

# **A Decade of HIA Development in Thailand: From Cases to Constitution**

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## **Abstract**

The concept of HIA has been introduced and developed in Thailand since 2000. At first, HIA in Thailand has been designed as the social learning process for promoting healthy public policy, applied from the project up to the policy levels. In 2007, after successful experiences in mobilizing policy changes for several cases, HIA has been included into the National Health Act. With this act, it has acknowledged the right of Thai people to demand for and participate in HIA for investigating potential positive and negative impacts on health from any specific policy. Moreover, in the late 2007, HIA has been incorporated into the National Constitution. The section 67 of the constitution requires any possible harmful projects and activities must be conducted HIA before implementation. This is quite impressive movement in terms of building up institution framework for HIA development. However, HIA in Thailand still needs further development in terms of analytical framework and enabling environment, which will help HIA to be the real societal learning process as wished.

## **1. Introduction**

Since the political reform in 1997, the calls for public participation and community right in Thailand have been echoed, leading to several movement and legal changes. Health sector is one of the most progressive sectors in Thailand in responding to public and community participation rights. At the same time, health sector in Thailand also found the necessity of moving the health sector's borders to reduce the negative health impacts from and promote health in various policies outside health sector. Especially development policy in Thailand, such as industrialization or farm commercialization with huge chemical uses, had evidently cause negative impacts on people health. These two forces have merged within the National Health System Reform, started in 2000 and, later, leading to the introduction of health impact assessment (HIA), as a tool for healthy public policy. Seven years later, through a lot of efforts, HIA was incorporated into the National Health Act and the 2007 constitution. Although it is an impressive progress, especially in terms of an institutional infrastructure, it is not automatically guarantee that HIA can lead to desirable social learning process and healthy public policy as wishes.

The Chapter will firstly provide the historical development and philosophical basis of HIA development in Thailand since 2000, through the facilitation of Health System Reform Office. Then, the legislative process of HIA from 2000-2007 will be described, which hopefully can be a lesson learnt for other countries. After that, the present HIA institutional mechanism and implementation in Thailand will be explained, before critical

reflection on an existing HIA system in Thailand will be presented. At the end of the Chapter, the conclusion and recommendations for HIA development in Thailand will be pointed out with the main aims to develop social learning process for healthy public policy formulation and implementation.

## **2. Background: Thailand's Health System Reform**

The concepts of healthy public policy and HIA have been firstly introduced to the Thai public during the process of the National health system reform, started from 2000. This reform provides important spaces and processes for several changes in Thai society, including the expansion and deep-rooting of healthy public policy and HIA. Therefore, it is important to understand the evolution of this concept in Thai society through the health system reform process.

Combined with drastic changes in social and political conditions during the 1980s and 1990s, national health system was increasingly forced to reform. The climax was reached in 1997 when the new constitution was adopted and implemented, with the massive supports from civic movement. Under this constitution, health became a part of human rights not just public welfares. Consequently, government was required to provide public health services of the same standards to all the populations. All development programs and projects that had adverse impacts on health are now required to conduct environmental impact assessment with public scrutiny process. The civic roles in policy formulations and public decision-makings, as well as in their implementations had been asserted in this constitution. Last, the 1997 constitution requires decentralization of government services including health services (1).

### **2.1 The Drafting Process of National Health Act**

National Health System Reform Office (HSRO) was an ad hoc organization under Health Systems Research Institute (HSRI), functioning as the secretarial division of the National Health System Reform Committee, which was setup in 2000 by the Prime Minister's Office Regulation on National Health System Reform.

As a secretarial body, HSRO had coordinated with all sectors throughout the country to take part in the conceptualization and the formulation of the National Health Act, which was to be a health statue of Thai society. HSRO also used this process as a learning tool for Thai people towards the reform of their health behaviors and modes of thinking in order to move from 'health repair' to 'health promotion'.

The tangible outcome of the reform was to develop the "National Health Act" as a constitutional framework of national health system. However, unlike other legislations in Thailand, the reform aimed to use a drafting process as the opportunity for mutual learning in Thai society.

The process was started from the national and the six regional seminars on "The Desirable Health System in Thailand" in 2000. The results of these seminars were put into the background paper for developing the framework of health system reform. In January 2001, the principle framework for the national health system reform was

developed and followed by the public hearing and feed-back process. During the period of April-August 2001, 35,000 people from more than 1,800 organizations joined the public hearing held in every province of the country and more than 100,000 public feed-back were sent to HSRO. Both the framework, feed-back, and other ideas were discussed and summed up in the first National Health Assembly in September 2001 attended by 1,500 representatives from all provincial forums of previous public hearing (1).

Based on the results from the first National Health Assembly, the first draft of National Health Act was developed and again followed an extensive public review process. The results of all three processes were summarized and developed into the final draft of the National Health Act in July 2002. This final draft was submitted for the endorsement to the National Health Assembly in August 2002. After endorsement, the draft was submitted to the Prime Minister at the closing ceremony of the assembly with the political commitment to pursue this reform and formal legislative process (1).

## **2.2 Health in the New Dimension**

Through this reform process, several new ideas in the health system were introduced, demonstrated, deliberatively discussed, and on-going developed, which led/have led to significant changes in the dimensions of health within Thai society.

The new dimensions start from the definition of health. In the draft, health was defined as *“the complete status holistically interrelated in the physical, mental, social, and intellectual (or spiritual) balances”*(2). Therefore, health is no longer the issues of illness. It becomes the issues of complete well-being, both for individuals and the whole society and both in physical and more social and spiritual senses.

Following the new definition of health, health systems are now referred to *“all of the interconnected management that enhance healthiness and factors relevant to health aspects, such as individual factors; economic, social, political, educational, legal, religious, cultural and traditional factors; scientific and technology factors; as well as the factors on public health and public health service”*(2). In other words, now health system is moving beyond the previously called “health sector”.

The draft also asserts the right of person *“to participate with the state and the community in generating the environmental conditions which are appropriate, balance, safe, quality, and meet the standard of continuous normal living in good health with good quality of life”*(5). Therefore, the new health systems *“should aim at creating health for all and all sectoral participation should be enhanced for therein health promotion with the continual potential building process of persons, families, communities, and socio-environmental conditions for reciprocal benefits of living together”*(6)

## **2.3 The Development of Healthy Public Policy and HIA in Thailand**

The issues of healthy public policy and HIA were raised firstly during the national seminar on “The Desirable Health System in Thailand” in 2000 and echoed during the public hearings at the provincial level in 2001. This issue has become more important for Thai society, mainly because of the increasing trend of health risks from environmental

hazards; such as air pollution, pesticide contaminations, improper waste treatments etc., as well as the evidence and concerns of health impacts from development projects; such as large dams, coal-fired power plants, trans-national gas pipelines, highways, etc.

After the issue was raised in the reform process, Health Systems Research Institute (HSRI) has set up the academic review process in 2001, which, consequently, reinforced the concept of “healthy public policy”, introduced 10 years earlier in the Ottawa Charter. The notion of healthy public policy received good public response in combating the facing problems in Thai society and was put into the framework for national health system reform (8).

In February 2001, HSRO published the conceptual framework of national health system and distributed it to relevant sectors and the public in order to gain feedbacks and create a desirable framework for Thai society. This document states of HIA in Item 5.2 of the Fifth System ‘Health Promotion’ as follows:

*“To give priority to healthy public policy by setting mechanisms for studying health impacts from public policy making, from large-scale projects, from investment policies, from legislation and standard setting. The State must also have the mechanisms to hold relevant organizations and individuals accountable for any negative health impact that takes place.”*(9)

Later, in 2001, the issue of healthy public policy became the first topic of discussion in the first National Health Assembly, showing its relevancy and importance in Thai health reform’s context. In the assembly discussion, two HIA studies on the industrial development project and agricultural policy were presented, showing clear negative health impacts from well-known governmental policy and project. As a result of the first assembly, the concepts of healthy public policy and HIA were included in the first draft of National Health Act, paving the way for HSRI to develop research program on healthy public policy and health impact assessment started in 2002 to support further development in healthy public policy and HIA in Thailand (8).

The draft stresses that the expected health systems shall have “*guidelines and measures to establish the healthy public policy and the process of HIA from the public policy, aimed at joint learning of all sectors in the society, through the sufficient academic utilization, with the transparent and accountable mechanism*”(10) Furthermore, the draft also asserts “*the right of Thai people to participate in accessing the information, suggesting, performing, using the assessment outputs and making decision on the approval and permission of the policy implementation and crucial projects that may have an impact on health*”(10).

After the long process of public hearing including special hearings for those who had been affected by development projects, the special session on healthy public policy and health hazards was organized in the second National Health Assembly in 2002 to scrutinize and later endorsed the draft of National Health Act in August 2002, as earlier mentioned.

From 2002, the HIA guidelines and capacity strengthening activities were carried out for both academicians and active citizens. Under the HSRI research program, over 50 HIA case studies were conducted in several policy issues, both at the national and local levels.

Although all the cases aimed at desirable policy changes, only some of them can reach this expected policy outcomes, highlighting the importance of policy contexts in healthy public policy developments. To foster desirable policy changes, five policy networks, including one for energy and industrial policies, were set up with the role in seeking opportunities and formulating strategies for healthier policy changes.

## **2.4 HIA in the Legislative Process**

The recommendations and academic syntheses were included in the content of the National Health Bill, which was then taken to the public consultation process through all provincial health assemblies. The last consultation was organized on 8-9 August 2002 in the national health assembly, and the Bill was reviewed on 24 September 2002. This law was generally known as *'the people issue of the Health Act'* and included seven sections referring to HIA. They were Sections 8, 21, 22, and 27 in Chapter 2: Rights, Duties, and Health Security, Section 42(5) in Chapter 3: National Health Commission, Sections 67(1) and 68 in Chapter 6: Health Strategy and Policy Approach (11).

HSRO submitted the Bill to the Government, and the Council of State was then assigned to review and amend many sections. The Bill was, therefore, called *"the Government's issue"*. Moreover, only two sections referring to HIA remained after the amendment. The Bill was firstly approved with the consensus of the House of Representatives on 14 December 2005 (11).

However, a royal decree of the dissolution of the House of Representatives on 24 February 2006 as well as the political crisis, which led to the coup d'état on 19 September 2006, have brought the National Health Bill back to the beginning of its legislative process.

Shortly after the establishment of the National Legislative Assembly, the National Health Bill was submitted to the National Legislative Assembly with the strong back-up by the Minister of Public Health, Mr. Mongkol Na Songkla. The amendment commission was established to review the the National Health Bill with the participation of the people representatives of the previous Health Assemblies. With the full support from these commissioners, the rights and participation of the citizens in HIA are restored in Sections 10 and 11 in the last National Health Bill (11).

Finally, on 4 January 2007, the National Legislative Assembly approved the National Health Bill, which is currently being enforced in the government gazette. As mentioned earlier, this time the rights and participation of the citizens in HIA are restored in Sections 10 and 11, while the prescription of HIA criteria and methods is stated in Section 25(5) as the duty and authority of the National Health Commission (NHC) (11).

## **2.5. Inside the National Health Act**

The National Health Act B.E.2550 (2007) is among a few laws in Thailand, which have the most extensive people participation process in the history. It is the first Act that includes several sections on HIA. The Act covers the right, responsibilities, and functions on health and health securities. Moreover, the Act also includes the operational

mechanisms and the public participation process, particularly the section on the rights of the people to make a demand for and to participate in HIA process.

According to the intention of the National Health Act, HIA is aimed to be a social learning process, which has been developed for all stakeholders in the society to examine health impacts of policy, project, or activity that have already affected or may affect a group of people, in order to support the most appropriate alternative in public decision-making process with the goal to protect and promote health of all people in Thai society (12).

HIA is both the social mechanism and social process for the participatory approach to Healthy Public Policy. Therefore, the institutional structure of HIA does not need to set up a specific institute or other administrative structures, but HIA should rather be committed and applied by all related stakeholders in order to protect and support the rights and the health of the people (12).

Since the rights and public participation are core values of HIA, the National Health Act has three sections on HIA as follows (13):

**Section 10** In the case where there exists an incident affecting public health, a State agency having information relating to such incident shall expeditiously disclose such information and the protection thereof to the public.

**Section 11** An individual or group of people has the right to request for estimation or participating in the estimation of impact on health resulting from a public policy.

An individual or group of people shall have access to information, explanation and underlying reason prior to a permission or performance of a programme or activity which may affect his or her health or the health of a community, and shall have the right to express his or her opinion on such matter.

**Section 25 (5)** National Health Commission (NHC) shall have powers and duties to prescribe rules and procedure on following up and evaluation in respect of national health system and the impact on health resulting from public policies, both in the levels of policy making and implementation.

## 2.6 Moving into the Constitution

After the success in implementing HIA National Health Act, HIA was discussed in the drafting process of new constitution after the 2006 coup d'état. The National legislative assembly, who pass the National Health Act, also suggested to add HIA in the decision process of projects and activities that may harmful to health of Thai people. Later, HIA was added into the national constitution draft and passed through the first national referendum in August 2007. Finally, in the August 2007, HIA has been acknowledged in the national constitution. The Constitution of the Kingdom of Thailand BE.2550 (2007) in section 67 stipulates that (14):

*“Any project or activity which may seriously affect a community’s environmental quality, its natural resources or its people’s health, is prohibited unless (a) **these environmental and health impact are studied and assessed** (b) a public hearing process is undertaken to obtain the opinions of people and stakeholders and (c) independent organization formed by representatives of non-governmental organizations and higher education institutes provides opinions and comments, prior to the implementation of such a project or activity...”*

As stipulated by the Constitution, whenever a new project or activity is proposed that may cause public health impacts, HIA should be implemented along with an environmental impact assessment (EIA) to ensure the community right to live in a healthy environment.

### **3. Present HIA mechanism in Thailand**

Based on both HIA and National Health Act, HIA in Thailand have been applied in four main ways.

First, as earlier mentioned, according to Constitution, all possible harmful projects require to conduct HIA in their decision-making processes. In the HIA process for possible harmful projects, local people and public can participate meaningfully in public scoping and public review. At the same time, according to the constitution, HIA report must be reviewed by the independent organization to ensure the quality of the HIA process and report.

Second, any governmental organizations may apply HIA in the policy and planning development. In other words, apart from HIA at the project level as earlier mentioned, HIA can also be applied at the policy and program levels, such as for power development plan, for mining development strategy, or regional development policy. National Health Commission Office must co-ordinate with and support the relevant organization to conduct HIA in their planning process and facilitate for public participation in HIA process.

Third, any local people who may concern about the impacts of specific policy on their health also have right to request for HIA to ensure that the policy would not lead to their negative health impacts. In this case, National Health Commission Office will facilitate the HIA process, especially to co-ordination between local people, policy-makers, and relevant organization in conducting HIA and applying to policy-making process.

In Thailand, after the completion of a project or activity where health impacts have occurred, people can still request HIA for such a project or activity as stipulated by the National Health Act. Although, in principle, HIA should be used prospectively, the retrospective HIA can also be very useful for policy evaluation. At the same time, owners of the project or activity may have to undertake measures to eliminate the impact such as changing an industrial production technology.

Last, local governments and people and other organizations can apply HIA as a social learning process to solve their own problems or to plan for their better future for health.

In this case, HIA can be done locally without any law requirement and can communicate with National Health Commission Office for technical support and exchange of ideas and information.

National Health Commission has established the National HIA commission, which composes of key organizations in developing HIA in Thailand, to take care of overall HIA development in Thailand. Moreover, in order to facilitate all these four HIA channels, HIA Co-ordination Centre has been set up by National Health Commission Office to work with other organizations and local people in Thailand. At the same time, HIA Co-ordination Centre has to support National HIA commission for further continuous development of HIA in this country.

#### **4. Case Study: Mab Ta Put Crisis**

Shortly after the National Health Act coming into force, in April 2007, local people in Rayong, who face severe negative health impacts from air and water pollutions from Mab Ta Put industrial estate, the largest industrial complex in the south-east Asia, applied their rights to ask for health impact assessment of the governmental policy to expand this petro-chemical complex into the next phase, under section 11 of the National Health Act. In July 2007, National Health Commission, developed from Health System Reform Office, decided to conduct HIA in this case as the first HIA under the National Health Act.

The HIA was conducted through both academic and participatory process. Three local health assemblies and several local workshops were organized to collect information from all stakeholders in all aspects of health determinants.

The HIA report was published in August 2008, showing the negative impacts of present industrial estates and, more importantly, of the further expansion policy on this industrial area. The negative health impacts do not occur only through the exposure to industrial pollutions but also through the undesirable changes of social conditions, such as the cultural conflicts from workers' immigration or loss of social cohesiveness. The great concerns of local people were the increasing incidence of cancer, especially leukemia, and the chemical accident disaster in the area.

This HIA report was used by the local people as an important evidence in the Rayong Administrative Court, against the government from not applying pollution control zone measures in their area. In March 2009, the local people won the case and Thai government had to announce pollution control zone in Mab Ta Put area.

One recommendation from this HIA report is to suggest Thai government to follow constitution section 67 by applying HIA for each possible harmful projects. However, due to the political uncertainties and unrest (so-called yellow-shirt and red-shirt conflict) during 2008-2009, Thai government did not bring section 67 of the constitution into action appropriately. In June 2009, the local people brought their case against into the Central Administrative court. They asked the court to urgently order Thai government to follow section 67 of the constitution strictly and, therefore cancel the unlawful permission for 76 industrial investment projects in Mab Ta Put area. Finally, in



September 2009, they won the Mab Ta Put case again in the Supreme Administrative court. (15)

Because the court decision means that around 10 billion USD of industrial investment must be postponed, the Mab Ta Put case brought a huge public attention over HIA implementation in Thailand. HIA development and procedures had been reported in the Newspaper for months.

Prime Minister, Mr. Abhisit Vejjajirakul, ordered National Health Commission to establish *the Rules and Procedures of HIA* under the constitution section 67, within three months, aiming to use as a practical guidelines for HIA implementation. Later, National Health Commission, chaired by the Prime Minister, approved HIA Rules and Procedures on October, 19<sup>th</sup>, 2009 (16). However, only HIA was not enough to solve the Mab Ta Put investment crisis, because other components of Section 67, such as public participation was not in place yet. Therefore, in November 2009, Thai Government sets up the four-parties commission, from industrial, government, people, and academic sector to establish the rules and procedures for implementing Section 67 of the Constitution. On December 29<sup>th</sup> 2009, the four-parties commission agree to set up the rules and procedures for the Section 67, followed the principle of HIA rules and procedures. This ensures the principle of public participation in decision-making process. Specifically, public scoping and public review also applied to EIA under the constitution section 67, which never done before in Thailand (17).

## **5. Critical Reflection**

However, in reality, the implementation of HIA in Thailand has not always run smoothly because in the beginning HIA was regarded as “social learning process” in order to come up with the best policy, or so-called healthy public policy, that will be beneficial to Thai people’s health and well-being. The effort is successful to a certain degree but people still ask how HIA will lead to actual government’s decision.

Nevertheless, when HIA status was “incorporated” into “government’s decision-making process” as was expected by the people, there is still a question. Even though the section 67 of the constitution has been carried out for almost 2 years in Mab Ta Put area, the private sector still asks for tangible standards and practices for health impact assessment that those who follow will surely pass through approval process.

Concurrently, local people who live in the Mab Ta Put industrial area want their concerns and needs (e.g. the need to preserve their lifestyle) to be included and analyzed in HIA as well as be accepted by other parts of the society, while the government and some people in the private sector regard them as “emotional”, not reliable information to be used in health impact assessment.

Therefore, HIA in the Thailand constitution is still in the dilemma between governmental approval process and social learning process. The government who got stuck in between the two sides could not find the appropriate way out of this conflict because just to deal with the existing database needed to support health impact assessment, the government’s resources (especially human resource) are already tightly occupied. The government,

therefore, does not have the strength required to bring the society to the new level of mutual learning and agreement.

## **6. Conclusion and Recommendations**

In a decade, HIA development in Thailand has walk quite far from the initiative to the instruction framework. In other words, we can move from the conferences and case studies to the constitution. However, focusing on an institutional infrastructure cannot lead to fully development of HIA as a desirable social learning This dilemma led National Health Commission Office to organize the critical reflection workshops for further HIA development in the next five years in 2010 and 2011 with participants from four parties; namely governmental, private, affected local people, and academic sectors. The results of the workshop are quite critical and interesting as discussed below (18).

- **Moving Upstream of Development Process**

If the main purpose of developing HIA is to encourage knowledge sharing in the society until it leads us to fairly acceptable and feasible conclusion, then we must learn the lesson and accept its past limitation which is the fact that implementation of HIA in the Constitution at the end of development when all parties involved have already decided on their own beliefs or standing points, for example, the owners of the project may have calculated business returns in their minds, some of them may even invest in their projects already. On the other hand, those who oppose the projects will never accept such major change in their lives. Thus conflicts arise. It is difficult to go back to the beginning to decide what are the options and directions of the development.

As a result, if we want to maintain the spirit of deliberative decision-making in the society, HIA must be used as a planning and decision-making tool at the very beginning of project development, meaning during the strategic planning period, from overall strategies to thematic and spatial strategies. Even though each group may have different expectations and ideas on the project development, as long as they have not decided on their standpoints or specific ideas of the project, there is still some room for social learning and mutual understanding instead of arguments and conflicts where everybody only focus on the benefits or problems they will get from the project.

- **Providing Alternative Policy Options**

Although moving towards the upstream in development process will provide a broader opportunity to share and learn within the society, this opportunity cannot be effectively linked to policy solution until the new strategic policy option would be presented, discussed and analyzed through HIA process. This is because, without policy options, it is quite difficult for Thai society to exchange, learn, and making decision together. Therefore, HIA should not only focus on comments and critiques of specific government policy but HIA also needs to stimulate and accumulate new ideas and initiatives from different stakeholders within the society.

Concurrently, HIA should also develop a tool that can illustrate strategic changes or impacts systematically in various dimensions as well as can process the information and display the result instantly (or being interactive) to support and stimulate the learning

process as well as help create mutual understanding between all parties in the society. This may lead to the new alternative, which could be beneficial to everyone.

- **Linking to Other Aspect of Development**

Another important problem for implementation of HIA in Thailand is how to link all health determinants into health impact assessment and to government's decision-making process, especially in case of social determinants of health. Since the accuracy of data in the aspect of social determinants is often criticized, HIA conducted in Thailand, especially after the 2007 constitution, mostly focuses on physical and biological environment rather than psychological, social or spiritual aspects, as stressed in the National Health Act.

The imbalance in assessment as mentioned above, apart from affecting the integrity of health impact assessment, also reduces the importance of local people's voices. As a consequence, the impacts caused by changes of social determinants of health cannot be measured or converted into usable data. Inevitably, this kind of impact is often excluded from health impact assessment or even if it included, it does not have much weight to the government's decision.

The challenge of HIA, therefore, is how to develop health impact assessment scheme that reflects changes in social and spiritual health dimensions. Nevertheless, the latest development in the last 2-3 years, from the survey of happiness level of Thai people and the survey of the progress indicators all over the country which is a cooperation between Department of Mental Health, National Bureau of Statistics and Thai Health Promotion Foundation, is an important step for the development of database and tools for comprehensive HIA and future scenario.

At the same time, HIA should also link potential health impacts to overall development goals (like gross national happiness in Bhutan), which will be developed by people in each region or province. Linking between HIA and overall development goals will increase public attentions on possible health impacts, because these health impacts may reduce the potential to achieve overall development goals.

- **HIA Co-ownership**

Last but not the least, it is necessary for HIA in the near future to be designed in the way that all sectors especially local people who will be impacted (both positively and negatively) can participate as the owner of the assessment to ensure that the assessment is really a social learning process. Consequently, we must be careful when develop tools and database, try not to lessen sense of ownership of HIA of the community and of other sectors. Tools will only be used to support communication and sharing of information and opinions among various parties rather than to be used as the answer to the decision-making process that may have impact on the people's health.

Building a system that will enable everybody to work together for HIA, for example, between database developer, future scenario simulator, impacted people, official decision makers and the other groups, is a real challenge for Thai society. This is a cultural challenge that will create impact assessment and decision-making process that is mutually owned by various parties instead of the private-own assessment or state-centered approach that has been used before.

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