In contrast, the emergence of coastal communities under the 2015 APMCRM is subject to registration, the entitlement of rights and duties depends on its registered status, and the registered status may be revoked if a fact stipulated by the law has occurred.

The Problems of Rights Violations and Limitations in the Protection of the Environmental Rights regarding the Sea and Shore in the Case Study Areas

On the implementation of construction projects to protect coastal areas in the case study areas, it was found that, in the majority of the case study areas, the method of seawall construction has been applied for preventing and solving coastal erosion problems, with the Marine Department, the Department of Public Works and Town & Country Planning, local administrative organisations, and the Department of Marine and Coastal Resources, playing an important role.

In order to obtain information on the problems of rights violations and limitations in the protection of the environmental rights regarding the sea and shore in the case study areas, the researcher conducted in-depth interviews with the informants who were groups of people living in the case study areas and relevant state officials. It was found that in the areas where construction projects on the coastal areas have already been completed, such as the cases of Pranburi Beach and Samila-Chalatat Beach, people have experienced both positive and negative impacts from project implementation. That is to say, people have benefitted from the protective barrier of the structure that is capable of protecting roads and properties; but at the same time, the beachfront areas could no longer be used due to the problems of subsidence of structures and erosion having occurred in the downstream area where the structure ends. Nevertheless, for the cases of certain areas where the construction has not been completed or has already stopped, the problem of exercising constitutional rights of people may arise during the period when construction projects are being carried out, such as the cases of Mae Ramphueng Beach, Muang Ngam Beach, and Maharaj Beach. In these areas, there have been requests for responsible government agencies to carry out construction projects on the basis of respecting the constitutional rights of people in various dimensions, for example, a request for informing about project implementation and conducting public consultation in all aspects. In addition, the mobilisation of environmental rights regarding the sea and shore by people in some areas has been exercised by filing a lawsuit in the Administrative Court such as the plaints in the Samila-Chalatat Beach Case, the Muang Ngam Beach Case, and the Maharaj Beach Case.

It can be said that the cause of the problems arose from the ambiguity of policy formulation, as well as the duties and powers of the relevant organisations and provisions of relevant laws. This brings a situation where the enforcement

of the laws aimed at protecting the people's rights has not been undertaken in accordance with the objectives set out by the laws. This can be seen as follows:

Policies and Organizations related to Protection of Environmental Rights regarding the Sea and Shore

The EIA problem (which has been resolved)

The study has found that the problems of violations of people's rights are rooted in the policy specifying the types of construction projects for coastal protection that did not require the making of an EIA report in the case of seawall construction. It disregarded the precautionary principle which is a foundation of sustainable development, resulting in the undermining of the realisation of environmental rights regarding the sea and shore guaranteed under the 2017 Constitution and the failure to accomplish the undertaking of national development based on sustainable development. However, this problem was solved in June 2023 as the Ministry of Natural Resources and Environment stipulated that the construction of seawalls in any size is a project that is subject to the requirement of making an EIA report at the approval stage or the stage of applying for permission for the project, as the case may be. Thus, the operations of seawall construction projects at present have been consistent with the right to participate in public affairs regarding environment-related activities according to the precautionary principle.

The overlapping duties and powers between organisations

On the problems of overlapping duties and powers between organisations, it is not unusual that several organisations have important roles in carrying out construction projects to protect coastal areas in the case study areas. This may result in overlapping problems in their operations such as overlapping operations between the Department of Public Works and Town & Country Planning and the Marine Department. These overlapping operations also occur between the operations of the Department of Marine and Coastal Resources and the Department of Public Works and Town & Country Planning on the grounds that the construction under the responsibility of the Department of Public Works and Town & Country Planning is performed to protect properties of the state. For instance, the protection of road which is done on sandbars is under supervision of the Department of Marine and Coastal Resources as sandbars are part of marine and coastal resources according to the definition under the 2015 APMCRM.

It can be seen that even though each agency has its own roles and responsibilities according to its laws, these roles and responsibilities are performed in the same area, namely, the coastal areas, but the operations are not done in the same direction. Ultimately, it affects coastal areas in a way that accelerates continuous coastal erosion. Lastly, there is also a problem of overlapping of different roles within the Department of Marine and Coastal Resources. The fact that the Department of Marine and Coastal Resources plays the roles of both a regulator and a performer of construction projects similar to the Department of Public Works and Town & Country Planning and the Marine Department inevitably causes overlapping of operations, which may also affect the efficiency of its operations.

Laws related to protection of environmental rights regarding the sea and shore

The study has found that the 2015 APMCRM lacks clarity in some matters such as the meaning and scope of the "severe damage" under section 17, which becomes a problem when the law is enforced in practice as this term may be differently interpreted.

This Act also lacks provisions necessary for protection of the environmental rights regarding the sea and shore. For example, the absence of the definition of the word "seashore" which should be defined not only from its physical appearance but also consideration of its usability in a dynamic way (Lavalle et al., 2011, pp. 15–16). Moreover, the Act lacks specific provisions on public consultation on projects in order to protect coastal areas which is considered to be crucial for protection of the rights of people. This is on the grounds that at present there are no laws specifically enacted for accommodating the rights of people to receive information and to express opinion about the project in accordance with the public consultation process under the 2017 Constitution. The public consultation process is done only in accordance with the Rule of the Office of the Prime Minister on Public Consultation, B.E. 2548 (2005), and there are still problems in enforcement in practice. Lastly, missions of coastal area protection in Thailand are carried out separately by each agency, without clarity regarding integrated operations. These agencies have the status of juristic person under public law which have the duties and powers under their own laws on establishment of government agency. Hence, coordination between these agencies can be done only by orders of the Cabinet as the highest superior. This situation causes the problem of coastal erosion to continue to exist without any improvement.

Law Enforcement of Administrative Unit and Adjudication of Judiciary

Role of the state in enhancing participation of communities

The study has found that law enforcement of administrative unit does not meet the objectives set out by the law. This is for the reason that agencies are likely to apply construction of seawalls for protection of coastal areas in most of the case study areas since an EIA report is not required for this type of project. This situation brings about a rapid increase in the number of seawall construction projects. As an EIA report is not required, in practice, agencies responsible for such projects usually organise an open forum for public consultation as part of decision-making in project implementation. Apart from the fact that this is done only in practice, the preliminary impact study and public consultation are not taken into consideration by expert committees according to the EIA process. Such public consultation, therefore, does not result in a true guarantee of the rights of citizens as stakeholders. Moreover, as an EIA report is not legally required, the organisation of an open forum for public consultation is subject to discretion of particular agencies, and different modes of organisation in different standards may be applied. On the issue of compensation for damages caused by project implementation, for the same reason of not having a requirement of submission of an EIA report, exercising the right of people to a remedy for the grievance and injury in such cases is nearly impossible. However, seawall construction projects were returned to the list of projects which are subject to the requirement of making an EIA report in June 2023.

With regard to the role of the state, the state has guaranteed the constitutional community rights by providing opportunities for communities to participate in conserving and utilising coastal areas together with the state and local administrative organisations. At present, this can be done by the power of section 16 of the 2015 APMCRM. However, the rights relating to coastal communities under the 2015 APMCRM and the 2017 Constitution are recognised and guaranteed in a different way. The 2017 Constitution recognises the existence of communities without any requirement of reference to or reliance on the recognition of other legislation, but rather on the grounds of its self-recognised or self-certified status and its natural entitlement to rights regardless of having the status of juristic persons or having met the requirement of registration. In contrast, the emergence of coastal

communities under the 2015 APMCRM is subject to registration, the entitlement of rights and duties depends on its registered status, and the registered status may be revoked if a fact stipulated by the law has occurred. The said criteria can be widely interpreted, resulting in the difficulty of “coastal communities” to emerge. This is on the grounds that it is difficult to clearly determine the scope and content of an act which is deemed to violate the public morals, or to be a danger to public peace or national security, or to be any act which may cause severe damage to marine and coastal resources. Ultimately, the guarantee of rights relating to coastal communities through legal registration system may undermine the principle guaranteeing community rights under the 2017 Constitution, which does not require legislation as delineated above.

The issue of adjudication of the Administrative Court

Turning to the issue of adjudication of the Administrative Court, it was found that the principle of proportionality was applied for the first time in the Sakom Case by the Songkhla Administrative Court, and was also used in the Samila-Chalatat Beach Case by the same court. From the legal principles laid down by the Songkhla Administrative Court in both cases, it shows that the state’s construction projects on coastal areas must not be carried out in an arbitrary manner. That is, the model of the project chosen by agencies must have a capacity to prevent coastal erosion under the conditions that there are no other measures that are more effective, the measure chosen must not cause more serious damage to marine and coastal resources than the benefits to be received, and people’s opinions have been taken into account. In addition, the Administrative Court has affirmed that, in the event where the project in question is a project that is not required for an EIA report to be submitted but is likely to cause severe impacts on the community in terms of environmental quality, natural resources, and health, persons or communities are entitled to bring the case before the Administrative Court to request for the project to be carried out in line with the conditions provided by the 2017 Constitution in accordance with the precautionary principle without necessity for the law to be legislated. This is for the reason that the 2017 Constitution has an intention for the constitutional rights and liberties to be immediately enforced without the implementation of legislation. Hence, the enforcement of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992) must be consistent with the 2017 Constitution.

Conclusion and Recommendation

The results of this study show that violations of environmental rights regarding the sea and shore from construction projects in coastal areas in Songkhla and Prachuap Khiri Khan Provinces have been caused by the ambiguity of policy-making, the duties and powers of the organisations, and the provisions of relevant laws. As a result, law enforcement for protection of rights of people is not in conformity with the objectives set out by the laws. From these results in combination with the results obtained from the focus group discussion, the researcher proposes the following guidelines for protection of people's environmental rights regarding the sea and shore in the case study areas; (1) The state must impose policies and properly allocate duties and powers of relevant organisations to be capable of ensuring integrated operations and in line with the principles of sustainable development. The EIA should be applied, starting from the level of strategic environmental assessment (SEA) in order for the overview of coastal area management at the strategic level to be seen, and then moving to the assessment at the project level to allow agencies to easily operate; (2) The government must guarantee the right to a healthy environment in the Constitution and incorporate necessary definitions such as "seashore" and a specific right to public consultation on construction projects in coastal areas in the 2015 APMCRM; and (3) The state must decentralise powers and budgets to local administrative organisations to facilitate participation with the state in managing their own coastal areas. These proposed guidelines are expected to bring about integrated coastal management which gives priority to system, organisational mechanism, and cooperation between all stakeholders from all sectors with an important goal of making a balance between environmental, economic, and societal considerations. These proposed guidelines will increase efficiency in protecting the environmental rights regarding the sea and shore in Thailand and the state practice to be in line with international obligations to which Thailand is a party.

Conflict of Interest

No potential conflict of interest was reported by the author.

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