

# **Governing the Power Sector:**

## **An Assessment of Electricity Governance in Thailand**

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## 1. Introduction

The Thai power sector has been dominated by three government-owned enterprises since 1970's. The first is the Electricity Generating Authority of Thailand (EGAT), responsible for generation and transmission. The other two are Metropolitan Electricity Authority (MEA) and Provincial Electricity Authority (PEA), responsible for distribution and retail services for the Greater Bangkok and the rest of the country respectively.

Even though, the security of supply has been quite stable for a long time, there are many serious inefficiencies and problems associated with the sector. The tariff structure allows the utilities to pass on many unfair burdens to consumers, including burdens from "Take-or-Pay" contracts or increased generation cost due to errors in gas supply. Also, competition in power generation has been limited, mainly due to the monopoly power of EGAT. Moreover, many power plants have substantial impacts on the environment and local livelihood. These have led to severe social conflicts over new power plant projects and coal mining and gas exploration and pipeline projects as well.

Within this context, many governments have tried to introduce and implement the privatization of the power utilities for more than a decade. But the policy has been strongly resisted, mainly by the utilities and their labor unions as well as civil society groups. The present government employed many strategies in collaboration with the utilities to push privatization forward as well as to tone down public arguments against privatization. EGAT was eventually privatized in June 2005, with plans to list it on the Stock Market in November 2005. The other two distribution utilities were intended to follow suite.

The privatization issue was brought up again in the public debate when the cabinet made the decision to change the principle of power tariff from cost-base to return-base power tariff system. But it became highly controversial in November when a coalition of consumer groups filed a case with the Supreme Administrative Court stating that the two royal decrees on EGAT privatization were unlawful and the Initial Public Offering of EGAT's shares should be paused.

Consequently, the Court made the decision to order the temporary halt of the Initial Public Offering. After that, the Ministry of Energy finally set up an Interim Electricity Regulatory Commission (an institution that had unclear authority) in December 2005, after many years of requests from civil society organizations to set up an independent regulator. In March 2006, the Supreme Administrative Court ruled to cancel the two royal decrees, thereby rendering the already-privatized EGAT Pcl. to be a state owned EGAT again.

The pilot assessment of electricity governance in Thailand started in May 2005 and has been conducted through these dynamic interactions. The assessment is divided into three sections to cover the three important areas of electricity governance, which are Policy Process, Regulatory Process, and Environmental and Social Aspect, as presented in this report. The main aim of the assessment is not limited to producing a high quality academic report, but rather to interact with and mobilize all stakeholders, with the goal of joining forces and learning together to improve governance of the electricity sector in Thailand.

## **2. Development of Privatization Policy in Thailand**

The analysis on initiatives from various sectors regarding Thailand Electricity Sector's Privatization can be divided into 3 periods, with the following details.

### **a) Initiatives for electricity sector privatization before the Economic Crisis (1989-1997)**

Reform and privatization initiatives in Thailand's electricity sector started during the government of General Chatchai Junhavan (about the year 1989) when there was rapid economic expansion. Fundamental principles in electricity privatization were reduction of state enterprise's investment cost, and promotion of private sector participation in power production, responding to rapid increasing of electricity demand. These principles conformed to World Bank's general policy recommendations for developing countries during that period.

Nevertheless, attempts at electricity sector privatization at this initial stage were not successful because of the strong opposition from the EGAT Labour Union, which led to demonstrations calling for the deposition of the minister in charge of EGAT.

Changes began to appear during the government of Prime Minister Anand Panyarachun in 1992. The government amended the Electricity Generating Authority of Thailand Act, allowing private power producers to produce and sell electricity into the power grid according to the outsourcing policy to purchase electricity from Small Power Producer (SPP) and Independent Power producers (IPP). At present, private power producers account for about 50% of total electricity production in Thailand.

The context for these changes is noteworthy for two reasons: First, the changes occurred during the National Assembly of State Security (military scheme), and during this time the labor union's political rights and roles were strictly controlled. Secondly, the first IPP eligible for supply electricity into the system in 1994 was Electricity Generating Public Company Limited (EGGO), an affiliate of EGAT. This reflects the strong negotiating power of EGAT in the reform or changes of electricity system. The changes that did take place may well have resulted from EGAT and the government reaching an acceptable agreement.

### **b) Initiatives for electricity sector privatization during the Economic Crisis (1997-2000)**

In 1997 while a number of the Small Power Producers (SPP) started to supply electricity into the power grid and the IPP selection process (through the bidding process) was progressed to the signing of the Power Purchasing Agreement (PPA), Thailand entered a period of economic crisis. The Thai currency (Baht) was devaluated and liberalized; electricity demand decreased substantially; and Thailand entered the financial assistance program of the International Monetary Fund (IMF). Yet during this period the government still arranged new Power Purchasing Agreements with all of the seven IPPs, despite the decrease of the electricity demand, and the government also compensated the IPPs for the effects of baht devaluation. Although the primary motivation of the government was to maintain investor's confidence, these decisions were later criticized for creating excess

generation capacities, and causing huge economic burden for the Thailand electricity system<sup>1</sup>

After the economic crisis, the Thai government under the Prime Minister Chuan Leekpai (The Democrat Party) decided to restructure the electricity system and state enterprises according to the Letter of Intent presented to the IMF. The Electricity Sector Restructuring Plan was prepared. This national master plan prescribed establishment of a Power Pool, the drafting of Energy Regulatory Act, and the division of EGAT into 3 power producing companies. The power generation systems were separated from transmission systems with a clear target that the power pool would start functioning in 2003<sup>2</sup>. In this regard, National Energy Policy Office acted as a core agency in planning and coordinating operations under the guidelines.

Furthermore, the Prime Minister Chuan Leekpai's administration urged the enactment of State Enterprise Corporatization Act B.E. 2542 (1999) which would be used as an administrative mechanism in privatization of state enterprises. Royal Decrees would be sufficient to amend each Act governing each state enterprise, without the approval of the legislature. This action greatly limited the oversight role of the legislative body and the parliamentary process in considering and formulating electricity reform and privatization policy.

While EGAT did not generally support the establishment of a Power Pool or electricity sector restructuring --specifically the separation of generating systems from the transmission systems-- EGAT did not play a very prominent role during this period since the organization had encountered liquidity problems and was seeking a loan guarantee from the government. In 2000, EGAT privatized Ratchaburi Power Plant (the largest generation capacity to date), to become a new IPP. Its shares were sold in the Thailand stock market, where it received very positive response from investors.

During this period, the role of civil society in the electricity sector became more prominent. Several incidents reflected this more proactive stance, including opposition to Coal Power Plant construction at Prachuab Kirikhan Province, an opposition to the increase of the Fuel Adjustment Tariff (Ft), an opposition to establishment of the Power Pool, as well as several developments with regards to policy recommendations. Civil society groups did succeed in some cases, for example, construction of the Ban Krud and Bo Nok Coal-Fired Power Plants was halted, and the government agreed to establish a sub-committee to review the Ft mechanism. But in general, civil society movements were conducted on a case by case basis (with conjunction in some cases), and in a sporadic manner rather than being a continuous movement with genuine institutional policy influences.

### **c) Initiatives for Electricity Sector Privatization during Taksin's Administration (2001-2005)**

The electricity sector restructuring approach changed drastically after the landslide election of Prime Minister Taksin Shinawatra in 2001, who initiated an idea to register capable state enterprises as public companies and sell their shares in the stock market. The strategy is to stimulate investment in stock market while maintaining monopoly power of

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<sup>1</sup> Discussion Panel at the Parliament on Electricity Reserve Generation and Stability of Electricity System, The Case of Coal Power Plant at Prachuab Kirikan, 11 December 2001/2001

<sup>2</sup> Energy Policy and Planning Office. 2000. Electricity Supply Industry Reform and Thailand Power Pool. <http://www.eppo.go.th/power/index.html>

companies, and use its profit as capital for investment in various countries in the region according to a “National Champion” concept. The previous electricity sector restructuring plan was first delayed, and finally cancelled.

Petroleum Authority of Thailand (PTT) was the first state enterprise in the energy sector to be privatized to become PTT Public Company. Its shares were successfully sold in the stock market in 2001. PTT share's value has increased from 35 Baht to 230 Baht within 4 years, causing the PTT Public Company to be held up as a model of state enterprise privatization. However, the PTT Public Company success story traded off with the monopoly system of natural gas pipeline, and has been criticized because large proportions of shares were allocated to relatives of government politicians.

At the same time, the government restructured the administrative system, centralizing authority. The Ministry of Energy was established in 2002, merging agencies related to energy issues. The National Energy Policy Office became the Energy Policy and Planning Office (EPPO). Under the new ministry, electricity policy making roles have been transferred directly to the ministry and the executive body, rather than being developed by the National Energy Policy Office as in the past. The first step of the new ministry was to announce a National Energy Strategy in August 2003.

At the end of 2003, the government proposed an Enhanced Single Buyer as a model in the EGAT privatization. This model was based on a study by the Boston Consulting Group which proposed to maintain the authority and role of EGAT as a single buyer responsible for the united power generation and transmission system in order to maintain electricity stability. Under this model, the government would privatize the EGAT in the stock market to get sufficient investment capital for an expansion of power production capacity and electricity system in response with increasing electricity demands in the future.

Initially, the government expected to complete EGAT privatization within 2004. The public hearing was conducted at the beginning of the year. Later, civil society groups joined together with State Enterprise Labour Unions to oppose the idea, and mobilized various demonstrations that resulted in various academic forums and many critiques of reform in society. In March 2004, the government announced the postponement of EGAT privatization, stating that there would be further studies before the next decision, while the EGAT governor resigned from his position as well.

The civil society movement reduced its attention after the postponement. Only one distinct movement was an establishment of the Committee on Privatization of EGAT in the Senate to study this issue. There were public hearings gathering opinions from the key stakeholders including the Ministry of Energy and EGAT, EGAT Labour Union, academia, and the National Economic and Social Advisory Council in June 2004. Unfortunately, the final results of these hearings were released almost a year later in mid- 2005, and the government did not take these findings and recommendations into the decision-making process.

After his massive winning in the general election for a second term in February 2005, Taksin's administration started EGAT privatization once again. Prior to the election, the EGAT governor (Mr. Kraisi Kannasoot) proposed findings from studies for alternatives to privatization. Hearings were held and surveys of EGAT staff opinions conducted, leading to internal negotiation between EGAT and the government. Among the main issues discussed were the refusing of EGAT to separate the transmission system; setting the proportion of new power plants that EGAT could construct at 50%; and how to

transfer benefits from the privatization to EGAT staff.<sup>3</sup> At the same time, the government announced Regulation of the Office of the Prime Minister on the Electricity Regulatory Commission on March 2005 to address the issues that had previously been criticized by various stakeholders. Finally, EGAT privatization was preceded again following the process stipulated in the State Enterprise Corporatization Act, and the EGAT Public Company was established on 23 June 2005.

There was little public attention to the privatization of EGAT at the beginning of 2005, when compared with the reactions in 2004. Concurrently, the government did not arrange any public hearing at all in 2005.

The position of civil society became prominent in September 2005, when the cabinet made decisions to restructure the electricity tariff, and also increase the tariff so as to lessen the burden of EGAT prior to its shares being sold on the stock market. Civil society groups then started a movement against EGAT privatization, and against the increased burden of electricity tariff. In an effort to ease some of this political pressure, the government decided that EGAT would be responsible for 21 billion baht of the Fuel Adjustment Tariff burden while the electricity base tariff would be fixed for 3 years. The PTT Public Company also used the future discount of gas prices for the next three years to reduce the Ft Tariff in the October round, so that the electricity tariff of October 2005-January 2006 would not be so high that it might stimulate more opposition and may become an obstacle to EGAT privatization.

Lastly, the coalition leading by Confederation of Consumer Organizations submitted a petition to the Supreme Administrative Court for suspension of EGAT stock allocation in the stock market due to its large-scale negative impacts on the public interest. On 17 November 2005, the Administrative Court ordered temporary suspension of EGAT share allocations until further notice. Finally, the Court ruled to cancel the two royal decrees of EGAT privatization, therefore, canceling the EGAT privatization of the Taksin's government.

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<sup>3</sup> EGAT News. 2005. The Government to support EGAT to become leading organization. 28 February 2005.



### **3. An Assessment of Governance in Policy Process**

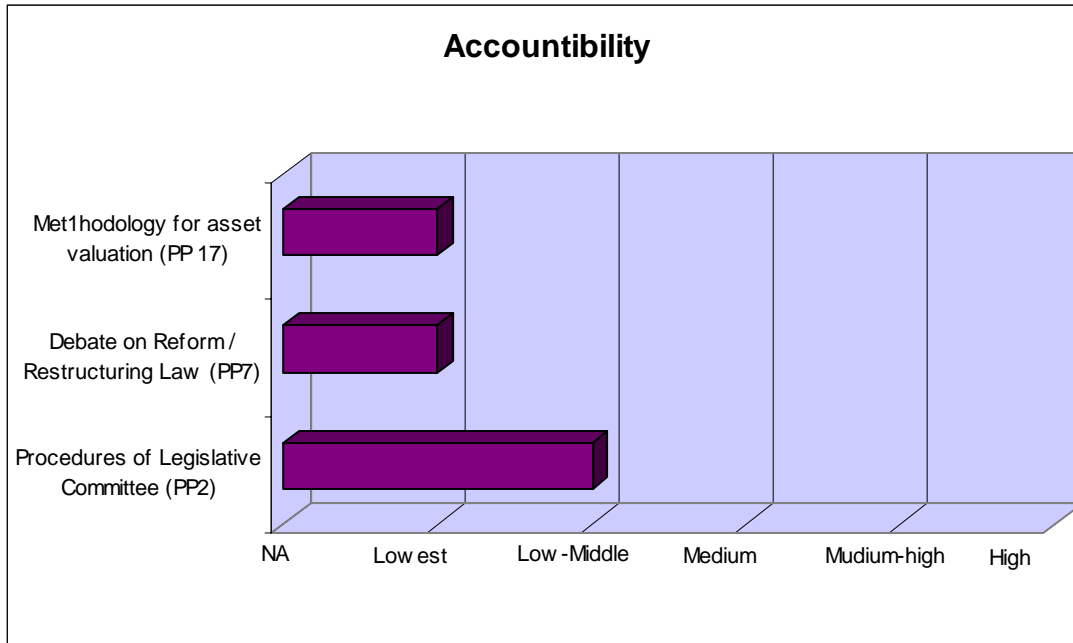
Policy process determines the function and performance of the electricity sector, and is the key to governance. Section 1 of the indicator toolkit asks questions about how policies are developed and adopted. It looks at the major institutions involved, including the legislative and executive branches of government, the ministry responsible for electricity operations and sector planning, as well as the international donor institutions. These indicators ask questions about the selection criteria for representation in these institutions, their reporting standards and requirements, clarity of their role and mandate, and the extent to which there is systemic space for public consultation and participation.

Since the EGAT privatization is a long process with various major policy decisions, the study team in consultation with the Advisory Committee, has chosen to focus on the policy process and decisions of the government in EGAT privatization during the year 2005 since this recent decision making process significantly affects Thai electricity sector.

Findings of the assessment in Section 1 (Policy Process) can be summarized as followed.

1. The privatization of Electricity Generating Authority of Thailand to become EGAT Public Company Limited was carried out according to the State Enterprise Corporatization Act B.E. 2542. This Act gave authority to the executive branch of the government (the cabinet) in proposing a Royal Decree for any state enterprise privatization, without the consideration of the legislative body (no amendment of the existing Act.) Therefore, the EGAT privatization was carried out with no parliamentary involvement in the process. The Thai EGI assessment results indicate that that accountability and redress mechanisms (namely PP2 Legislative procedure and PP7 Debate on reform) are very weak (Figure 1).

2. With regard to public participation, during 2004 EGAT privatization was carried out according to conditions set forth in the State Enterprise Corporatization Act and five public hearings were conducted. However, after the major demonstrations in February-March 2004, the government postponed EGAT privatization until there would be sufficient and clear study of the various options for such privatization.



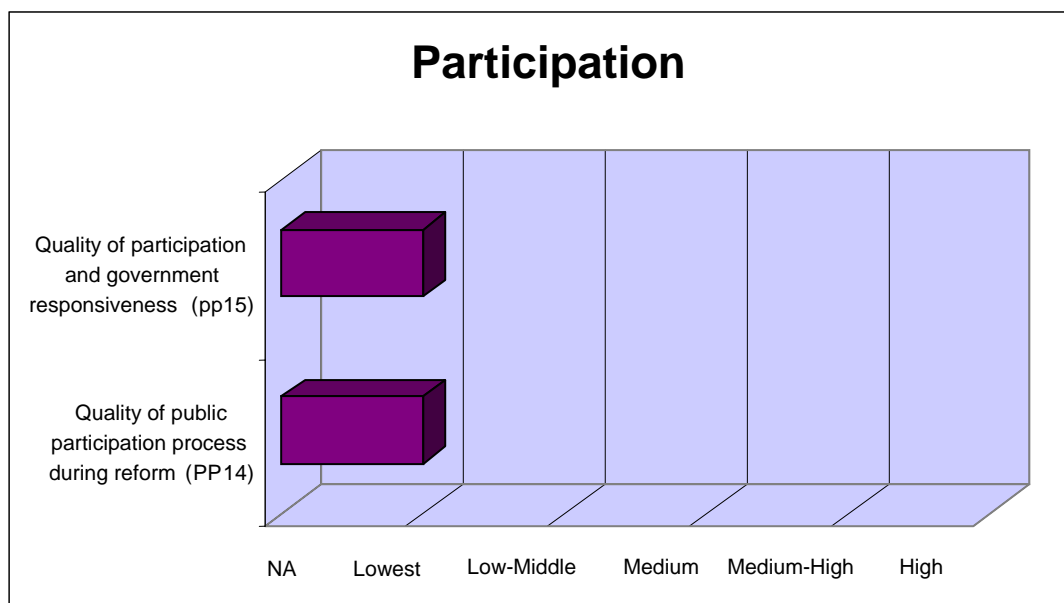
At the end of 2004, the government started EGAT privatization once again. While EGAT arranged a hearing for their staff only in December 2004 to determine alternatives in its privatization plan, there was no public hearing held during that period.

Once the government proposed the EGAT privatization plan to the cabinet for approval, it referred to the public hearing process conducted in 2004 as fulfilling the need for participation in the part of the privatization process under the State Enterprise Corporatization Act. The government did not conduct any new public hearings in 2005, reasoning that it was a consecutive operation.

In this regard, referring to the public hearing in 2004 is not justified since the content of the policy in 2005 (including content of the Royal Decrees) has been altered from that of the public hearing in 2004. For example, the 2005 decree established the Electricity Generation Committee, and designated a fixed proportion of 50% for EGAT in developing new power plants. In addition, there were studies analyzing other alternatives to privatization. Therefore, the new public hearing should have been conducted, to fulfill the conditions set in the State Enterprise Corporatization Act.

Furthermore, the government did not disseminate the outcomes of public participation except the conclusion of public hearing in 2004. Thus, there was no systematic process for participation, or access for less-privileged groups.

According to the above-mentioned problems, the decision-making process in EGAT privatization during 2005 is considered to lack clarity, and took place without adequate public participation. The assessment results both for quality of public participation process (PP14) and quality of participation (PP15), therefore, score the lowest (as shown in Figure 2).



3. Concerning access to information, the examination of publicly-available information (websites) of major agencies relating to EGAT privatization, namely, EGAT Public Company, Energy Policy and Planning Office (EPPO), and Ministry of Energy revealed that:

- **Coverage:** Even though there were various documents prepared by several experts and actors in 2004, there was no single website collecting all documents prepared by the government and other organizations relating to EGAT privatization. Most websites focused on their own documents.
- **Convenience:** Only the website of EPPO provides the draft Royal Decrees of EGAT privatization and the Regulation of the Office of the Prime Minister on the Interim Electricity Regulatory Commission. It also provides the previous master plan on electricity restructuring. However, there was no information that provided a broad overview of the structure of the electricity sector post-privatization. For ordinary people, the navigation and search features of the websites were not user-friendly.
- **Timeliness:** Since most available information is in the form of announcements of changes that have already happened, the prior information dissemination criteria was not met..

Consequently, with regard to information dissemination of major agencies involved in EGAT privatization, the lowest mark was selected for the indicator evaluating scope of background policy information available to the public (PP10).

4. To evaluate media coverage, the research team considered newspaper coverage surrounding the 10<sup>th</sup> May 2005 ministerial decision on EGAT privatization and found that:

- **Volume of Coverage:** The two largest circulating newspapers covered some news regarding privatization, but there were no analytical articles on the topic.
- **Balance and Quality of Coverage:** Four related articles were found as analytical articles during the period. But these articles provided unbalanced point of view and did not cover other significant issues such as benefits, impacts, and alternatives to privatization. Some articles stressed the lack of strong opposition

of the EGAT Labour Union without providing other points of view or additional information.

- **Clarity of information:** In the later stage, news and information regarding electricity system restructuring were conveyed to the public through an advertisement campaign. The government and several agencies produced media and purchased advertisement spaces both on television and in newspapers. The ads allowed the government to gain public support without providing comprehensive information or alternatives. Recently, the EGAT Public Company purchased space in the prominent newspaper to publish an article without informing that it was the advertisement section.

As a result, this indicator (PP16 Quality of Media Coverage) falls in the low-medium ranking. Nevertheless, when the civil society movement persisted during September-November 2005, leading to the Administrative Court's decision to suspend the Initial Public Offering of EGAT stocks, the media provided substantial news and analysis on this issue.

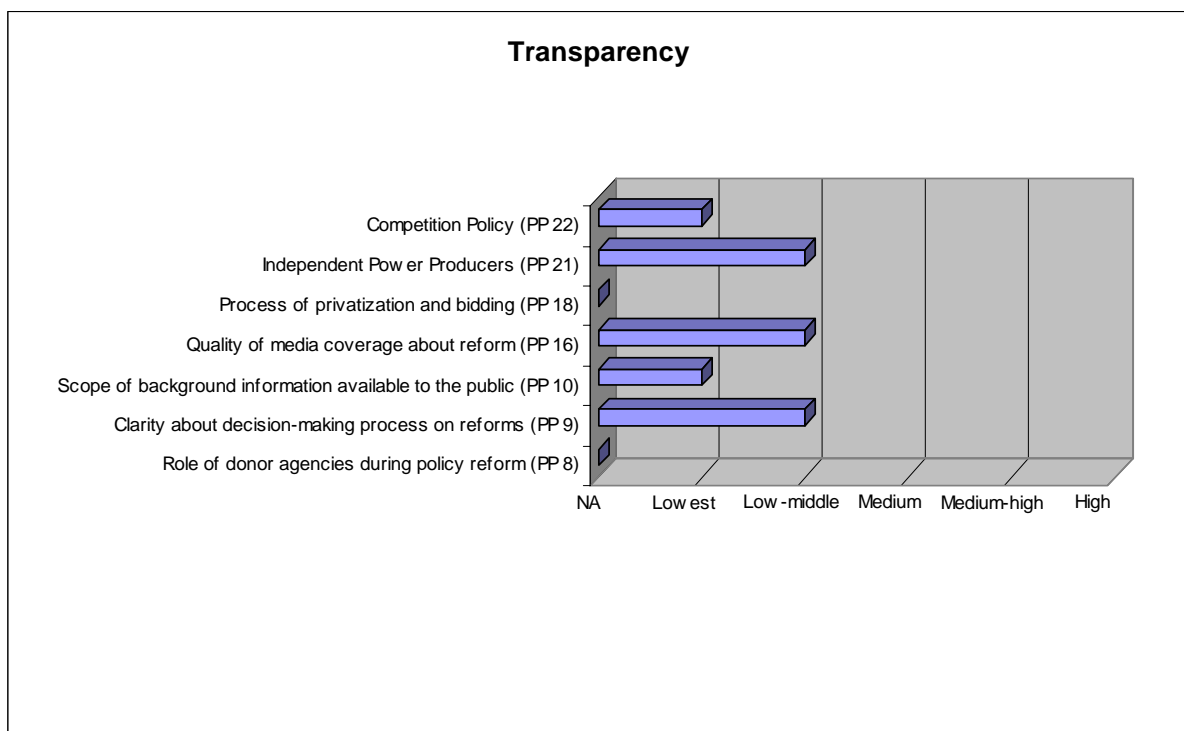
5. Although the State Enterprise Corporatization Act B.E. 2542 lays out a clear decision-making process that specifies the responsible decision-makers, the EGAT Privatization process in 2005 was not systematically disclosed to the public. For instance, there was no information on the decision-making process or the EGAT privatization plan on the websites of the major agencies involved in the privatization. Though there were announcements by EGAT and EPPO in a daily newspaper, such announcements were released after the decision had been made. Thus the policy process lacked information dissemination prior to the decision being taken, and also lacked systematic openings to less-privileged groups. For this reason, the assessment of the clarity of decision-making process (PP9) falls into the low-Middle range.

6. Other major problems are lack of capacity and lack of opportunities for various social groups to participate in the policy process. The study found that:

- With regard to the Energy Commission of the House of Representatives, responsible for energy issues including the EGAT privatization, the entity held regular meetings, but there was no proactive action regarding the privatization. Neither public hearings on the 2005 EGAT privatization nor reasoned reports and regular proceedings were formulated. In addition, members of the Energy Commission were never required to disclose their past links and commercial interests in the electricity sector industry before joining the committee.
- The senate has established a specific Committee to gather opinions regarding the reform of the electricity state enterprises. The public discussion panel for a group of diverse actors was conducted. The panel included representatives from the government, EGAT Labour Union, National Economic and Social Advisory Council, and academia. The documents submitted to the Committee by the four groups were disclosed to the general public. After that, some major issues were conveyed to the public via certain printed media and the report was submitted to the senate. However, the executive body did not respond to such recommendations and there was no requirement to do so. The government did not consider such findings from the Committee when deciding on the EGAT privatization.
- Even though, EPPO may be considered to be the distinct agency for energy policy and planning, there was no condition that the executive body should formally consult EPPO or respond to its proposals. Moreover, the operation of

EPPO and annual budget allocation depend upon the consideration of the Ministry of Energy. There were no provisions prohibiting key personnel in the Ministry to engage in electricity business. Several officials from the Ministry of Energy were designated as committee in various companies relating with the electricity sector. Consequently, the independence of the planning agency (PP6) is considered at a Low-Medium level.

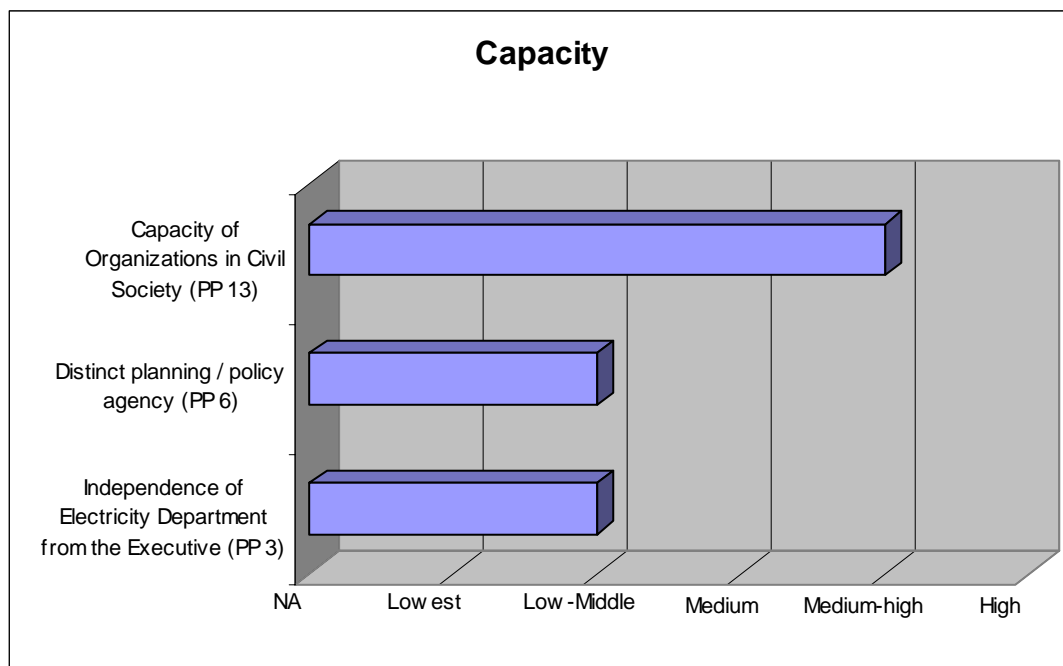
- The civil society sector has increased its role and capacity in producing information and analyses regarding electricity sector reform. Examples of its efforts include criticism, information review, proposing alternatives for systematic electricity sector reform, as well as proposing a petition to the Supreme Administrative Court to suspend EGAT stock allocation. Hence, they receive Medium-High score in this assessment as shown in Figure 4. However, in the overall picture, civil society movement is still not constantly engaged in electricity issues and public attention still depends mostly on the political situation (for instance, the issue will become significant when there is a demonstration, or an increase in the electricity tariff, etc.)



7. The fundamental problem of policy process is the design of the monopoly electricity structure, namely, the application of Enhanced Single Buyer Model as the approach for Thailand electricity system and EGAT privatization. This decision was based on the study conducted by Boston Consulting Group (BCG) in October 2003. However, the report was never made available to the public, for example, there was no information disseminated in the websites of relating agencies (Ministry of Energy, EPPO, EGAT Pcl.). The decision-making timeframe was not formally announced, therefore, the public could not express their opinions or debate. Such decision created problems in other governance processes such as:

- The government designated the portion of half of the new power plant constructions in the next 10-year period to EGAT Pcl. There was no clear rationale or explanation on how the conclusion of this 50% proportion was reached. On the contrary, there was no consideration made for the highest percentage of the market share for the EGAT Public Company and its affiliates. Furthermore, the EGAT affiliates still have the rights to compete in the selection process for Independent Power Producer as well.
- No other mechanisms to stimulate competition were considered, such as providing opportunity for power generation from Combined Heat and Power system. In addition, there was no establishment or development of preventive mechanism for abuse of market power.
- The mechanism for the next round of IPP selection is still unclear, though it is quite sure that it will be based on competitive bidding basis. The revision of power demand forecast has been discussing behind the close door as usual. The recent amendment of an IPP contract, which allows the company to double their generating capacity, was dealt without any public consultation.

Based on these facts, the assessment outcome of competition policy (PP22) scores the lowest, while the assessment of IPP (PP21) scores the low-middle range. Overall score for the transparency principle is presented in Figure 3, with two indicators that cannot be applied in the Thai context; namely the roles of donor agencies (PP8) and the process of privatization and bidding (PP18).



## 4. Recommendations for Better Governance in Policy Process

The overall findings from an assessment found that Thailand electricity sector's policy process does not embrace the principles of good governance. Most of the indicators are low in value (ranging from lowest to low and medium scores), specifically for the principles of participation, accountability and redress mechanisms, and transparency and access to information. Consequently, it is essential to develop policy processes that comply with the principles of good governance.

1. The key issue of electricity system reform or privatization is in the formulation of electricity system structure and the fair market mechanism. Participation in policy process needs to start from this point. However, in the past, the government has not been open to public participation and general discussion on this issue. Furthermore, the “Enhanced Single Buyer” Model impedes fair competitiveness in several aspects. Consequently, the electricity reform process needs to step back to allow an exchange of opinions on electricity structure and market mechanisms. This may be achieved through information dissemination and public discussion in order to ensure that the structure and competitive mechanism to be adopted will be fair to all stakeholders.
2. One of the mechanisms that leads to bypassing (or neglecting) public participation processes as well as legislative and parliamentary processes is the State Enterprise Corporatization Act. B.E. 2542 which gives full authority to the executive body in EGAT privatization without parliamentary consideration. Therefore, the State Enterprise Corporatization Act, (as well as any attempt to issue other Acts governing universal issues) should be repealed. Alternatively, new and specific legislation to improve overall electricity governance is needed. One example of such legislation is the attempt to draft the Energy Regulatory Act to enhance the role of the legislative body in consideration of energy policy, and create public accountability. At the same time, the new legislation will help control fair competitiveness in the electricity sector.
3. The major problem for public participation is limited access to each step in the decision-making process, and information necessary for decisions. Public hearings are not sufficient to ensure participation, since most of the important decisions are usually made without a public hearing process. For example, there was no public hearing in the case of determination of EGAT proportion in power plant construction and EGAT privatization in the 2005. Good policy processes should involve a public announcement of decision-making steps, channels for public participation at every stage, and clear responsive procedures from the government. Furthermore, importance should be placed on systemic access to participation for weaker groups in the society, and special processes may be needed to receive opinions from these groups.
4. Weak information management systems for the EGAT privatization are a major drawback in the policy process. There was no agency (neither EGAT nor Ministry of Energy) responsible for information management at the policy level, and no information on different opinions regarding EGAT privatization was collected. Information disclosure was one-way communication, which contradicts with the principle of transparency and does not support participation in the policy process. Better policy information management and public

information dissemination systems are urgently needed, for both the public sector (as the directly responsible body) and the civil society (as the key source of public participation).

5. The lack of an independent planning agency responsible for policy analysis and planning is a significant governance problem. The trend from administrative reform and latest EGAT privatization demonstrates that the role of EPPO has been significantly reduced, compared to the role of its predecessor institution the National Energy Policy Office (NEPO). The agency currently follows the directions specified by executive body (although it should not be inferred that NEPO was totally independent from the executive body). The new EPPO has been granted more regulating authority which might result in contradictions between its planning and regulating roles in the future. For now, we recommend that EPPO should be responsible for developing and guiding energy policy. In the future, an independent agency responsible for policy analysis and electricity and energy planning should be established, and several partners should take part in the governance of this new agency.

Even though the capacity of civil society was found to be middle to high level according to the assessment results (higher than other indicators in the policy process) the engagement in policy dialogue has been limited and has not sufficiently influenced the direction of policy. One exception was in the case of a petition to the Supreme Administrative Court to suspend the selling of EGAT shares in the stock markets. However, such efforts could only suspend inadequate policy process, and so far it has not been able to concretely formulate the better policy direction. The main obstacle is the policy communication with the public, which is directly related to the quality of media coverage. Civil society groups need to develop a more strategic approach to create the policy learning process for the public on energy issues. This can be achieved through better coordination with the mass media and also alternative media, as well as the development of policy information management and public information dissemination systems and participation in the establishment of an independent energy planning agency as proposed in item 4 and 5 above.

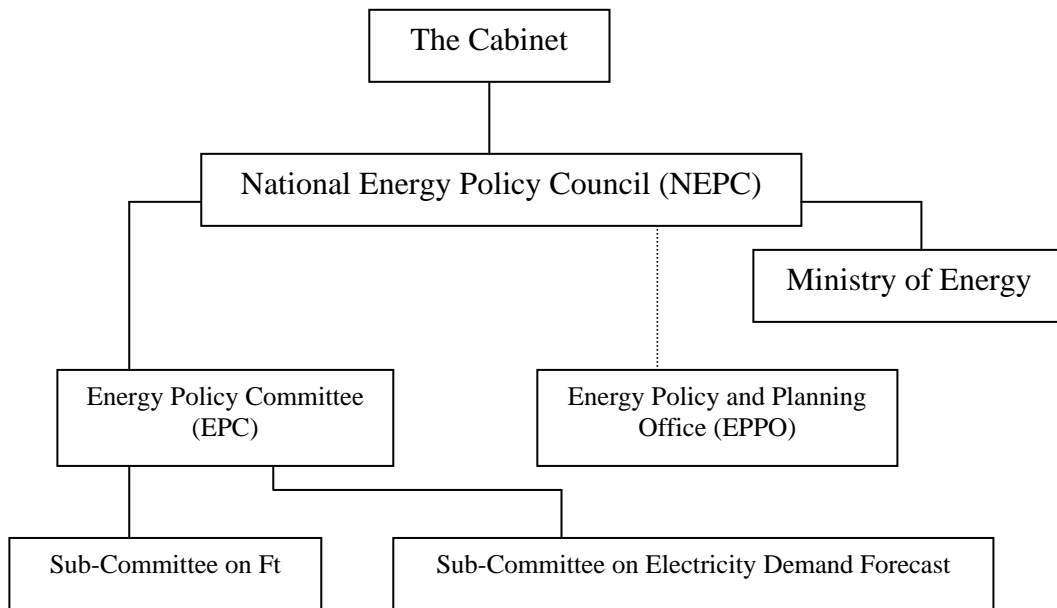


## 5. Assessment of Governance in Regulatory Process

Regulatory process is another importance component of electricity governance. It is the critical mechanism available to ensure that the economic, financial, social and environmental aspects of performance in the electricity sector are aligned. Regulatory bodies are intended to permit and foster a healthy and efficient sector that is able to achieve the national goals as reflected in policy formulation.

One of the critical functions of the regulatory process is to balance the interests of key stakeholders such as investors, labor and consumers. A credible and predictable regulatory process and approach is essential for this purpose. Regulatory processes encompass key decisions and considerations in the sector including tariff setting, licensing for power plants and other infrastructure services, or the setting of service as well as efficiency standards. Effective regulation should lead to technical efficiency, reliable high quality of service, and cost efficiency. Effective regulation is also expected to lead to enhanced confidence in the sector and to promote investment.

**Figure 5 Thailand Electricity Regulatory Process (Before December 2005)**



The Thailand electricity regulatory process before 2005 involved several related agencies. Regulatory policy formulation and implementation were not clearly separated. (As shown in figure 5). Regulatory authority was given to several agencies:

1. National Energy Policy Council (NEPC) is responsible for formulation and regulation of energy policies including Electricity and Petrochemical sectors. The agency was established according to the National Energy Policy Council Act B.E. 2535 with the prime minister as the chairman. Resolutions of the NEPC are considered national energy policy and will be effective once approved by the cabinet.
2. The Ministry of Energy was established in October 2002 under the Act Amending the Administrative System B.E. 2545 (2002). The agency is responsible for the formulation of energy policies as discussed with the NEPC. The Ministry is entitled to plan, propose, advice, and monitor compliance with policies related to energy.
3. EPPO is the core agency responsible for determination of measures, rules and regulations concerned with the domestic energy industry. The director of EPPO is appointed by the cabinet.
4. Energy Policy Committee (EPC) was set up by the NEPC in 2002. Its duties are to propose management and development plans, energy measures, as well as to regulate changes of electricity tariffs according to automatic tariff setting formula.

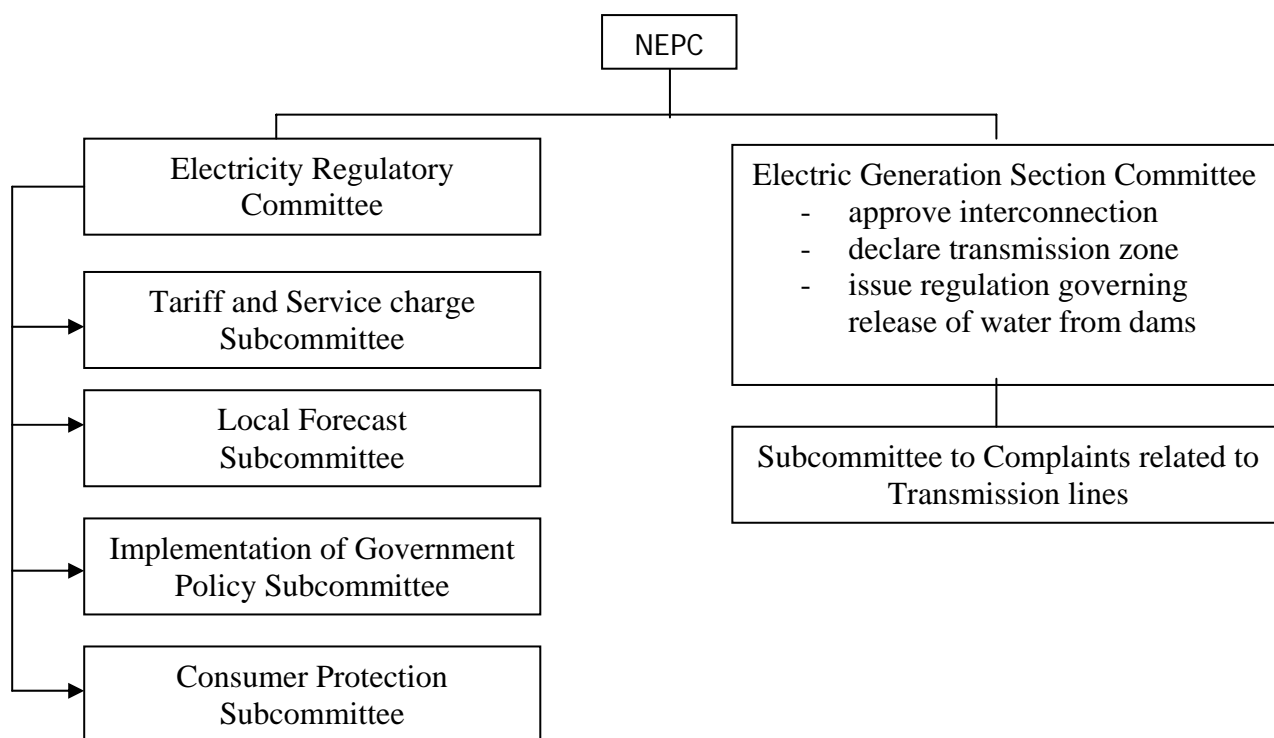
In addition, Electricity Generating Authority of Thailand, Metropolitan Electricity Authority, and Provincial Electricity Authority still have regulatory authority over certain issues such as determination of criteria for the sale and linkage of electricity transmission system.

▪ **Thailand Electricity Regulatory Process (After December 2005)**

The Thailand electricity regulatory process encountered a significant change when the Electricity Industry Committee was established according to the Regulation of the Office of the Prime Minister on the Electricity Regulatory Commission B.E. 2548 on 1 December 2005. The committee comprises Mr. Yongyut Vichaidit as a chairman and other 6 members, with the EPPO as a secretariat. (As shown in figure 6). Nevertheless, this committee has several limitations which will be discussed in the next topic.

In addition, the Electricity Generation Regulatory Committee was set up with the Permanent Secretary of the Ministry of Energy as a chairman and the director of EPPO acting as secretary. This committee is responsible for several tasks which were previously conducted by EGAT, including: approval of electricity linkage, designation of electricity transmission area, determination of water level released from the dams. These duties were transferred to the committee after the privatization of EGAT on 23 June 2005.

**Figure 6 Thailand Electricity Regulatory Process (After December 2005)**



### Assessment of the Indicators

The Thailand electricity sector has undergone several significant changes both in policy and regulatory processes. The government planned to establish an independent regulatory commission; however, the legislation supporting its establishment (Draft Electricity Industry Act) was still under the consideration of the Ministry of Energy at the time of completing this assessment.

The government established an Interim Electricity Regulatory Commission, under the Regulation of the Office of the Prime Minister on Electricity Regulatory Committee B.E. 2548 on 1 December 2005. This entity was to act as an independent regulatory body, separate from the Ministry of Energy on a temporary basis, until the Electricity Regulatory Commission is established through enactment of an Electricity Industry Act in the future.

The research team, with approval from the Advisory Committee, has opted to refer to the “The Interim Electricity Regulatory Commission” under the Regulation of the Office of the Prime Minister on Electricity Regulatory Committee B.E. 2548 for the purposes of this study of regulatory process in Thailand.

Since the electricity sector is in flux, research outcomes may not reflect changes that have occurred since 31 December 2005.

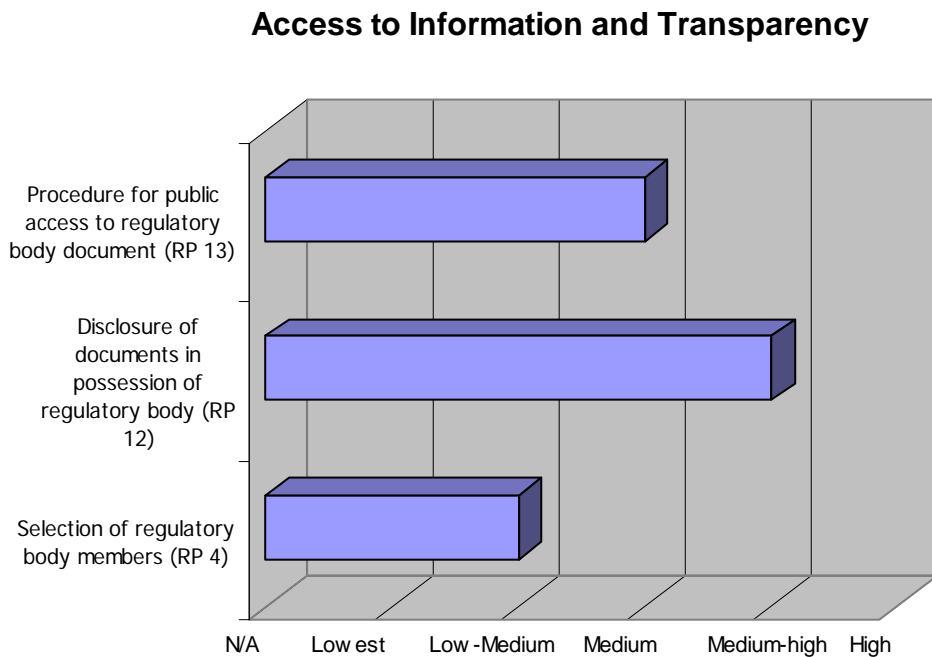
### The Assessment Results

Assessment of indicators in the regulatory process section can be divided into 4 aspects: Access to Information and Transparency, Participation, Accountability and Redress, and Capacity. Scores of indicators range from Not Applicable (0) to the Highest (V).

- **Access to Information and Transparency**

The research team has applied 3 indicators (of 7 available indicators) to the regulatory body in Thailand, including: Selection of regulatory body members, Disclosure of documents in possession of regulatory body, and Procedure for public access to regulatory body documents.

The study found that access to information and transparency of regulatory body fall into low-medium to medium-high level as follows:



Selection of regulatory body members The score is low-middle since the selection process for regulatory body members has only two elements of effective selection process including well-defined procedures and composition and eligibility of the members. However, the selection was still lack of independence, transparency, and differing tenures.

Disclosure of documents in possession of regulatory body This indicator value was found to be medium-high, since all documents / information in the possession of the regulatory body are expected to be public unless they are classified as ‘confidential’ (under the Public Information Act B.E. 2540 (1997)). However there is no well-defined procedure and rules to decide on whether documents are ‘confidential’. In order improve governance in this regard, the regulatory body should issue rules or conditions that define "confidentiality", stating which type of information can be made available to the public and which type shall be "confidential".

Procedure for public access to regulatory body documents: This indicator value was found to be medium since two elements of desired procedure for public access to regulatory body documents are met, including existence of a well-indexed document database and reasonable cost. However, there is no simple, well-defined procedure for inspecting/obtaining documents, nor is there wide dissemination of information. To

improve governance, it is important to introduce a clear procedure for inspecting and obtaining documents, and also to disseminate this information via websites, brochures, or advertisements to make the public aware of such procedures.

- **Participation**

There are 4 indicators for an assessment of public participation in the regulatory process, including space for public participation in the regulatory process, institutional mechanisms for representation of interests of weaker sections/stakeholders, and interventions by civil society in the regulatory process.

The study found that the public participation in the regulatory process can not be assessed since no institutional body had been established as yet under the Regulation of the Office of the Prime Minister.

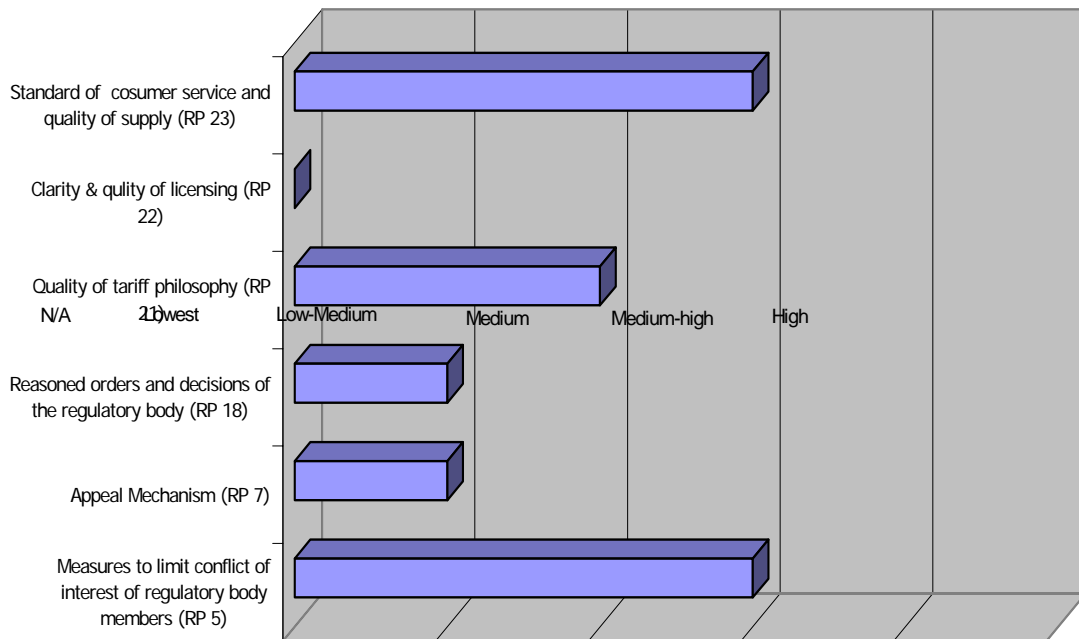
The indicator assessing efforts to build the capacity building of weaker stakeholders was applied, since it could be used to assess the efforts of agencies related to the regulatory body that share responsibility for capacity building of weaker stakeholders as well. Nevertheless, this indicator was found to be very low, as there were no public agency conduct activities or support to build the capacity of less-privileged sections of society.

- **Accountability and Redress Mechanisms**

These indicators addressed conflicts of interests among regulatory body members, appeal mechanisms, the orders and decisions of the regulatory body, tariff philosophy, licensing, and consumer service and quality of supply.

The study found that accountability and redress scores range Low to Medium, with the following details.

## Accountability & Redress



**Conflict of Interest:** The score is medium since the applicable law, rules or regulations do explicitly recognize issues of conflict of interests among regulatory body members, but the provisions to prevent such conflict of interests are inadequate. This is because the Regulation of the Office of the Prime Minister prescribes that the committee should not fall into specific prohibitions during his term of duty, but does not specify provisions to prevent conflict of interest after retirement of his position.

**Appeal Mechanism:** Since the Regulation of the Office of the Prime Minister does not cover appeal mechanisms or revisions to the orders of the Electricity Regulatory Commission, this indicator received the lowest score. Orders or decisions of the regulatory committee are final and cannot be appealed.

**Orders and decisions of the regulatory body:** There is no legal requirement in the Regulation of the Office of the Prime Minister that any orders or decisions of the regulatory body must contain reasons or must respond to public comments / objections. This indicator value was therefore found to be low.

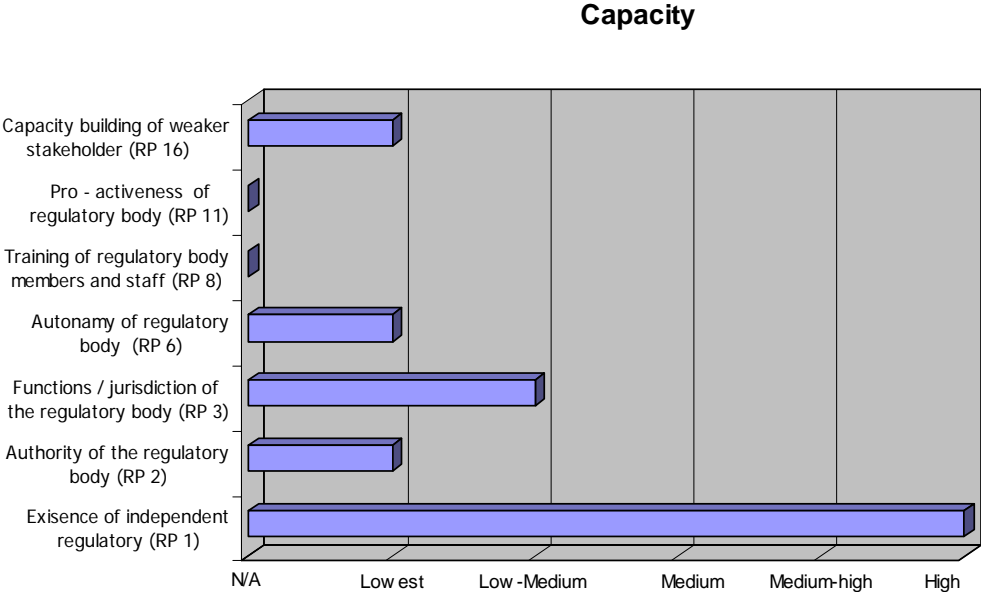
**Tariff Philosophy:** This indicator receives a low-middle score since tariff determination in 2005 is guided by pre-determined tariff philosophy / principles. But while the tariff philosophy is based on detailed analysis of cost drivers, projected efficiency gains, and economic impact, there was no detail analysis on impact on different stakeholders. The tariff determination does not explicitly include measures to mitigate any adverse impacts on different stakeholders. Language presented was technical and difficult to interpret, while the tariff principle was not adopted after a proper public participation process.

Licensing: This indicator was not applied according to Regulation of the Office of the Prime Minister on Electricity Regulatory Commission does not have the authority to issue licenses or concessions, or approve power purchasing agreements.

Consumer service and quality of supply: The regulatory institution was not yet functioning during the period when this research was completed. The Energy Policy and Planning Office has been responsible for regulating standards and quality of service. Quality of service for power generation was standardized into two groups: standard of services and technical standard. Furthermore, a consulting company was hired to monitor service and conduct an annual survey of electricity users. However, the results of the evaluation of EGAT performance were not available to the public, and the public did not have any opportunity to make comments or suggestions on how to improve. There were no well-defined procedures or forums to addressing consumer grievances regarding service and quality of supply. Consequently, this indicator was found to have a medium score: there are mandatory, well-defined standards of performance for consumer service and quality of supply, but they meet only one element of effective implementation.

▪ **Capacity**

There are 7 indicators addressing regulatory capacity including institutional structure for regulatory decisions, authority of the regulatory body, functions/jurisdiction of the regulatory body, autonomy of regulatory body, training of regulatory body members and staff, pro-activeness of regulatory body, and capacity building of weaker stakeholders. The assessment found that capacity varied widely, with the following details:



Institutional structure for regulatory decisions: The score is highest since an independent regulatory body has been established to take responsibility for regulatory decision-making and oversight. However, there are limits on the effectiveness of the Electricity Regulatory Commission, which will be discussed in other indicators.

Authority of the regulatory body: The score is lowest since the regulatory body does not have even one well-defined element of authority. The Regulation of the Office of the

Prime Minister on the Electricity Regulatory Commission, item 12 on authority of regulatory body does not specify authority to request information from relevant bodies, enforce penalties or punishment, and enforce its orders. Under item 12 (7) the commission only has authority to investigate electrical project investment plans. Other matters such as regulating the functioning and performance of power producers, and especially investigation of information from private producers were not specified.

Functions/jurisdiction of the regulatory body: The functions and jurisdiction of the regulatory body are clearly defined in the Regulation of the Office of the Prime Minister. Duties include approval of investment plan, determination of criteria, conditions and technical standards, designation of electrical safety and quality service, as well as consideration of appeals. However the tasks not covered include setting tariffs which is under the conditions set forth by NEPC; determination of criteria and issuance of licensing; approval of power purchase; approval of conditions for linkage services; control of electricity system and power purchasing. The result of the assessment falls to low-middle since functions of the regulatory body are clearly defined, but more than three critical regulatory functions are not entrusted to the body.

Autonomy of regulatory body: The regulatory body is found to lack autonomy, and does not have even meet one element of autonomy. There is no fixed tenure for members since it depends on the decision of the Prime Minister and NEPC. It lacks financial autonomy since the Regulation of the Office of the Prime Minister does not clearly specify the source of income and budget of the regulatory body. The agency also lacks human resources since there is no clarity about the Commission's income and budget to hire staff and consultants.

Training of regulatory body members and staff and Proactiveness of Regulatory Body: these indicators could not be applied since the Electricity Regulatory Commission under the Regulation of the Office of the Prime Minister had only just been established during the research.

Capacity building of weaker stakeholders: The Regulatory body does not undertake any activities to build the capacity of weaker sections or provide financial, technical and legal support, and neither does any other government agency.



## **6. Recommendations for Better Governance in Regulatory Process**

Regulatory process is an important element of electricity governance. The electricity sector needs to be regulated with transparency and credibility, and the institutions and processes need to be able to balance the interests of key stakeholders. Although the establishment of the Electricity Regulatory Commission or a "temporary regulatory body" in Thailand can be considered a good effort, there are several weaknesses in the structure and proposed process. These include the lack of a legal basis that gives the regulatory body authority; failure to assign the regulatory body necessary jurisdiction and functions; a lack of autonomy; a need for provisions to prevent conflicts of interest among commission members; and little space for public participation in the regulatory process. In order to improve the regulatory process, the research team proposes the policy recommendations as below.

1. The electricity regulatory process shall be clearly separated from policy formulation and implementation. At present the Electricity Regulatory Commission or a temporary regulatory body that was recently established is under the authority of National Energy Policy Council (NEPC). The regulatory needs to be separated from the hierarchy of the policy-making entity. This can help ensure autonomy. Otherwise, regulatory decisions may be influenced or pressured by stakeholders.
2. The establishment of an independent regulatory commission needs legal support through the enactment of the Electricity Industry Act. This act will entrust the regulatory body with the authority necessary to truly regulate the electricity sector.
3. The jurisdiction of the new regulatory body should cover both the electricity sector and natural gas sectors, since the natural gas is a monopoly activity and it is a major cost for the electricity sector, as over seventy percent of Thailand's electricity is generated from natural gas.
4. The regulatory body needs to have authority to issue and withdraw licenses in order to have authority over power producers.
5. Regulatory body members need to be selected through a well-defined and independent procedure, so that it will not be influenced by political groups. Furthermore, members should be selected on the basis of well-defined composition and eligibility criteria. The procedure shall be transparent, to the extent of making public the background of candidates in order to prevent the conflict of interests.
6. The regulatory body should function without influence or interference from stakeholders. Apart from autonomy in decisions and functions, the financial autonomy and independence of human resources also critical to make the regulatory body effective. Adequate financial resources and budget are necessary for the commission to have the freedom to select appropriate and adequate staff and consultants.

7. The regulatory body should not favor the interests of electricity-related agencies or companies. To prevent such conflicts of interest, legal instruments should define prevention provisions on such issues. The Regulation of the Office of the Prime Minister has clearly specified that members of the regulatory body should not be involved with any companies or agencies performing electricity-related activities during their terms of duty. However, the legislation does not include provisions to prevent conflicts of interest after members have retired from the position. There is a need for an additional provision, which states that members of the regulatory commission cannot take any commercial employment, directly or indirectly, with an electricity sector entity for two years after their retirement.
8. Regulatory decisions and functions should be executed with regard for the governance principles of transparency, participation, and accountability. Orders and decisions of the regulatory body should be legally required contain an explanation of the basis for the order, and respond to public comments and objections. The regulatory body needs to create space for public participation in the regulatory process. It should create opportunities for interested or affected people to participate in proceedings. By law, all proceedings before the regulatory body should be open to the public, and the public should have the right to participate in such proceedings. People should also have the right to provide opinions and information to the committee before a decision is made, rules or regulations issued, or orders are passed.
9. The regulatory body should support the representation of interests of weaker stakeholders. Capacity building activities of weaker stakeholders shall be conducted in order to create participation in regulatory process. The government agency should provide technical, legal, and financial support for weaker sections of society to participate.
10. The regulatory body should allow the public to appeal decisions of the agency in order to review orders/decision of Electricity Regulatory Commission. This will also allow monitoring of the operations of the regulatory body.
11. The regulatory body should provide training for Electricity Regulatory Commission members and their staff since the electricity sector is witnessing rapid changes in terms of market structure, industry structure and financial structure. Continuous capacity building of the members and staff of the regulatory body is crucial to ensure that it effectively addresses such complex issues.

## **7. Assessment of Governance in Environmental and Social Aspects**

The Thai economy was transformed into an export-oriented manufacturing sector in the 1980s, in a shift from its traditional dependence on agriculture. This was the result of the active promotion of foreign investment by the 1970s, which led it to create an industrial sector based on import substitution.

Electric power is critical to industrial development and economic growth, and maintaining a supply of affordable commercial energy is one of priorities of the Thai national economic policy. Electricity investment and the construction of infrastructure in the electricity sector in some cases such as power plants, hydro-electric dams, pipelines that deliver oil or gas to thermal power plants and so on have negative impacts to environment, human health, human rights, community rights and also cause serious conflicts between the pros and cons.

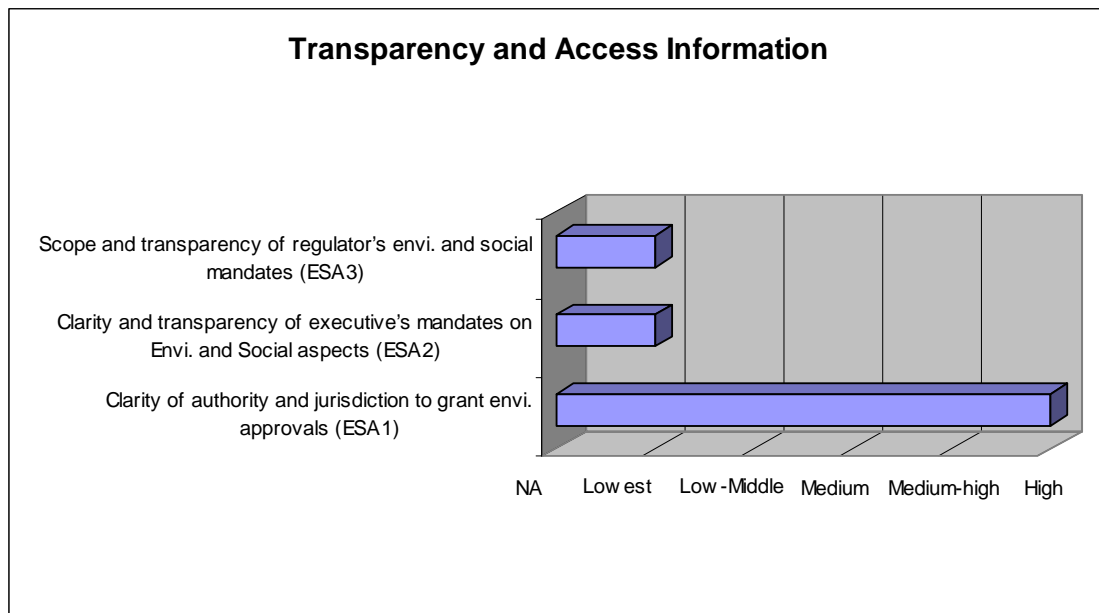
The results in the environmental and social aspects section are based on 15 indicators and are organized under four key principles of good governance. The assessment team researched and analyzed laws, policies and practices, and conducted interviews with government officials, Members of Parliament, senators, judges, representatives of electric power companies, members of civil society organizations and local people.

- **Transparency and Access to Information**

The Constitution of the Kingdom of Thailand 1997 (B.E.2540) expressly confers the public participation principle and the right to access to information in some provisions such as local community rights (section 46), participation in the preservation and exploitation of natural resources and the environment (section 56), the right to access to information held by the public officials (section 58), and powers and duties of local administrative organizations in relation to promoting environmental preservation (section 290). The Freedom of Information Act B.E.2540 (A.D.1997) creates new rights of access to information held by public authorities. Whereas the Act provides rights of access in a more extensive scheme for making information publicly available, it requires government agencies to make certain rules and regulations concerning the information available to the public, and to disclose information in response to specific requests. The environmental information regulations are not well established. For example, the scope of environmental information in the possession of public authorities responsible for the environment is not defined or categorized. In addition, there is no clarity about the the basis on which information will be made available, or treated as confidential.

The study found that there are provisions contained in law which refer to shared jurisdiction scheme for environmental issues between the ministries, and also between the central and local government. Expert commissions are set up in some provinces in order to approve the Initial Environmental Examination (IEE) and the EIA report in the environmental protection areas. But in the case of projects undertaken by government agencies or joint projects of private companies in collaboration with the government, the National Environment Board is to be responsible for theses projects, and submits their opinions to the Cabinet.

There are no laws and policies, which define or make clear reference to the environmental and social issues or performance in the electricity sector, with regard to the role of the executive agency (ESA 2) and the regulatory body (ESA 3). The result shows that the government has limited mandate or intent to address environmental and social performance standards for the power sector, even through it has many development projects in the electricity sector.



- **Participation**

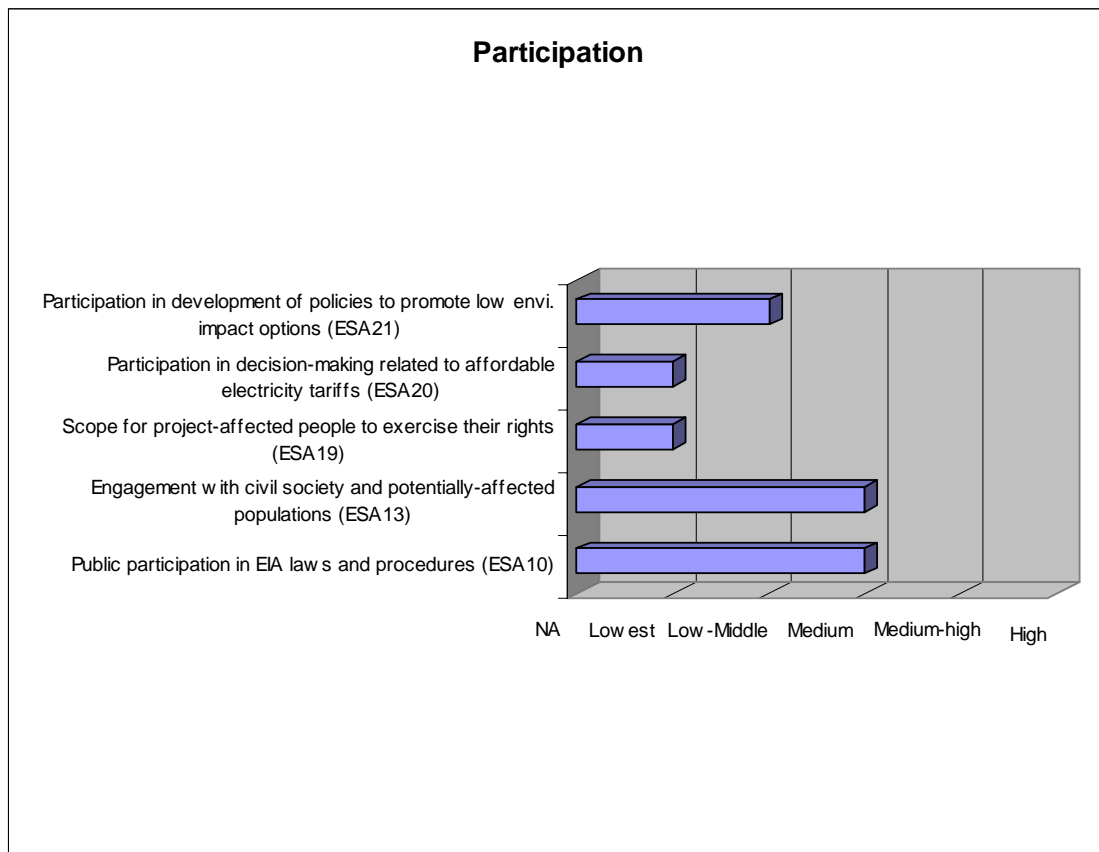
Public participation in policy-making and regulatory processes is very limited. While the Office of the Prime-Minister's regulation on participatory consultation (2005) calls for public consultation on government projects, there is no specific policy, law and process of public participation for electricity sector processes. Each government agency can stipulate their rules and conditions in broad sense without clear standards. The public participation requirement is very important for electricity development projects, which can have serious effects on local people.

The Power Development Plan of EGAT (2004-2015), which is the long-term national plan for the electricity sector in Thailand, has addressed environment concerns at the project level, but not at the overall or strategic level and there is no element of quality of participation (ESA 8). EIA laws require adequate time period given for public input and comment on the final EIA report and there is regulations on participatory consultation mentioned above (ESA 10).

The law relating to the construction of plant and environmental impact assessment (EIA) did not require the public participation process in an approval of projects (ESA 19). Practically, in some project, businesses who are power generators have an initiative to make such process. However, it usually makes more conflict among local people and

was not recognized by local communities or persons who are not agree with project. The causes of problems are lack of access to information both good and bad effects on such project, no transparency, no dispute resolution mechanism, and in some cases there are some kinds of corruption or benefits to local people. In many cases, local people will not be given information and consultation about the construction project in community areas before the project was started.

The study showed that there is no element of quality for participatory decision-making in electricity pricing mechanism (ESA 20). The researchers found that electricity price is computed on the basis of the individual customer's rate and the level of consumption in all areas of the country. It does not given an attention to affordability of electricity prices by low-income consumers and rural consumers. The departments responsible for planning or policy development in the electricity sector consider an appropriate low environment impact technologies and management that meet one element of quality for participation (ESA 21). The direct interface between civil society organizations, affected people and electricity service providers is assessed as being medium (ESA 13).

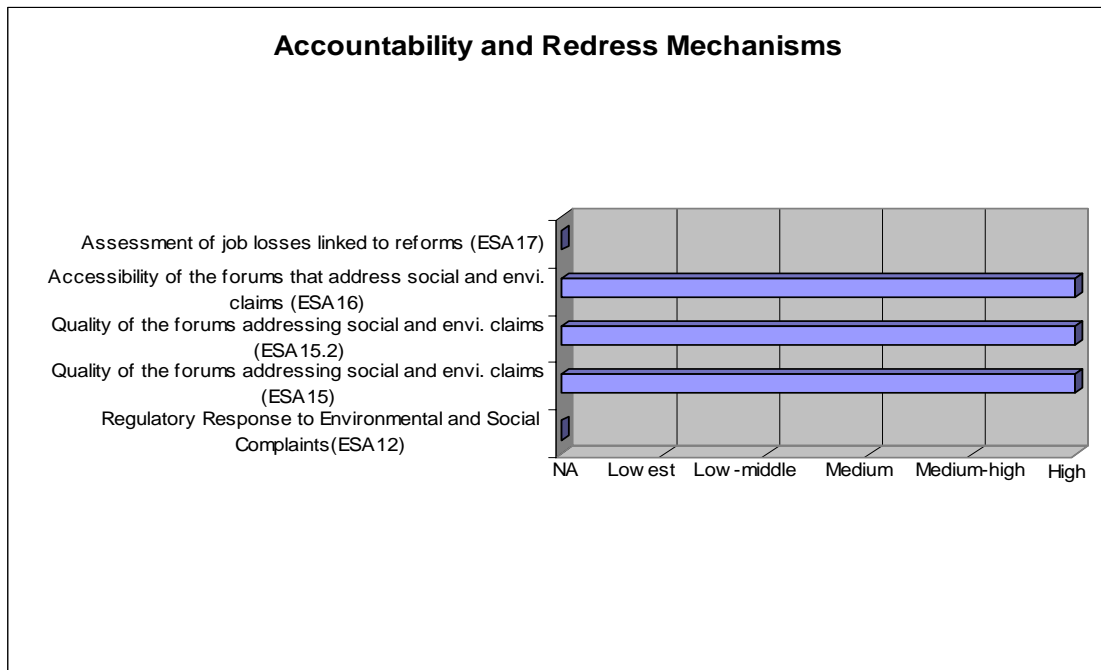


- **Accountability and Redress Mechanisms**

The electricity infrastructure construction usually produces severe impact on local people way of life, their quality of life, healthcare, social and environment problems. Therefore, the policymakers and government agencies responsible for review and approval of electricity projects should also concern benefits received and these issues. Meanwhile, people who are damaged should have an effective access to justice, fair treatment and adequate compensation.

In Thai judicial system, an effected person can bring a claim for damages in civil cases through the civil court and the administrative court. The result on an assessment of the quality of the administrative court in general (ESA 15) and in environmental claims (ESA 15.2) found that resolving claims related to environmental damages scored highest. It was also concluded that the quality for access to redress in environmental and social claims before the administrative court is the same result (ESA 16).

The regulatory body in the electricity sector is not established yet so that there is no an environmental or social complaint or petition so this indicator was not applicable (ESA 12). By the way, the assessment of employment impact assessments in the EGAT Public Company Limited (EGAT) was not applicable because Thai government has no policy regarding job losses after state-owned enterprise was corporatized or privatized. The Cabinet had a resolution that all staffs shall have the status quo without any changing in benefit (ESA 17).



- **Capacity**

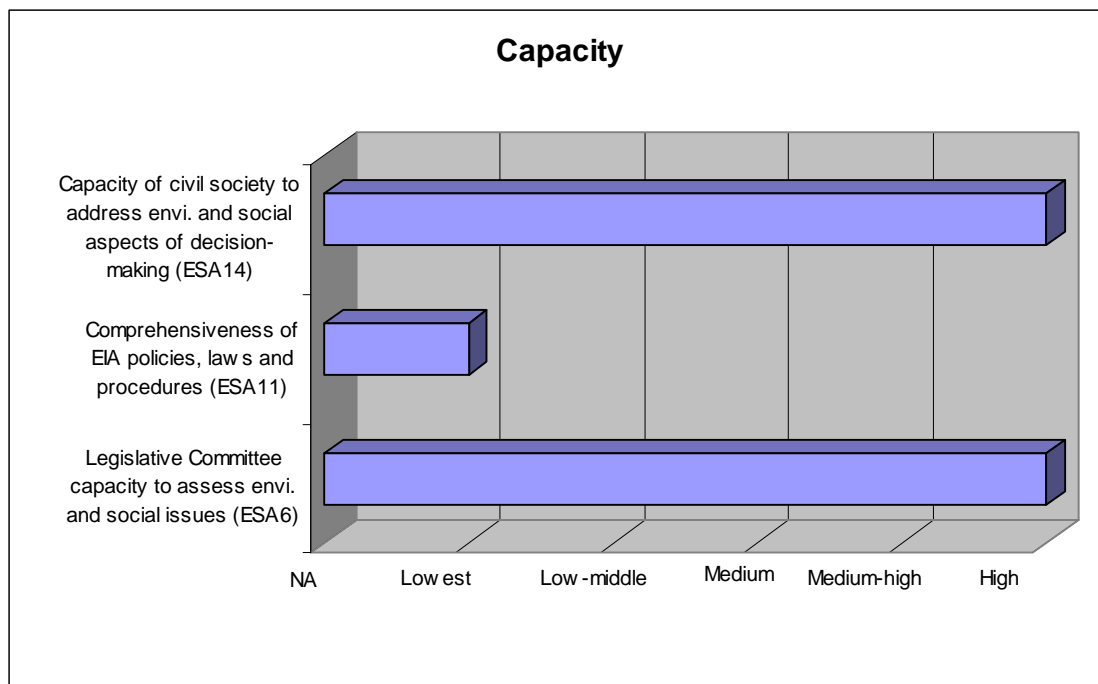
To develop the capacity building and raise an awareness of all stakeholders in the electricity sector on environmental and social matters are very important. They should have knowledge and deep skill in technical, social and environment issues. The indicators are designed to examine laws, policies, a process of environmental impact assessment, the capacity of civil society and parliamentary members or their staffs.

The EIA law, policy and procedure have been implemented in 1992 and the law was lastly amended ten years ago (1996). The policy and some requirements and conditions in provisions do not reflect the real situation of environmental problems.

The committee members with explicit responsibility for drafting the electricity sector laws and policies and performance are the Commission on Energy in the Lower House and the Commission on Science, Technology and Energy in the Upper House. The study found that, from a set of document and interviews with current legislative members and their staffs, both legislative commissions have draw attention on research and development on the energy sector and electricity reform. Environmental and social issues are not the priority of the legislative members, then the result exhibits no elements of capacity to assess environmental and social issues in both commissions (ESA 6).

EIA laws requires the construction of thermal power plant (10 megawatt or over) to propose EIA report in accordance with the Ministry of Science and Technology's regulation regarding to EIA (ESA 11).

During the past few years of electricity reform, civil society organizations, especially consumer groups and energy groups, have played an important role in promoting environmental and social issues to the public. Their campaign and activities have taken the effect on government policy in the electricity sector. The report found that civil society's capacity is high (ESA 14).



- **Conclusion**

An overview of the result of the environmental and social assessments are laws and policies with regard to the environmental and social governance in the electricity sector have not been complied with transparency and information disclosure principles; public participation is not required by law regarding government agencies' approvals for power sector projects; access to justice in the judicial and administrative courts is more opened when they compared to the regulatory body; the capacity of legislative committees and government officials in power and environmental issues should be improved; and civil society organizations are not adequately supported by the government.

In addition, there are some important issues related to governance that are not included in the ESA indicators, but that are too important to ignore as follows:

- Some politicians in the government have the conflict of interest in approvals for electricity projects. Political power may have influence on government officials' consideration and they have very close relationship with construction companies in electricity infrastructure.
- Laws of environmental impact assessment (EIA) require only documentary review in each project. Agencies will not consider social and environmental issues, especially climate change, water resource management and biological diversity, as a whole in nearby areas or communities.
- There are many agencies responsible for environmental protection, but there is a lack of good cooperation, so that environmental impacts cannot be thoroughly assessed.



- Law of public participation which define the processes and methods of public participation is not clear. Moreover, the civil society has no support in the decision-making process of agencies in environmental issues.
- Environmental and social issues are not the first priority in the review process of EIA report in comparison with economic, engineering and technical issues.

## **8. Recommendations for Better Governance in Environmental and Social Aspect**

1. Revise the current regulation of environmental impact assessment (EIA) prescribed in the Environmental Protection Act of 1992 by accepting public participation principle as special provisions in the electricity sector. These provisions shall be an important requirement for licensing, approval of electricity sector projects or the construction of infrastructure.

2. Develop public participation procedure in the electricity sector which meet the principle of free, transparent, prior and informed consent, protection of minority rights, public consultation and dispute settlement in the requirements and guidelines of related laws such as draft law on National Electricity or the Prime Minister's Office Regulation on Public Consultation of 2005.

3. Carry out training programs on environment, public participation, human rights and community rights for government officials in the Ministry of Energy, the Ministry of Natural Resources and Environment and legislative or parliamentary committees and undertake these programs to businesses and the public.

4. Determine environmental and social issues as well as the disclosure of electricity power plants' information to the public before an approval of electricity projects or agreement with business considered by government agencies.

5. Establish dispute settlement mechanisms through mediation or dialogue processes and make preliminary compensation to people who are affected or damaged in projects.

6. Promote an independent organization responsible for environment protection in accordance with article 56 of the Constitution so as to give opinion attached with an approval of activities or projects having impact on environment and support civil society organizations in environmental protection and sustainable energy consumption in terms of tax benefit, capacity building and other activities.

7. Raise awareness of businesses, officials, politicians and people in social and environmental issues, they should be conditions of approval of power sector projects.

## 8. Perspective

By the end of 2005, the public opinion survey clearly showed that majority of Thai people did not support the EGAT privatization policy due to the concerns of its negative impacts on public interests. But, how can this unpopular and highly sensitive policy direction take place and lead its way so easily in the democratic society, like Thailand?

The electricity governance assessment provides a systematic framework of understanding this contradictory situation. It is clear from the assessment, since the government can totally bypass the parliamentary process and, at the same time, did not facilitate broader ranges of public participation, Thai government had full decision-making and agenda-setting powers. While Thai government aims to lead the country to an information society, information management for public participation in this policy process was incredibly poor. Lack of participation spaces and balance information easily blocked public deliberation in this policy process. Capacities for policy deliberation and public accountability are also relatively weak. With unbalanced power, information, and capacities, good governance practices are hardly expected.

Rather than the scores, the electricity governance assessment provides a common language and understanding for stakeholders to implement the good governance concept in our own contexts. Since the governance is multi-facets and multi-levels of interactions within the society, such common understanding and language is necessary for developing better practices and balancing power relationship in Thai power sector. Hopefully, with the clearer framework, it can broaden the public discussions, deepen the analyses, and improve the structure and process of electricity governance in Thailand.

The final judgement of the Supreme Administrative court to cancel the two royal decrees is certainly the significant step for Thai public to take more control over our own power system. However, it is still a long, long way to go. We still need to consider a lot of questions. What should be a more appropriate competitive policy? How can we bring this policy back to the parliamentary debates? How can we facilitate more meaningful public participation? How can we work with the Interim Electricity Regulatory Commission in establishing more effective and accountable regulatory process? How can environmental and social consequences be seriously integrated into policy and planning process? How can the capacities of each important actor be developed and co-operate in reaching better practices for governing our power sector?

On-going assessment and further development of this assessment framework are needed in answering these questions and, at the same time, raising further questions for public deliberation. For the on-going assessment, the specific focuses, such as IPP bidding process, revising Power Development Plan and EIA system reform, should be made in order to elaborate this framework into operational practices. In some cases, this framework may be used proactively by developing and suggesting guidelines for better practices to relating institutions, for example, the Interim Regulator or Tri-parties Committees for environmental protection. And, in some areas, such as the drafting of Electricity Industry Act or the abolishment of State Enterprise Corporatization Act, this assessment framework is required to work politically and deliberatively in designing appropriate institutional frameworks for Thai power sector.

The future of governing the power sector is so challenging and highly uncertain. It is long process without clear ending point. Fortunately, we already took the first step and hopefully we have a better road map in our hands.

## Annexure I

**Summary Indicator Table showing key attributes covered and their status**  
**Status – 1 = Attribute is met , 0 = Attribute is not met**

### Policy Process

Indicator		Key Attributes	Status	Score
PP 2	Procedures of Legislative Committee	<ul style="list-style-type: none"> <li>• Disclosure of interests of the members</li> <li>• Reasoned reports</li> <li>• Active, with regular meetings</li> <li>• Public consultations and open proceedings</li> <li>• Public availability of submissions</li> <li>• Public availability of own documents</li> <li>• Action Taken Report</li> </ul>	0  0 0 0 0 1 1	Low-Middle
PP 3	Independence of Electricity Ministry / Department from the Executive	<ul style="list-style-type: none"> <li>• Criteria for appointment</li> <li>• Fixed tenure and removal procedure</li> <li>• Disclosure of interests</li> <li>• Rules about Conflict of Interests</li> </ul>	1 0 0 0	Low-Middle
PP 6	Distinct planning / policy agency	<ul style="list-style-type: none"> <li>• Existence of planning/policy agency</li> <li>• Mechanism for consultation by executive</li> <li>• Authority to seek information</li> <li>• Availability of resources</li> <li>• Requirements for transparency</li> <li>• Requirements for consultation (from stakeholders)</li> </ul>	1 0	Low-Middle
PP 7	Debate on Reform / Restructuring Law or other key Policy Change Law	<ul style="list-style-type: none"> <li>• The reform/restructuring law was enacted through the legislature</li> </ul> <p><b>Criteria of effective legislative process</b></p> <ul style="list-style-type: none"> <li>• Adequate time for debate</li> <li>• Attendance of members</li> <li>• Duration of debate</li> <li>• Availability of transcripts of debate</li> </ul>	0	Lowest

PP 8	Role of donor agencies during policy reform	<p>Conditions of transparent donor engagement</p> <ul style="list-style-type: none"> <li>• Information about (donor's) policy positions</li> <li>• Availability of loan documents and conditions</li> <li>• Information about financial disbursement</li> <li>• Information about technical assistance</li> </ul>		NA
PP 9	Clarity about decision-making process on reforms or policy change	<p><u>Clarity About the Process:</u></p> <ul style="list-style-type: none"> <li>• Clarity about the decision-maker</li> <li>• Pre-laid out time-frame</li> <li>• Clear format for decisions</li> <li>• Timeframe for public input</li> <li>• Specification for the use of public input</li> <li>• Anticipation of feedback</li> <li>• Specification of a mechanism for recourse</li> <li>• Provision for documentation of the process</li> </ul> <p><u>Ease of access and breadth of information:</u></p> <ul style="list-style-type: none"> <li>• Information circulated with reasonable lead time</li> <li>• Information available on internet and more than one other tool</li> <li>• Systematic efforts to reach out to disadvantaged communities</li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p>	Low-Middle
PP 10	Scope of background policy information available to the public about government analysis and stakeholder views	<ul style="list-style-type: none"> <li>• Breadth</li> <li>• Ease</li> <li>• Timeliness</li> </ul>	<p>0</p> <p>0</p> <p>0</p>	Lowest

PP 13	Capacity of Organizations in Civil Society	<ul style="list-style-type: none"> <li>• Presence of organizations</li> <li>• Techno-economic analytical capacity</li> <li>• Proactive engagement and strategic capacity</li> <li>• Grass-roots links</li> <li>• Capacity for ongoing learning</li> <li>• Networking</li> <li>• Broad credibility</li> </ul>	1 1 1 1 1 1	Medium-High
PP 14	Quality of public participation process during reform or policy decisions	<p>Eo Q in a good process of public participation</p> <ul style="list-style-type: none"> <li>• Public notification</li> <li>• Public registries of documents</li> <li>• Communication of decisions within one month</li> <li>• Use of diverse communication tools</li> <li>• Adequate time for public consideration</li> <li>• Opportunity for consultation</li> <li>• Clear communication on the results of public participation</li> <li>• Outreach to vulnerable communities</li> </ul>	0 0 0 0 0 0 0	Lowest
PP 15	Quality of participation by stakeholders and government responsiveness	<p>Quality of participation:</p> <ul style="list-style-type: none"> <li>• Quantity of input</li> <li>• Breadth of input</li> </ul> <p>Responsiveness of policy maker:</p> <ul style="list-style-type: none"> <li>• Notification of public participation by government</li> <li>• Summary of public participation</li> <li>• Response to public participation</li> </ul>	0 0 0 0 0	Lowest
PP 16	Quality of media coverage about reform or policy decisions	<ul style="list-style-type: none"> <li>• Volume of coverage</li> <li>• Local language coverage</li> <li>• Balance of coverage</li> <li>• Quality of coverage</li> </ul>	0 1 0 0	Low-Middle
PP 17	Methodology for asset valuation / balance sheet restructuring during reforms	<ul style="list-style-type: none"> <li>• Disclosure of methodology</li> <li>• Justification</li> <li>• Independent scrutiny</li> <li>• Public disclosure of independent scrutiny</li> </ul>	0 0 0 0	Lowest
PP 18	Process of privatization and bidding	<ul style="list-style-type: none"> <li>• Release of request for proposals</li> <li>• Release of information provided to the bidders</li> <li>• Release of decision criteria and decision-making process</li> <li>• Justification for final selection</li> </ul>		NA

PP 21	Independent Power Producers	<ul style="list-style-type: none"> <li>• Legislative involvement</li> <li>• Competitive bidding</li> <li>• Transparent and detailed analysis of demand-supply scenario</li> <li>• Detail analysis of tariff impacts</li> <li>• Public consultation while approving PPAs</li> <li>• Public consultation during IPP policy development</li> </ul>	<p style="text-align: center;">0 1 0 0 0 0</p>	Low-Middle
PP 22	Competition Policy	<ul style="list-style-type: none"> <li>• Mechanisms for prevention of market power</li> <li>• Scrutiny of conditions for competition</li> <li>• Adequate public consultation</li> <li>• Transparent competitive mechanisms</li> </ul>	<p style="text-align: center;">0 0 0 0</p>	Lowest



## Regulatory Process

	<b>Indicator</b>	<b>Key Attributes</b>	<b>Status</b>	<b>Score</b>
RP 1	Institutional structure for regulatory decisions	<ul style="list-style-type: none"> <li>Regulatory decision through executive</li> <li>Regulatory decision through independent commission</li> </ul>	0 1	Highest
RP 2	Authority of the regulatory body	<ul style="list-style-type: none"> <li>Seek information</li> <li>Investigations</li> <li>Penalizing defaulters</li> <li>Enforcement of orders</li> </ul>	0 0 0 0	Lowest
RP 3	Functions / jurisdiction of the regulatory body	<ul style="list-style-type: none"> <li>Clarity about functions / jurisdictions</li> <li>Entrustment of all critical functions</li> </ul>	1 0	Low-Middle
RP 4	Selection of regulatory body members	<ul style="list-style-type: none"> <li>Independence</li> <li>Well-defined procedure</li> <li>Transparency</li> <li>Composition and eligibility criteria</li> <li>Differing tenures</li> </ul>	0 1 0 1 0	Low-Middle
RP 5	Conflict of interests of regulatory body members	<ul style="list-style-type: none"> <li>Legal recognition of conflict issues</li> <li>Adequate preventive provisions</li> </ul>	1 0	Medium
RP 6	Autonomy of regulatory body	<ul style="list-style-type: none"> <li>Fixed tenure of members and well-defined removal procedures</li> <li>Financial autonomy</li> <li>Human resources</li> </ul>	0 0 0	Lowest
RP 7	Appeal Mechanism	<ul style="list-style-type: none"> <li>Permission to appeal</li> <li>Clarity about grounds of appeal</li> <li>By whom?</li> <li>Before another authority or forum</li> </ul>	0 0 0 0	Lowest
RP 8	Training of regulatory body members and staff	<ul style="list-style-type: none"> <li>Certainty and regularity</li> <li>Diverse fields of training (legal, technical and financial)</li> <li>Diversity of perspectives</li> </ul>		NA

RP 11	Pro-activeness of regulatory body	<ul style="list-style-type: none"> <li>• Use of penal powers</li> <li>• Suo motu petitions</li> <li>• Discussion papers (public debate)</li> </ul>		NA
RP 12	Disclosure of documents in possession of regulatory body	<ul style="list-style-type: none"> <li>• Legal provisions</li> <li>• Operating procedures</li> </ul>	1 0	Medium-High
RP 13	Procedure for public access to regulatory body documents	<ul style="list-style-type: none"> <li>• Well-indexed database of documents</li> <li>• Simple, well-defined procedure for inspecting</li> <li>• Reasonable cost</li> <li>• Wide dissemination of information</li> </ul>	1 0 1 0	Medium
RP 14	Space for public participation in the regulatory process	<ul style="list-style-type: none"> <li>• Open proceedings</li> <li>• Public right to participate</li> </ul>	-	NA
RP 15	Institutional mechanism for representation of interests of weaker sections / stakeholders	<ul style="list-style-type: none"> <li>• Routine considerations</li> <li>• Ad-hoc considerations</li> <li>• Availability of diverse institutional structures</li> </ul>	-	NA
RP 16	Capacity building of weaker stakeholders	<ul style="list-style-type: none"> <li>• Capacity building activities by different agencies</li> <li>• Availability of financial and analytical resources</li> </ul>	0 0	Lowest
RP 17	Interventions by civil society in the regulatory process	<ul style="list-style-type: none"> <li>• Filing of cases/appeals before the ERC</li> <li>• Private interest cases and appeals</li> <li>• Public interest cases and appeals</li> <li>• Presence of active CSOs</li> </ul>	-	NA
RP 18	Orders and decisions of the regulatory body	<ul style="list-style-type: none"> <li>• Reasoned orders</li> <li>• Response to public comments</li> </ul>	0 0	Lowest

RP 21	Tariff philosophy	<ul style="list-style-type: none"> <li>• Based on detailed analysis</li> <li>• Provision for mitigating adverse impacts</li> <li>• Simple language</li> <li>• Public participation</li> </ul>	1 0 0 0	Low-Middle
RP 22	Licensing	<ul style="list-style-type: none"> <li>• Clarity about requirement and exemption</li> <li>• Clarity about process</li> </ul> <p><u>Clear provisions regarding</u></p> <ul style="list-style-type: none"> <li>• Amendment / Revocation</li> <li>• Dispute resolution</li> <li>• Compliance / performance monitoring</li> </ul>		NA
RP 23	Consumer service and quality of supply	<ul style="list-style-type: none"> <li>• Well-defined standards of performance</li> <li>• Monitoring of supply quality</li> <li>• Periodic public review</li> <li>• Consumer grievance redress mechanism</li> </ul>	1 1 0 0	Medium

## Environmental and Social Aspects

Indicator		Key Attributes	Status	Score
ESA 1	Clarity of authority and jurisdiction to grant environmental clearances / approvals for power sector projects	<ul style="list-style-type: none"> <li>• Provisions in law / implementing regulations</li> <li>• Definition of how authority is shared across jurisdictions</li> <li>• Adequacy of access to relevant information</li> <li>• Provisions published in official journal/gazette</li> <li>• Provisions posted on the websites</li> <li>• Public sector agency with principal authority issues brochure, poster, information sheets, etc.</li> <li>• Provisions may be obtained from public information office/library</li> <li>• Public sector agency discloses projects granted approvals in timely fashion</li> <li>• Principal authority discloses all projects requesting / pending approval</li> </ul>	1 1 1 1 1 1 0 0	Highest
ESA 2	Clarity and transparency of <u>executive's</u> mandates on Environmental and Social aspects	<ul style="list-style-type: none"> <li>• Reference to environmental and social performance of sector in description of responsibilities of executive</li> <li>• Guidance on how executive will cooperate or consult with regulators or other authorities</li> </ul> <p><u>Commitments to information disclosure</u></p> <ul style="list-style-type: none"> <li>• Reporting on ESA of performance of electricity sector</li> <li>• Availability of documents on executive's environmental and social responsibilities</li> <li>• Availability of these documents in a range of forms</li> <li>• Dissemination using various media/outlets</li> <li>• Efforts to aware marginalized socioeconomic or cultural groups</li> </ul>	1 0 0 0 0 0	Lowest

ESA 3	Scope and transparency of regulator's environmental and social mandates	<ul style="list-style-type: none"> <li>• Reference to environmental and social responsibilities in documents describing role and mandate of regulatory body</li> <li>• Consideration of social and environmental issues in tariff setting</li> </ul> <p><u>Adequacy of access to relevant information</u></p> <ul style="list-style-type: none"> <li>• Publication of regulator's environmental and social responsibilities in the official govt. journal</li> <li>• Posted on the regulator's website</li> <li>• Available at low cost or free to the public</li> <li>• Availability in range of forms/formats</li> <li>• Dissemination through various media/outlets</li> <li>• Efforts to aware marginalized/less privileged population</li> </ul>	0 0 0 0 0 0 0	Lowest
ESA 6	<u>Legislative Committee</u> capacity to assess environmental and social issues	<ul style="list-style-type: none"> <li>• Specific budgetary resources to support social and environmental issues</li> <li>• Existence of dedicated staff</li> <li>• Expertise of staff</li> <li>• Availability of training</li> </ul>	0 1 1 0	Highest
ESA 8	Inclusion of environmental considerations in national power sector plan	<ul style="list-style-type: none"> <li>• Analysis of environmental considerations in most recent plan</li> <li>• Inclusion of project-specific impacts and broader sectoral impacts</li> </ul> <p><u>Public access to relevant documents</u></p> <ul style="list-style-type: none"> <li>• Mechanisms to seek public input</li> <li>• Inclusion of less-privileged and affected populations</li> <li>• Communication of how public input is incorporated</li> <li>• Reasonable public comment period</li> <li>• Availability of public comments</li> </ul>	1 0 0 0 0 0	Low-Middle

ESA 10	Public participation requirements in environmental impact assessment (EIA) laws and procedures	<ul style="list-style-type: none"> <li>• Participation mandate at scoping stages</li> <li>• Use of more than one mechanism</li> <li>• Adequacy of time period for comment</li> <li>• Release of full and summary reports, prior to approval</li> <li>• Existence of guidelines to define adequate public consultation</li> <li>• Availability of summery or full public comments</li> <li>• How public comments informed the findings/recommendations is discussed in final IA</li> <li>• Principle of free prior informed consent is incorporated into EIA guidelines for consultation</li> </ul>	0 1 1 0 0 0 0	Medium
ESA 11	Comprehensiveness of environmental impact assessment (EIA) policies, laws and procedures	<ul style="list-style-type: none"> <li>• National or electricity sector laws and policies are in place that specify or require EIAs for electricity sector activities</li> <li>• Electricity sector policies, regulations or guidelines detail for project level EIA</li> <li>• Electricity sector policies, regulations or guidelines detail for project-level social impact assessment</li> <li>• Strategic assessments have been carried out to evaluate environmental or social objectives</li> <li>• Strategic assessments have been carried out to evaluate both environmental and social objectives</li> <li>• Strategic assessment guidelines for electricity sector programs, plans and policies</li> </ul>	1 1 0 0 0 0	Lowest
ESA 12	Regulatory Response to Environmental and Social Petitions or Complaints	<ul style="list-style-type: none"> <li>• Formal cases or evidence of environmental or social complaints filed</li> <li>• Regulatory agencies have accepted them</li> </ul>		NA

ESA 13	Quality of engagement by electricity provider with organizations in civil society and with potentially-affected populations	<ul style="list-style-type: none"> <li>• Existence of specific department / staff to engage with the public</li> <li>• Requirement to engage public is defined in corporate policy</li> <li>• Support to vulnerable weaker sectors to enable engagement</li> <li>• Availability of information on how public can lodge complaints</li> <li>• Disclosure of its own EIAs</li> <li>• EIAs include non-technical summary and summary of public consultation</li> </ul>	1 0 0 1 1 0	Medium
ESA 14	Capacity of civil society to address environmental and social aspects of decision- making by electricity sector	<ul style="list-style-type: none"> <li>• At least one CSO has used appeal or redress mechanisms</li> <li>• Existence of independent CSO assessment of social / environ. implications of sector policy</li> <li>• Records of CSO participation in official consultations</li> <li>• CSO input on most sector EIAs</li> <li>• Evidence of CSOs specializing in sector issues or providing legal support to vulnerable groups</li> </ul>	1 1 1 1 1	Highest
ESA 15	Quality of judicial or administrative forums addressing social and environmental claims (for the administrative court in general)	<ul style="list-style-type: none"> <li>• Issuing binding decisions to redress social and environmental damages</li> <li>• Independence and impartiality</li> <li>• Capacity and training</li> <li>• Access to information</li> <li>• Definition of triggers for claims and standing in laws</li> <li>• Applicable provisions of law define what parties have 'standing' before the forum</li> </ul>	1 1 0 1 1 1	Highest
ESA 15.2	Quality of judicial or administrative forums addressing social and environmental claims (for a case study in the administrative court )	<ul style="list-style-type: none"> <li>• Issuing binding decisions to redress social and environmental damages</li> <li>• Independence and impartiality</li> <li>• Capacity and training</li> <li>• Access to information</li> <li>• Definition of triggers for claims and standing in laws</li> <li>• Applicable provisions of law define what parties have 'standing' before the forum</li> </ul>	1 1 0 1 1 1	Highest

ESA 16	Accessibility of judicial or administrative forums that address social and environmental claims (for the judicial court)	<ul style="list-style-type: none"> <li>• Geographic</li> <li>• Temporal</li> <li>• Linguistic</li> <li>• Economic</li> <li>• Amicus briefs from non-parties</li> </ul>	1 0 0 1 1	Highest
ESA 17	Assessment of job losses linked to policy changes or reforms in the electricity sector	<u>Evidence of assessment of employment impacts (at least two of the following)</u> <ul style="list-style-type: none"> <li>• Magnitude of job losses</li> <li>• Effect on job security</li> <li>• Impact on wages and benefits</li> <li>• Significance to the macro economy</li> <li>• Assessed before making changes</li> <li>• Measures to address impact</li> <li>• Creation of redress mechanisms for workers</li> </ul>		NA
ESA 19	Scope for project-affected people to exercise their rights	<ul style="list-style-type: none"> <li>• Existence of explicit requirements or procedures for consultation of project affected people in project review and approval</li> <li>• Efforts to educate potentially affected people on their rights</li> <li>• Use of more than two participation mechanism</li> <li>• Free Prior Informed Consent</li> </ul>	0  0 0 0	Lowest
ESA 20	Participation in decision-making related to affordable electricity tariffs	<ul style="list-style-type: none"> <li>• Attention to low income and rural consumers in tariff setting principles</li> <li>• Efforts to communicate impacts and reasons for tariff changes to low income or differentially impacted groups</li> <li>• Use of more than one participation mechanism to get their input</li> </ul>	0  0 0	Lowest



ESA 21	Participation in development of policies to promote low environmental impact management and technology options	<p><u>Decision-making considers at least three of following management and technology options:</u></p> <ul style="list-style-type: none"> <li>• Co-generation</li> <li>• Demand-side management</li> <li>• Creation of energy saving companies</li> <li>• Grid-connected renewable energy technologies</li> <li>• Distributed renewable energy technologies</li> <li>• Improved thermal/fossil fuel generation technologies</li> <li>• Improved pollution control technologies for thermal power plants</li> <li>• Reduction in T&amp;D losses</li> <li>• Consultation with stakeholders and interest groups</li> <li>• Use of more than one participation mechanism</li> </ul>	<p>0</p> <p>1</p> <p>0</p> <p>1</p> <p>1</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p> <p>0</p>	Medium
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