

Creating Rights from the Bottom Up: Public Interest Environmental Lawyers in Thailand

by

Songkrant Pongboonjun

LL.B, Thammasat University, 2005

LL.M, Thammasat University, 2012

A Dissertation Submitted in Partial Fulfillment
of the Requirements for the Degree of

DOCTOR OF PHILOSOPHY

in the Faculty of Law

© Songkrant Pongboonjun, 2023

University of Victoria

All rights reserved. This Dissertation may not be reproduced in whole or in part, by photocopy or other means, without the permission of the author.

We acknowledge and respect the ləkʷəŋən peoples on whose territory the university stands and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

Supervisory Committee

Creating Rights from the Bottom Up: Public Interest Environmental Lawyers in Thailand

by

Songkrant Pongboonjun

LL.B, Thammasat University, 2005
LL.M, Thammasat University, 2012

Supervisory Committee

Professor Deborah Curran, Faculty of Law
Supervisor

Dr. Rebecca Johnson, Faculty of Law
Departmental Member

Dr. James Lawson, Department of Political Science
Outside Member

Abstract

This research is about the interaction between various stakeholders in environmental movements in Thailand after adopting the 1997 Constitution-known as the People's Constitution. Although academics have acclaimed this Constitution in recognizing environmental rights, few scholars have studied how it changes environmental movements afterward. This research tries to fill this gap in the literature. The study examines how citizens and public interest environmental lawyers employed new legal opportunities to protect the environment. The study examines how lawyers and communities tailor new legal rights into legal strategies and how they create changes inside state institutions, such as legal precedents and policies. This research also highlights how legal strategies bring about change outside state institutions, such as how they impact public awareness, support ongoing movements and change stakeholders' legal consciousness. In addition, the research identifies key factors contributing to effective legal strategy.

I adopt the concept of law as negotiated practices developed by law and society scholars as a theoretical framework. The main idea is that the state does not exclusively create and impose laws on citizens. In contrast, many parties, including citizens, play a crucial part in constructing law in various stages. Sometimes, some stakeholders may have a more decisive influence in drafting, passing, applying, interpreting, implementing, and challenging a given law, but no stakeholder always dominate the whole process. As a result, the law is dynamic and subject to negotiation. Perceiving the law from this perspective, the study examines how environmental rights have been transformed into practice in Thailand, where the idea of the rule of law has not yet been established. This research concludes that environmental rights and legal strategies empower environmental movements to better advocate for the environment, health and livelihood. At the same time, the empowered movements enable the Thai legal system to create significant change in advancing environmental rights. In other words, environmental rights and environmental movements empower each other to achieve what they have never achieved before, creating a cycle of empowerment.

Table of Contents

Supervisory Committee	i
Abstract	iii
Table of Contents	iv
List of Tables	vii
List of Figures	viii
Acknowledgments.....	ix
Dedication	x
Chapter 1: Introduction	1
1. Introduction.....	1
2. The Birth of the Modern Thai Legal System	5
3. The People’s Constitution.....	8
4. Environmental Constitutionalism in Thailand.....	11
5. Public Interest Environmental Lawyers in Environmental Movements	14
6. Structure of Dissertation	18
Chapter 2: Literature Review	21
1. Introduction.....	21
2. Law and Social Change	22
3. Top-Down and Bottom-Up Approaches to the Study of Law	25
3.1 Top-Down Approach to the Study of Law	26
3.2 Bottom-Up Approach to the Study of Law.....	28
4. Public Interest Environmental Lawyers.....	32
5. The Impacts of Legal Strategies	34
5.1 Direct Impacts.....	34
5.2 Indirect Impacts	40
5.2.1 Raising Public Awareness.....	41
5.2.2 Supporting Social Movements.....	43
5.2.3 Increasing Bargaining Power.....	44
5.2.4 Changing Legal Consciousness	45
6. Evaluating Legal Strategies	47
6.1 Legal Recognition.....	48
6.2 Tangible Benefits.....	49
6.3 Community Empowerment.....	51
6.4 Analytical Frameworks.....	54
7. Conclusion	55
Chapter 3: Methodology	56
1. Introduction.....	56
2. Research Questions.....	57
3. Case Studies Approach	57
4. Public Interest Environmental Lawyers.....	59
4.1 Who are Public Interest Environmental Lawyers?	59
4.2 Why Study Public Interest Environmental Lawyers?.....	61
5. Researcher’s Positionality.....	62
6. Empirical Research Processes.....	65

6.1 Expected Contribution from Participants.....	66
6.2 Participants Recruitment.....	68
6.2.1 Public Interest Environmental Lawyers.....	69
6.2.2 Clients and Community Members.....	72
6.2.3 Non-Governmental Organization Representatives.....	72
6.2.4 Governmental Agency Representatives.....	73
7. Covid-19's Impact on Research.....	74
8. Conclusion.....	75
Chapter 4: Six Public Interest Environmental Cases.....	77
1. Introduction.....	77
2. Klity Creek Lead Pollution Case.....	78
3. Mab Ta Phut Industrial Pollution Case.....	83
4. Khuha Mountain Quarry Mine Case.....	88
5. Chana Pipeline and Industrial Complex Case.....	92
6. Non Mak Keng Waste Pollution Case.....	96
7. Mae Omki Land Rights Case.....	98
8. Conclusion.....	103
Chapter 5: Impacts of Legal Strategies.....	104
1. Introduction.....	104
2. Obtaining Legal Recognition.....	105
2.1 The Affirmation of Rights.....	106
2.2 The Expansion of Rights.....	112
2.3 Litigation and Negative Legal Precedent.....	115
3. Getting Tangible Benefits.....	117
3.1 Monetary Reward.....	117
3.2 Improving Environmental Quality.....	122
4. Empowering Environmental Movements.....	129
4.1 Raising Public Awareness.....	130
4.2 Supporting On-going Movements.....	134
4.2.1 Use Legal Tools to Remove Obstacles.....	134
4.2.2 Increase Negotiating Power.....	137
4.3 Establishing Ground for Future Movements.....	140
4.3.1 Establishing Useful Facts Through Litigation.....	140
4.3.2 Leading to New Organizations.....	141
4.3.3 Inspiring Other Communities.....	143
4.4 Changing Legal Consciousness.....	144
4.4.1 Change to Nuanced Understanding of Law.....	145
4.4.2 Change to View Law as a Supporter of the Movements.....	150
5. Conclusion.....	153
Chapter 6: Supportive Factors for Effective Legal Strategies.....	155
1. Introduction.....	155
2. New Legal Opportunities.....	157
3. PIELs and NGOs as Resources.....	163
4. Community.....	169
5. Virtuous Cycle of Empowerment.....	171
6. Conclusion.....	173

Chapter 7: Conclusion.....	175
1. Introduction.....	175
2. Legal Recognition.....	177
3. Tangible Benefits.....	178
4. Community Empowerment.....	178
5. Factors for Effective Legal Strategies.....	180
6. A Cycle of Empowerment.....	181
7. Research Implication.....	182
Bibliography.....	185

List of Tables

Table 1 Rights and institutions relating to environmental protection in 1997, 2007, and 2017 Constitutions	10
---	----

List of Figures

Figure 1: The Virtuous Cycle of Environmental Rights Empowerment	172
--	-----

Acknowledgments

I would like to thank the member of my supervisory committee—Professors Deborah Curran, Rebecca Johnson, and James Lawson—for their ideas, questions, and feedback that gave direction and substance to this research. Their cheerful support inspired me to sustain this long academic journey. I would like to thank Professor Deborah Curran for her supportive supervision in particular. Her advice and confidence helped me start and complete this project as planned. Her active role in the Environmental Law Centre in teaching and assisting the communities to protect the environment inspires me not only on my research but also to set up an Environmental Law Centre at Chiang Mai University, Thailand. Professor Deborah shows me that we can contribute to environmental movements in many ways. This research benefitted significantly from writing workshops led by Professor Deborah. I want to thank my writing workshop colleagues—Murray Ball, Chinwe Nwanisobi, Rebeca Macias Gimenez, Lilly Woodbury, Meredith James, and Justine Keefer—who read part of my research and gave me insightful feedback. I would like to thank Angie Reamer who taught me academic English and helped me on my English. My gratitude for financial support from Chiang Mai University, Canadian Queen Elizabeth II Diamond Jubilee Scholarships managed by the Centre of Asia and Pacific (CAPI), the University of Victoria, Anand-UVIC Fund Graduate Scholarship, the UVic Centre for Global Studies (CFGs). A special thanks to CAPI and CFGS for providing financial support and having been my academic communities and homes during my study. Finally, I thank research participants who have advocated for a healthy environment and are willing to share their stories with me. Without support from the abovementioned people and institutions, this project would not have come this far.

Dedication

I dedicate this dissertation to Jintana (Aew), Patcharanun (Proud), and Patteera (Peace), Pongboonjun who have supported me throughout my long academic journey. They made this journey the most impressive and memorable one for me.

I also dedicate this research to environmental movements in Thailand who have inspired me to take on this interesting research. They are the ones who have devoted their lives to protecting the environment and creating a healthy environment for all of us.

I dedicate this work to global environmental movements that remind me another healthier world is possible.

Chapter 1: Introduction

1. Introduction

Environmental problems pose severe threats to our world and, “widespread and rapid changes in the atmosphere, ocean, cryosphere, and biosphere”¹ or air pollution² jeopardize countries worldwide. As environmental problems increase, governments, civil societies, communities, and individuals have utilized various methods to address the issues.³ For instance, many countries have chosen legal approaches to recognize environmental rights in their legal system in one way or another.⁴ The notion that the environment is an appropriate subject to be protected by the constitution and safeguarded by courts is recognized worldwide; it is called environmental constitutionalism.⁵ This trend is one of the various responses to severe environmental problems many countries have faced.⁶ As many countries worldwide pay more attention to environmental problems, more countries enlist environmental rights in their constitutions. Boyd asserts that 147 countries worldwide explicitly recognize environmental rights, environmental responsibilities, or both in their constitutions.⁷ In 1997, Thailand adopted environmental rights in its constitutions to deal with environmental and natural resources. Consequently, the legal system and lawyers have played essential roles in environmental movements as other countries.

Thailand’s rapid industrial development began in 1961 when the Thai government launched the first National Economic and Social Development Plan, emphasizing growth in private investment.⁸ Although this policy led to unprecedented rapid economic growth

¹ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis, Summary for Policy Makers*, 2021, online, <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf>, at 4.

² Johan C Kuylenstierna, et al, “A perspective on global air pollution problems”, in John T Houghton et al, *Global Environmental Change* (Cambridge, UNITED KINGDOM: Royal Society of Chemistry, 2002), 21-56.; Mario Molina, “Air pollution is a global problem with local solutions” (2008) 456:S1 *Nature* 19–19.

³ Franklin J Agardy & Nelson Leonard Nemerow, *Environmental Solutions: Environmental Problems and the All-Inclusive Global, Scientific, Political, Legal, Economic, Medical, and Engineering Bases to Solve Them* (San Diego, UNITED STATES: Elsevier Science & Technology, 2005).; Melany Banks, “Individual Responsibility for Climate Change” (2013) 51:1 *The Southern Journal of Philosophy* 42–66.

⁴ David R Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, 2012), at chapter 3.

⁵ James R May & Erin Daly, *Global environmental constitutionalism*, first paperback edition ed (New York, NY: Cambridge University Press, 2016) at 1.

⁶ *Ibid* at 17.

⁷ Boyd, *supra* note 4 at 47.

⁸ Christopher John Baker & Pasuk Phongpaichit, *A history of Thailand*, third edition ed (Port Melbourne, VIC, Australia: Cambridge University Press, 2014) at 149-150.

for many years,⁹ it also led to unparalleled environmental degradation.¹⁰ For example, in 1961, 51 percent of the country was covered by forest, but only 29 percent was left in the late 1980s.¹¹ Besides deforestation, air pollution is another severe problem in Bangkok and other large cities.¹² For instance, in 2020, the Thai government had to close all schools in Bangkok because of unhealthy air quality.¹³ Likewise, air pollution has been a serious persistent health concern for people in Chiang Mai and other northern provinces for numerous years.¹⁴ The Thai government has been unable to address these problems partly because it has not adequately prepared its laws and regulations to deal with development policies and environmental management.

In contrast to this enthusiasm for industrial development, Thailand has a weak regulatory infrastructure.¹⁵ Thailand has low environmental standards,¹⁶ weak legal enforcement,¹⁷ incompetent bureaucracy, and environmental and economic policies that contradict each other.¹⁸ To illustrate a lack of government enforcement of environmental law, the Environmental Act B.E. 2535 authorizes the government to announce polluted areas as a pollution control zone to address environmental problems comprehensively. However, the administration resisted announcing Map Ta Phut Industrial Complex in Rayong province as a pollution control zone for many years because of the concern about impacts on investment; despite this, activists have raised the alarm on health and environmental

⁹ Baker & Phongpaichit, *supra* note 8 at 165.

¹⁰ Walden F Bello, Shea Cunningham & Kheng Poh Li, *A Siamese tragedy: development and disintegration in modern Thailand* (London; New York: Oakland Calif.: Bangkok: Zed Books; Food First; White Lotus, 1998) at chapter 7.

¹¹ Bruce D Missingham, *The Assembly of the Poor in Thailand: from local struggles to national protest movement* (Chiang Mai, Thailand: Silkworm Books, 2003) at 18.

¹² Vipon Kititasnasorchai & Panat Tasneeyanond, “Thai Environmental Law” (2000) 4:1 *Singap J Int Comp Law* 1–35 at 31.

¹³ “Smog forces Bangkok schools to shut, but respite in doubt due to crop burning”, *Reuters* (21 January 2020), online: <<https://www.reuters.com/article/us-thailand-environment-pollution-idUKKBN1ZK18E>>; This also happened in 2019, Hannah Beech, “Bangkok Is Choking on Air Pollution. The Response? Water Cannons.”, *The New York Times* (30 January 2019), online: <<https://www.nytimes.com/2019/01/30/world/asia/pollution-thailand-bangkok.html>>.

¹⁴ “Transboundary Pollution in Northern Thailand Causes Dangerous Levels of Smog”, (27 March 2014), online: *The Asia Foundation* <<https://asiafoundation.org/2014/03/26/transboundary-pollution-in-northern-thailand-causes-dangerous-levels-of-smog/>>.

¹⁵ Kititasnasorchai & Tasneeyanond, *supra* note 12 at 2-3.

¹⁶ Jae Nikam & et al., *Air Quality in Thailand: Understanding the Regulatory Context*, (Stockholm Environment Institute: Stockholm, 2021), online: <<https://cdn.sei.org/wp-content/uploads/2021/02/210212c-killeen-archer-air-quality-in-thailand-wp-2101e-final.pdf>>, at 7.

¹⁷ Timothy Wales & Rick Levinthal, in Terri Mottershead, ed, *Environmental law and enforcement in the Asia-Pacific Rim* (Hong Kong: Sweet & Maxwell Asia, 2002) at 495.

¹⁸ Bello, Cunningham & Li, *supra* note 10 at 126-130.

problems for years.¹⁹ The announcement only came after the Administrative Court ordered the National Environmental Board to implement it in 2009.²⁰ In addition, environmental agencies have overlapping jurisdictions,²¹ are underfunded, and lack the expertise to deal with complicated environmental problems.²² These weaknesses and the pro-industrial development policies have made Thailand a destination for irresponsible and polluting businesses; as some scholars argue, Thailand is “Pollution Heaven.”²³

Ecological degradation, both the depletion of natural resources and various forms of pollution, impacts the environment and livelihood of local people around the country. However, it also ignites resistance through protests and direct actions throughout the country. For example, in the north, local people in ten provinces campaigned to stop timber cutting, which led to the cancellation of logging nationwide in 1989.²⁴ In the south, the protest against the tantalum processing plant in Phuket that led to the burning of the plant by the protesters in 1986 demonstrated the fear and anger of local people toward government development policies.²⁵ In the west, the well-known campaign against Nam Chon Dam on the Kwai Yai River in Kanchanaburi resulted in the project’s cancellation in 1988.²⁶ The main concern of this movement was the dam’s impact on the rainforests in Kanchanaburi.²⁷

In the northeast, the protest against Pak Mun Dam in Ubon Ratchathani, although it did not stop the construction, led to the establishment of the first national organization advocating for rural people’s interests since the mid-1970s,²⁸ the Assembly of the Poor.²⁹ In the east, the campaign against pollution from Map Ta Phut industrial complex was well-known since the air pollution leaked from the factory resulting in 1,000 student and teacher

¹⁹ Wannathepsakul, Nopanun, Network Bureaucracy and Public-Private Firms in Thailand’s Energy Sector, in Pasuk Phongpaichit & Christopher John Baker, eds, *Unequal Thailand: aspects of income, wealth and power* (Singapore: NUS Press, 2016) at 111.

²⁰ *Ibid.*

²¹ Kititansasorchai & Tasneeyanond, *supra* note 12 at 20.

²² Nuthmon Kongcharoen et al., *Legal Mechanisms for Ecological Revitalization and Compensation for Victims*, (Bangkok: 2017), at chapter 3.

²³ Bello, Cunningham & Li, *supra* note 10 at chapter 7.

²⁴ Philip Hirsch & Larry Lohmann, “Contemporary Politics of Environment in Thailand” (1989) 29:4 *Asian Surv* 439–451 at 439.

²⁵ “100,000 Angry Thais Destroy Polluting Plant - Los Angeles Times”, online: <<https://www.latimes.com/archives/la-xpm-1986-06-23-mn-20088-story.html>>.

²⁶ Hirsch, Philip, *The Politics of Environment: Opposition and Legitimacy*, in Kevin Hewison, ed, *Political Change in Thailand: Democracy and Participation* (London: Routledge, 1997) at 179.

²⁷ Tim Forsyth, “Are Environmental Social Movements Socially Exclusive? An Historical Study from Thailand” (2007) 35:12 *World Development* 2110–2130, at 2118.

²⁸ Missingham, *supra* note 11 at 3.

²⁹ *Ibid* at chapter 4.

hospitalizations in 1997.³⁰ These responses to environmental problems before 1997 came in the form of protests, direct actions and rarely used legal tools to support the movements. The peripheral role of law in environmental movements could be due to the fact that Thailand has weak environmental law.³¹

The environmental movements have changed from relying mainly on protest and direct actions to including a legal approach since the promulgation of the 1997 Constitution. From this year onward, the law and lawyers have contributed to environmental movements on an unprecedented scale; citizens framed their claims in legal terms, filed environmental lawsuits and campaigned to reform environmental laws paralleled to public demonstrations. The law and lawyers have moved from a marginal role to a critical environmental movement element. What has contributed to this change, and to what extent has this change affected Thai society? More specifically, how have citizens and lawyers achieved their goals of employing the new environmental rights and law to create a healthy environment?

This research focuses on how Thai citizens and communities turn to the law to protect the environment and their achievements. I examine the impacts of legal strategies—primarily looking at the effectiveness of litigation, though, not exclusively—that public interest environmental lawyers (PIELs) use on behalf of communities and individuals to protect the environment and human health. I have two main goals in studying the impacts of legal strategies. First, this research examines the effectiveness of legal strategies under the newly adopted environmental rights and institutions. Second, it identifies important factors contributing to the effectiveness of legal strategies and the barriers. This research finds that legal strategies positively impact environmental rights movements. Aggrieved communities can obtain legal recognition through legal tools. By employing various legal strategies, they receive tangible benefits such as compensation, a better environment, and a healthier river. In addition to these traditional legal benefits, law and legal strategies empower these communities to be more effective in their movements. To be said, the impact of legal strategies is far from perfect in addressing environmental problems. Some court judgments are not enforced properly. Defendants pay less compensation than the court decision requires or do not pay at all. The polluted river is not restored to the same quality before the pollution.

Nevertheless, the trend is clear that legal strategies bring positive changes to these communities. I find three important factors contributing to effective legal strategies: new legal opportunities, support from PIELs and NGOs, and community engagement. The case studies demonstrate the relationship between these three factors as the main contributor to their achievements.

³⁰ Phattraporn Soyong & Ranjith Perera, “Spatial analysis of the environmental conflict between state, society and industry at the Map Ta Phut-Rayong conurbation in Thailand” (2017) 19:3 *Environ Dev Sustain* 839–862 at 845.

³¹ Although, Thailand introduced the new environmental law in 1992 that recognized some environment rights, but 8 years later there were only two major environmental litigations launched, and these two cases did not linked to environmental movements outside court room, see, Kititansasorchai & Tasneeyanond, *supra* note 12 at 33-34.

I have divided this chapter into six parts. Following this introduction, I briefly discuss how the modern Thai legal system evolved along with the idea of a strong state and the continued attempt by civil society to reform the legal system to be more responsive to society leading to the adoption of the 1997 Constitution. Part three discusses how the 1997 Constitution became a turning point for Thai society in human rights and state accountability. Part four focuses on how the 1997 Constitution became the first Thai law recognizing environmental rights creating receptive contexts for citizens' movements. Part five introduces public interest environmental lawyers (PIELs) as new actors in environmental movements in Thailand. This part explains how the 1997 Constitution contributes to the birth of PIELs and why exploring their roles is crucial to understanding how communities utilize law and legal institutions to advance their movements. Part six sets out the structure of this thesis and provides a succinct conclusion.

2. The Birth of the Modern Thai Legal System

The modern Thai legal system is a product of the interaction between Thailand³² and Western countries in the 19th century under an absolute monarchy regime. Compared to other Southeast Asian countries, Thailand has a unique historical background because a foreign power has never physically colonized it.³³ However, this does not mean that Thailand and the Thai legal system were free from the influence of colonial powers. In the 19th century, Thailand signed treaties with the United Kingdom and other European countries³⁴ that permitted foreign merchants to trade freely in Thailand.³⁵ These treaties also gave foreign countries privileged status in the legal realm.³⁶ For example, these treaties gave foreign courts jurisdiction over their citizens and subjects living in Thailand, known as extraterritorial courts.³⁷ In other words, Thailand signed several treaties that favoured Western countries during this time to avoid colonization.

Besides the pressure from western countries, King Chulalongkorn, who reigned Thailand from 1868 to 1910, recognized the weaknesses of the traditional Thai legal system he inherited from his predecessor.³⁸ The source of the traditional Thai law came from the

³² Before 1939, Thailand was known as Siam. Because this research focuses on the period after 1997, for the convenience, I use Thailand to refer to both Siam before 1939 and Thailand after 1939.; Tamara Lynn Loos, *Subject Siam: family, law, and colonial modernity in Thailand* (Ithaca, N.Y: Cornell University Press, 2005) at 25.

³³ See a comprehensive discussion about Siam territory disputes with foreign countries and other kingdoms in Thongchai Winichakul, *Siam mapped: a history of the geo-body of a nation* (Honolulu: University of Hawaii Press, 1994).

³⁴ Thai government changed the country name from Siam to Thailand in 1939., Loos, *supra* note 32 at 25.

³⁵ Frederick Warren Riggs, *Thailand, the modernization of a bureaucratic polity* (Honolulu: East-West Center Press, 1966) at 19.

³⁶ Baker & Phongpaichit, *supra* note 8 at 48.

³⁷ Riggs, *supra* note 35 at 20-21.

³⁸ David M Engel, *Law and kingship in Thailand during the reign of King Chulalongkorn*, Michigan papers on South and Southeast Asia 9 (Ann Arbor: Center for South and Southeast Asian Studies, University of Michigan, 1975) at 77.

religious belief that was first translated and codified into a written form—called the Law of the Three Seals— under the reign of King Rama I, who reigned Thailand from 1782 to 1809.³⁹ According to the existing legal system, over thirty courts in different ministries held limited power and had overlapping jurisdictions.⁴⁰ Chulalongkorn openly complained about the judicial system as a broken system and advocated for comprehensive reform.⁴¹ The King had several reasons to change the Thai traditional legal system to align with the western legal system: eliminating extraterritorial courts, consolidating the King’s power over the country, and improving the legal system to better serve his people.⁴²

Western countries that had gained extraterritorial courts over their citizens and subjects, and had superior positions in treaties with Thailand, promised to revoke the unequal treaties if Thailand modernized its legal system and judicial administration.⁴³ Such law reform could also help the king consolidate power and enable him to expand the border to other territories that had been relatively independent of Bangkok’s control until that point.⁴⁴ Finally, in theory, the legal reform would better serve his people because it would grant Thais a new set of individual rights in dealing with the legal system.⁴⁵

In transforming from the traditional legal system to the modern legal system, both Civil Law and Common Law systems influenced the Thai legal system.⁴⁶ However, King Rama V decided to adopt the Civil Law system as a model for the country over the Common Law because a codified Civil Law system would better impress the western countries.⁴⁷ As a result, the Civil Law system has been the main characteristic of the Thai legal system since King Rama V to the present date.⁴⁸ This new modern legal system brought about, among other things, the Ministry of Justice, various codes, unified courts, and the recognition of some citizens’ rights in legal procedures.⁴⁹

³⁹ Loos, *supra* note 32 at 33.

⁴⁰ *Ibid* at 34.

⁴¹ Engel, *supra* note 38 at 77.

⁴² *Ibid* at 59.

⁴³ Andrew Harding & Peter Leyland, *The constitutional system of Thailand: a contextual analysis*, Constitutional systems of the world (Oxford: Hart Publishing, 2011) at 7.; Riggs, *supra* note 35 at 21.

⁴⁴ Loos, *supra* note 32 at 71.

⁴⁵ Engel, *supra* note 38 at 95.

⁴⁶ Frank Munger, “Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide: Citizen Participation in Legal Decision Making: A Cross-Cultural Perspective” (2007) 40:2 Cornell Int Law J 455–476 at 464.; Yut Saeng-uthai, *Basic Understanding of Law*, 17th ed, (Thammasat University Press:Bangkok, 2009), at 2-3.

⁴⁷ Baker & Pasuk Phongpaichit, *supra* note 8 at 65.

⁴⁸ Munger, “Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide”, *supra* note 46 at 464.; Saeng-uthai, *supra* note 46, at 30-31.

⁴⁹ Harding & Leyland, *supra* note 43 at 9.

About 20 years after King Rama V had started the Thai legal reform, the People's Party led a revolution that ended the absolute monarchy regime in Thailand in 1932.⁵⁰ This revolution changed Thailand from an absolute monarchy to a constitutional monarchy where the sovereign was vested not in the King but in the people.⁵¹ This event was the beginning of the Thai constitutional regime that recognized the people rather than the king as the legitimate source of sovereign power. For the first time, the constitution formally guaranteed people's rights in the constitution. This law redefined the relationship between people and rulers from subjects under a king to citizens and government under the law, at least in theory.⁵²

However, this formal recognition fell short of its inspiration to create a limited government that respected human rights. Thailand has faced military coups—almost every seven years—since it established the constitutional monarchy regime and democratic government in 1932.⁵³ The coups have raised a question of how effective the constitution and law are in restraining state power and preventing human rights violations.⁵⁴ Thailand has many laws that limit people's liberty and freedom.⁵⁵ Moreover, Thailand has a long history since 1932 of unaccountable human rights violations committed by the state.⁵⁶ The law becomes a powerful tool for the government to govern society but does not function as a tool for society to control state power. As the Thai historian Thongchai Winitchakul points out:

Thai rule by law is similar to many Asian countries that tend to privilege the executive branch. As part of the bureaucracy,

⁵⁰ Benjamin A Batson, *The end of the absolute monarchy in Siam*, Southeast Asia publications series no. 10 (Singapore: Oxford University Press, 1984) at 71.

⁵¹ The Siam Temporary Constitution Act 1932 (in Thai), Article 1, in Royal Gazette, Book 49/-/ p.166/ June 27, 1932, online; <<https://www.krisdika.go.th/librarian/get?sysid=424925&ext=htm>>; ChaRiggs, *supra* note 35 at 156.; Somchai Preechasinlapakun, *This is an Ambitious Aspiration: Thai Constitutional Drafting Organizations' Discourses on Monarchy from B.E. 2475-2550*, (Nontaburi: Same Sky, 2018) at 19.

⁵² See, the Constitution of the Siam Kingdom 1932, Part 2: Rights and Duties of Siamese.; Harding & Leyland, *supra* note 43 at 9.

⁵³ Eugénie Mériéau, “How Thailand Became the World's Last Military Dictatorship”, (20 March 2019), online: *The Atlantic* <<https://www.theatlantic.com/international/archive/2019/03/thailand-military-junta-election-king/585274/>>.

⁵⁴ Sirote Khampaiboon, “Consider 19 September Coup through Rights and Liberty and Political Order” (in Thai), online: <<https://prachatai.com/journal/2007/05/12847>>; TLHR, 5 Years NCPO, Is It Enough?: Proposal to Handle Coup's Consequences (in Thai), (22 May 2019), online: <<https://www.tlhr2014.com/?p=12492>>.

⁵⁵ See for example, Charan Khosananan, *Law and Rights and Liberty in Thailand: The Parallel from 1932 to Present* (in Thai), (Religious Cooperation for Society Group, 1985).; Withit Mantāphōn & Charles Taylor, *Roads to democracy: human rights and democratic development in Thailand* (Bangkok ; Montreal: publisher not identified, 1994).; David Streckfuss, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté* (London, UNITED KINGDOM: Taylor & Francis Group, 2010).

⁵⁶ Tyrell Haberkorn, *In plain sight: impunity and human rights in Thailand*, New perspectives in Southeast Asian studies (Madison, Wisconsin: The University of Wisconsin Press, 2018).; Human Rights Watch, “Thailand: Coup Threatens Human Rights”, (19 September 2006), online: Human Rights Watch <<https://www.hrw.org/news/2006/09/19/thailand-coup-threatens-human-rights>>; Human Rights Watch, “World Report 2019: Rights Trends in Thailand”, (28 December 2018), online: Human Rights Watch <<https://www.hrw.org/world-report/2019/country-chapters/thailand>>.

the judiciary helps the government fulfill its policies rather than play a check and balance role. Many courts do not have sufficient independence to play a check and balance function. Legal professions in bureaucracy solely function as state servants.⁵⁷

Specifically, the Thai legal system tends to give the state privilege and cannot properly control state power and effectively protect citizens' rights. The legal system cannot hold the state accountable for many human rights violations.⁵⁸

Despite many military coups and human rights violations in Thailand, Thai society's attempt to bridge the gap between constitutional texts and reality has continued. This effort came to a new milestone when the Thai parliament promulgated the 1997 Constitution, widely known as the People's Constitution.

3. The People's Constitution

The law reform and adoption of the constitutional monarchy regime were great aspirations for redefining the relationship between the state and citizens based on the rule of law in Thailand. However, the concept of the rule of law that perceived the law as a mechanism to limit state power and protect people's rights⁵⁹ had not materialized yet.⁶⁰ The 1997 Constitution was a continued attempt to bridge this gap.

Thailand has experienced constitutional instability for many decades. Since the end of the absolute monarchy regime, the country has had twenty constitutions.⁶¹ Most of these documents were the result of military coups.⁶² The coups' leaders started their regime by revoking the existing constitutions and introducing new ones, creating a vicious circle in Thai politics.⁶³ The latest coup was in 2014,⁶⁴ and the latest constitution is the 2017 Constitution.⁶⁵ Nidhi Eosewong, a Thai historian, once complained, "in Thailand, the

⁵⁷ Thongchai Winichakul, Full Speech Legal Privileged State and Royalist Rule of Law (in Thai),] waymagazine.org, online: <<https://waymagazine.org/thongchai-winichakul-rule-by-law/>> at 166.

⁵⁸ Haberkorn, *supra* note 56.

⁵⁹ See for example, Secretary-General to Security Council, The rule of law and transitional justice in conflict and post-conflict societies, United Nation, S/2004/616*, 23 August 2004, online <<https://www.un.org/ruleoflaw/files/2004%20report.pdf>>. at 4.

⁶⁰ Winichakul, *supra* note 57 at 163.

⁶¹ David Brandon Smith, "The Thai Coup Cycle: Why the National Council for Peace and Order's Authoritarian Reforms Are Unlikely to Bring Political Stability to Thailand" (2018) International Program Papers, online: <https://chicagounbound.uchicago.edu/international_immersion_program_papers/84>, at 1.

⁶² Mérieau, *supra* note 53.

⁶³ Somchai Preechasinlapakun, *Dynamics and Institutionalized of Coups in the Thai Constitution*, V.R.F Serie No. 483, July 2013, at 1.

⁶⁴ Smith, *supra* note 61 at 1.

⁶⁵ The Constitution of the Kingdom of Thailand, 2017 (in Thai), in Royal Gazette, Book 134/Chapter 40 Kor/p.1/ April 6, 2017online: <<https://www.krisdika.go.th/librarian/get?sysid=774606&ext=htm>>.

constitution is torn up often, and more easily than the various rules and regulations of ministries and departments.”⁶⁶ This historical background raises a question about the status of the constitution and the rights guaranteed in the constitution.

In contrast to the questionable status of the constitution, when one looks retrospectively, it is noticeable that, in general, Thai constitutions have expanded the scope of rights over time.⁶⁷ The best example was the 1997 Constitution. This constitution was the turning point for Thai society because the Thai government facilitated and encouraged citizens throughout the country to participate in the constitution drafting processes, and citizens engaged in the processes throughout the country.⁶⁸ The constitution recognized a new set of rights and established new institutions as the guardians of these rights.⁶⁹ As a result, the public has called the 1997 Constitution the People’s Constitution.⁷⁰

Although a subsequent coup’s leaders abolished the 1997 Constitution in 2006, many aspects of this constitution have existed in the following constitutions, especially rights and regulating institutions relating to the environment.⁷¹ For the right to a healthy environment that the 2017 Constitution does not explicitly recognize, the Thai parliament enacted a National Health Act B.E. 2007 to recognize this right,⁷² and judges have continued to recognize this right by applying it to cases.⁷³ In other words, the 1997 Constitution has

⁶⁶ Nidhi Eoseewong, “The Thai Cultural Constitution | Kyoto Review of Southeast Asia”, (15 March 2003), online: <<https://kyotoreview.org/issue-3-nations-and-stories/the-thai-cultural-constitution/>>.

⁶⁷ Harding & Leyland, *supra* note 43 at 220.; There are exception, for example all temporary constitutions adopted after coups were much more oppressive and put strict constrain on citizens’ rights. The 2017 Constitution also does not expand any rights but cut some right provisions from the 2007 Constitution.

⁶⁸ Duncan McCargo, in Duncan McCargo, ed, *Reforming Thai politics* (Copenhagen S., Denmark: Nias Pub, 2002) at 9.

⁶⁹ Harding & Leyland, *supra* note 43 at 257.; See also, the Constitution of the Kingdom of Thailand B.E. 2540 (1997), Chapter III: Rights and Liberties of Thai People, Part XII: Ombudsmen, Part XIII: The National Human Rights Commission, Chapter XIII: Courts, in Royal Gazette, Book 114/Chapter 5 Kor/p.1/ October 11, 1997. For unofficial English translation, see, online: <<http://www.asianlii.org/th/legis/const/1997/1.html>>.

⁷⁰ Kevin Hewison, “Constitutions, Regimes and Power in Thailand” (2007) 14 *Democratization* 928–945 at 931.

⁷¹ See, figure 1. the Constitution of the Kingdom of Thailand B.E. 2550 (2007) (Thai), Chapter III: Rights and Liberties of Thai People, Chapter VII: Direct Participation of the Public, Chapter X: Courts, and Chapter XI: Constitutional Organs, in Royal Gazette, Book 124/Chapter 47 Kor/p.1/ August 24, 2007. For the Office of the Council of State’s English translation, online: <<https://www.krisdika.go.th/documents/67673/181643/C04.pdf/929d6735-87ac-89b6-74e3-d90cd503304f>>.; the Constitution of the Kingdom of Thailand B.E. 2560 (2017), Chapter III: Rights and Liberties of Thai People, Chapter XX: Courts, Chapter XXII: Independent Organs, in Royal Gazette, Book 134/Chapter 40 Kor/p.1/ April 6, 2017. For the Office of the Council of State’s English translation, online: <https://www.krisdika.go.th/documents/67673/181643/837163_0001.pdf/3d0aab10-e61f-03a4-136a-75003ce4c625>.

⁷² The National Health Act B.E. 2550 (2007) (Thai), in Royal Gazette, Book 124/Chapter 16 Kor/p.1/March 19, 2007, at section 5.

⁷³ The Supreme Administrative Court Order No. KorSor 48/2557, Noosai Polsa and 77 plaintiffs V Industrial Minister and 2 defendants, (The Supreme Administrative Court, 2014), at 12-13.; The Supreme Court

continued to function under the following constitutions with minor changes.⁷⁴ In this regard, the 1997 Constitution is a critical milestone in rights development in Thailand.

Table 1: *Rights and institutions relating to environmental protection in 1997, 2007, and 2017 Constitutions*⁷⁵

Rights & Institutions	1997 Constitution	2007 Constitution	2017 Constitution
Freedom of expression	Section 39	Section 45	Section 34
Public assembly	Section 44	Section 63	Section 44
Public participation	Section 46,56,60	Section 58,66,67	Section 43
Information	Section 58,59	Section 56, 57	Section 41
Access to justice	Section 56, 62	Section 60, 67	Section 41, 51
A healthy environment	Section 56	Section 67	No
Constitutional Court	Section 255-270	Section 204-217	Section 200-214
Administrative Court	Section 276-280	Section 223-227	Section 197-198
Ombudsman	Section 196-198	Section 242-245	Section 228-231
Human Rights Commission	Section 199-200	Section 256-257	Section 246-247

One key objective of the 1997 constitution was to reform the legal system to protect basic human rights.⁷⁶ This constitution tried to achieve this goal by guaranteeing all basic rights recognized in many western constitutions.⁷⁷ Furthermore, this constitution also established various regulating organizations to oversee government agencies and protect people's rights.⁷⁸ More importantly, this constitution established two powerful courts, the constitutional and administrative courts, to assure that laws and government agencies would align with the constitution and the law.⁷⁹ Furthermore, concerning environmental protection, this constitution explicitly incorporated environmental rights and institutions to address environmental problems, which I discuss in the following section.

Judgement No. 15219/2558, Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, (The Supreme Court, 2015), at 36-38).

⁷⁴ Tom Ginsburg, "Constitutional afterlife: The continuing impact of Thailand's postpolitical constitution" (2008) 7:1 *International Journal of Constitutional Law* 83-105 at 91.

⁷⁵ The Constitution of the Kingdom of Thailand B.E. 2540 (1997), *supra* note 69; The Constitution of the Kingdom of Thailand B.E. 2550, *supra* note 63; The Constitution of the Kingdom of Thailand B.E. 2560 *supra* note 63.

⁷⁶ Tom Ginsburg & Hongyi Chen, eds, *Administrative law and governance in Asia: comparative perspectives*, Routledge law in Asia (Abingdon, Oxon [England]; New York: Routledge, 2008) at 232.

⁷⁷ Harding & Leyland, *supra* note 43 at 223-224.

⁷⁸ See, the Constitution of the Kingdom of Thailand B.E. 2540 (1997), *supra* note 69 Part XII: Ombudsmen, Part XIII: The National Human Rights Commission, and Chapter XX: Inspection of the Exercise of State Power, *supra* note 35.

⁷⁹ *Ibid* Part II: Constitutional Court, and Part IX: Administrative Court.

4. Environmental Constitutionalism in Thailand

Before 1997, environmental movements, defined “as a loose, noninstitutionalized network of informal interactions that may include, as well as individuals and groups who have no organizational affiliation, organizations of varying degrees of formality, that are engaged in collective action motivated by shared identity of concern about environmental issues,”⁸⁰ rarely used the law to support their movements. However, non-governmental organizations (NGOs) and grassroots movements successfully advocated for recognizing environmental rights in the 1997 Constitution. NGOs, environmental activists, and local communities played an essential role in advocating for decentralization, public participation, and people’s empowerment in the Constitutional drafting. This translated to advocacy for the recognition of environmental rights in the draft.⁸¹ As a result, the 1997 Constitution became the first Thai constitution that incorporated fundamental environmental rights.⁸² These included the right to live in a healthy environment⁸³ and access environmental information.⁸⁴ The Constitution also added the right to participate in preserving and exploiting natural resources.⁸⁵ Furthermore, it recognized the right to file a lawsuit, forcing government agencies to fulfill the constitutional duty to protect environmental rights.⁸⁶

The 1997 constitution was the turning point for environmental movements in Thailand because it was the first time the constitution recognized the right to a healthy environment.⁸⁷ Importantly, the constitution also established new institutions that people could access to implement these rights, such as the Ombudsmen,⁸⁸ the National Human

⁸⁰ Christopher Rootes, Environmental Movements, in David A Snow, Sarah Anne Soule & Hanspeter Kriesi, eds, *The Blackwell companion to social movements*, Blackwell companions to sociology (Malden, MA: Blackwell Pub, 2004), at 610.; In my case studies, I particularly focus on local environmental movements that struggle for a long period of time to defend their livelihoods and natural resources. I am not interested in a single protest or activity that happen and finish shortly., See, Nick Crossley, *Making sense of social movements* (Buckingham [UK] ; Philadelphia [PA]: Open University Press, 2002) at 1-7.

⁸¹ Naruemon Thabchumpon, in Duncan McCargo, ed, *Reforming Thai politics*, *supra* note 68 at 196.; Missingham, *supra* note 11 at 162.; Baker & Pasuk Phongpaichit, *supra* note 8 at 257.

⁸² Harding & Leyland, *supra* note 43 at 272.

⁸³ Constitution of the Kingdom of Thailand B.E. 2540 (1997) [Thailand], *supra* note 69, section 56 paragraph (1) states, “The right of a person to participate with the State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of the environment for usual consistent standard of living in the healthy environment shall be protected, as provided by law.”; See comments, Pawarit Lertdhamtewee et al., *Constitution and the Recognition and Protection of Basic Environmental Rights* (Bangkok: Constitutional Court Office, 2015) at 56.; Panuphan Chairat, *The Developing of Legal Principles for Protecting Thai Citizens’ Rights and Liberties in Administrative Cases related to Urban Planning, Building, Factories, and Nuisance*, (Bangkok: Winyuchon, 2006) at 57.

⁸⁴ Constitution of the Kingdom of Thailand B.E. 2540 (1997) [Thailand], *ibid* at section 59.

⁸⁵ *Ibid* at section 56 paragraph (1).

⁸⁶ *Ibid* at section 56 paragraph (3).

⁸⁷ *Ibid*, at section 56 paragraph 1.

⁸⁸ *Ibid* at section 196-198.

Rights Commission,⁸⁹ the Constitutional Court,⁹⁰ and the Administrative Court.⁹¹ The new environmental rights and institutions created receptive conditions for Thai people to mobilize legal tools to protect the environment and their communities from various development projects.

These conducive conditions are dramatically different from the restricted conditions in the past, which might contribute to the unpopularity of the legal approach for Thai environmental movements. Prior to 1997, people rarely employed legal tools such as litigation to solve environmental problems.⁹² For example, in the span of a decade researchers reported only two major environmental lawsuits in courts after promulgating the Enhancement and Conservation of National Environment Quality Act 1992, the primary environmental law.⁹³

However, after the adoption of the 1997 Constitution, changes occurred. Amongst many groups who took the 1997 constitution seriously and tried to take advantage of these new rights and institutions were communities affected or threatened by industrial or development projects. The 1997 constitution enabled many communities to challenge potentially harmful environmental projects by employing various legal tools to hold businesses and government agencies accountable to the constitution and laws.

Many communities started environmental movements immediately after adopting the 1997 Constitution and explicitly framed their campaigns as constitutional rights.⁹⁴ Most of these affected communities did not know each other, and their strategies differed.⁹⁵ However, the new constitution played an essential role in the movements. It created new opportunities for people to advance their causes and villagers and communities had constitutional

⁸⁹ Constitution of the Kingdom of Thailand B.E. 2540 (1997) [Thailand], *supra* note 69 at section 199-200.

⁹⁰ *Ibid* at section 255-270.

⁹¹ *Ibid* at section 276-280.

⁹² Wales & Levinthal, *supra* note 17, at 496.; Khettai Langkarpint, *Sustainable Development: Law, the Environment and Water Resources in Modern Thailand*, PhD. Dissertation (University of Warwick, 2000), at XI.

⁹³ Kititansasorchai & Tasneeyanond, *supra* note 12 at 33-34.

⁹⁴ Greenpeace Thailand, "Coal Power Plant Ban Krut Bo Nok Project Prachuap Khiri Khan", online: *Greenpeace Thailand* <<https://www.greenpeace.org/thailand/explore/resist/coal/coal-area/prachuap-khiri-khan>>; Thawilwadee Burikul, Access to Justice and Public Participation in Thailand, in Andrew Harding, ed, *Access to environmental justice: a comparative study*, London-leiden series on law, administration and development v. 11 (Leiden ; Boston: Martinus Nijhoff Publishers, 2007), at chapter 10.; Map Ta Phut Residents Protest Demanding Government to Address Pollution (in Thai), (June 12, 2008), accessed April 14, 2019, online: <<https://mgonline.com/local/detail/9510000068980>>; "Toxic Water, Tainted Justice: Thailand's Delays in Cleaning Up Klity Creek", online: <http://features.hrw.org/features/HRW_2014_reports/Toxic_Water_Tainted_Justice/index.html>.

⁹⁵ Strategies rank from protest, petition to government and independent organs, to file a lawsuit by framing their demand around the new constitutional rights.

provisions to support their campaigns. In addition, they had new independent organizations and courts to enforce new rights.⁹⁶

Citizens turn to legal tools more often when facing environmental problems. There is an increasing number of environmental lawsuits and complaints filed to the Administrative Courts and the National Human Rights Commission compared to other issues. In fact, after adopting the 1997 Constitution, the number of environmental lawsuits in the Administrative Court became a large part of court cases. The official reports of the Administrative Courts demonstrated the increased number of environmental lawsuits in the early years after the court opened in 2001.⁹⁷ The reports illustrated a considerable growth in environmental lawsuits from 1,779 cases in 2002⁹⁸ to 3,105 in 2003⁹⁹ and 3,886 in 2004.¹⁰⁰ Compared to other kinds of cases, from 2001 to 2006, environmental cases occupied 21 percent of Administrative Court cases.¹⁰¹ Environmental lawsuits have decreased in recent years, but have a noticeable presence in Court cases.¹⁰²

In addition, environmental and community rights complaints occupied a large share of the National Human Rights Commission files.¹⁰³ The National Human Rights Commission reported that in 2001 and 2002, environmental complaints were 21 and 18 percent of all complaints.¹⁰⁴ This number decreased to about ten percent in 2018 and 2019,¹⁰⁵ however

⁹⁶ Frank Munger, “Globalization, Investing in Law, and the Careers of Lawyers for Social Causes: Taking on Rights in Thailand” (2008) 53:4 N Y Law Sch Law Rev 745–804, at 778.; Harding & Leyland, *supra* note 43 at 248-249.

⁹⁷ The reports classified cases into eight groups. I consider and combine two groups as environmental cases because the nature of disputes directly links to environmental problems. The first group is lawsuit about land, common property, and natural resources. The second group is lawsuits about building regulation, condominium, land allocation, factories, environment, nuisance, and city planning.

⁹⁸ Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2002, (Office of Administrative Court: 2002), at 27.

⁹⁹ Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2003, (Office of Administrative Court: 2003), at 12-13.

¹⁰⁰ Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2004, (Office of Administrative Court: 2004), at 31.

¹⁰¹ Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2006, (Office of Administrative Court: 2006), at 29-30.

¹⁰² Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2017, (Office of Administrative Court: 2017), at 42; Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2018, (Office of Administrative Court: 2018), at 49; Administrative Court, the Administrative Court and the Office of Administrative Court Performance Report 2019, (Office of Administrative Court: 2019), at 47.

¹⁰³ The reports classifies complaints into 13 issues. I consider a right to participation in natural resources management and community rights in health and environmental issues as environmental complaints.

¹⁰⁴ Human Rights Commission, the National Human Rights Commission Performance Report 2002, (the Office of Human Rights Commission, 2002), at 31.

¹⁰⁵ Human Rights Commission, the National Human Rights Commission Performance Report 2019, (the Office of Human Rights Commission, 2019), at 61.

environmental cases still occupy a large part of the National Human Rights Commission's docket.

Consequently, the constitution and law that used to be the government's tools to govern and restrain people's rights have become critical tools for some communities and individuals to hold the government accountable for environmentally destructive projects that threaten their livelihood.¹⁰⁶ Moreover, some lawyers have taken the opportunity to work with communities to utilize the new legal platforms. They have supported communities, enabling them to employ the new constitutional rights, laws, and institutions in various ways. The lawyers who use their expertise to support communities and environmental groups in protecting the environment are public interest environmental lawyers (PIELs). Since adopting the 1997 Constitution, PIELs have played a crucial role in environmental rights movements by assisting aggrieved communities and individuals to transform abstract constitutional rights and laws into concrete legal strategies that people can employ to support their campaigns. These lawyers are new in Thai society yet their roles are increasingly important in environmental movements.

5. Public Interest Environmental Lawyers in Environmental Movements

Since the adoption of the 1997 Constitution, environmental rights have attracted the attention of legal academics. Some researchers have tried to understand these new rights by exploring their historical background and comparing them to environmental rights in other countries.¹⁰⁷ Furthermore, some scholars have studied these new rights by focusing on the role of courts in developing legal principles related to these rights.¹⁰⁸ These researchers assume that understanding the history of legal texts and court judgments would enable them to know how these new rights function in practice.

However, one cannot focus solely on rules or principles and assume that they would inevitably lead to change on the ground. Reformers must pay attention to change on multiple levels to create a better legal system.¹⁰⁹ As discussed earlier, despite the legal reform and the establishment of constitutions, the Thai legal system has neither effectively protected people's rights nor regulated the government's power. To make legal reform deliver what it formally expresses, one must go beyond analyzing legal texts and judicial

¹⁰⁶ Songkrant Pongboonjun, *Creating Rights from the Bottom Up: Litigation Against Pollution from Map Ta Phut Industrial Complex*, in the Second National Legal Social Science Academic Conference Proceeding Papers Title: *New Imaginative Thai Legal Landscape*, (Faculty of Law CMU: Chiang Mai, 2020), at 95.;

¹⁰⁷ See for example, Lertdhamtee et al., *supra* note 5; Khettai Langkarpin, *The Right to Healthy Environment in Constitution of Thailand: Comparing Law with Foreign Countries (in Thai)*, *Journal of the Faculty of Law, Naresuan University*, Year 10th Volume 1, (January-June 2017).

¹⁰⁸ See for example, Kanongnij Sribuaiam, *Health and Environmental Justice Process: Lesson from Map Ta Phut Case (in Thai)*, (Health System Research Institute, 2009), Songkrant Pongboonjun, *Margin of Judgement and Judicial Review in the Thai Administrative Court: A Comparison with the German Administrative Court and the European Court of Justice (in Thai)*, (Master of Law Thesis, Faculty of Law, Thammasat University, 2012), Lertdhamtee et al., *supra* note 5.

¹⁰⁹ Marc Galanter, "Why the Haves Come out Ahead: Speculations on the Limits of Legal Change Essay" (1974) 9:1 *Law & Soc'y Rev* 95-160 at 150.

doctrines. One must understand how citizens respond to the new law and institutions and how they deliberate and navigate this new opportunity.

After adopting the 1997 Constitution, outside state institutions, a new group of public interest environmental lawyers—who prioritize public interest work and use their legal skills to protect the environment and human health—gradually appeared in Thai society. They come from different backgrounds: some work in the human rights field, and others in the commercial area. They have shifted their focus to public interest environmental cases.¹¹⁰ These PIELs have played a significant role in assisting communities throughout the country to solve environmental problems by combining legal tools with other methods.¹¹¹ As one PIEL asserts,

[T]he establishment of the Constitution in 1997 [and] the trend toward development of administrative law...make it easier for the people to oversee the state's power by creating more channels for oversight that people's movements lack... Until now, the legal process has been employed to limit the people's rights. Now people have their own rights to use the legal process. The legal process is a channel for people to fight. And we think we can back them up on this part.¹¹²

This statement explains why PIELs came into environmental movements only after adopting the 1997 Constitution: it was difficult to constrain the state's power prior to that time. It also explains the role of PIELs after the promulgation of the "People Constitution": providing legal expertise to citizens for fulfilling their new rights. This phenomenon is interesting because Thailand has a long history of human rights violations by the state.¹¹³ As such, citizens invoking the law to challenge elites or the state is significant progress in Thai society¹¹⁴ and deserves close examination.

Understanding the role of PIELs and the impact of their legal strategies is crucial in the deliberation of how environmental rights work for at least two main reasons. First, government agencies and institutions designed to protect the environment or human health do not automatically apply general legal rights; the development and implementation of

¹¹⁰ PIELs define public interest environmental cases in two broad categories. First environmental cases that would impact the environment in general such as factories releasing toxins into a river. Second, environmental cases that would impact limited but a large number of people or communities such as large construction project that cause environmental problems in communities.

¹¹¹ Munger, "Globalization, Investing in Law, and the Careers of Lawyers for Social Causes" *supra* note 96 at 778.

¹¹² Cited in Frank Munger, Cause Lawyers and Other Signs of Progress: Three Thai Narratives, in Scott L Cummings, *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (New York, UNITED STATES: Cambridge University Press, 2011) at 261.

¹¹³ Haberkorn, *supra* note 56.; Khosananan, *supra* note 55.

¹¹⁴ Tyrell Haberkorn, *Revolution interrupted: farmers, students, law, and violence in northern Thailand*, New perspectives in Southeast Asian studies (Madison, WI: The University of Wisconsin Press, 2011) at 6.

environmental rights depends on people.¹¹⁵ PIELs play an essential role in assisting citizens in dealing with the law by providing them with the legal knowledge needed to address their problems. The situation is critical in Thailand, which has formally recognized environmental rights in constitutions, but has a weak culture respecting constitutional law.¹¹⁶ The constitutional change is likely to have minimal effect if changes at other levels do not accompany it. As Galanter argues, in the context of the United States, “[p]rograms of equalizing reform which focus on rule-change can be readily absorbed without any change in power relations.”¹¹⁷ Concerning environmental rights recognition in Thailand, citizens would face many difficulties using the law to protect the environment and create change without assistance from lawyers.

For example, in the Map Tha Put Industrial Pollution Case, residents filed a lawsuit asking the government to solve environmental problems in the Rayong Administrative Court in 2007 and won in 2009.¹¹⁸ This lawsuit happened after they had faced environmental problems for thirty years, the Enhancement and Conservation of National Environment Quality Act 1992 had been in force for fifteen years, and the 1997 Constitution was in force for ten years. Why did people who had faced environmental problems for more than 30 years stand up one day and take legal action against the government? To answer this question, one must understand that the law does not function automatically but needs citizens to invoke it. To support their claim, citizens need assistance, and PIELs help them utilize new laws and institutions.

Second, not solely state actors interpret the law. Non-state actors such as citizens and PIELs also interpret the law inside and outside state institutions.¹¹⁹ PIELs’ understanding of the law is crucial because PIELs will communicate with their clients, the general public, government agencies, and courts, and this message will influence the development of formal and informal understandings of legal doctrines.

A case of the right to a healthy environment is a good example. Thai constitutions have recognized the right to a healthy environment ambiguously.¹²⁰ However, some PIELs have

¹¹⁵ Munger, “Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide”, *supra* note 46 at 464.

¹¹⁶ Eoseewong, *supra* note 66.

¹¹⁷ Galanter, “Why the Haves Come out Ahead”, *supra* note at 149.

¹¹⁸ Rayong Administrative Court Judgment Red No. A 32/2552, dated 3rd March B.E. 2552 (2009), Charoen Dechkhoom and 16 claimant vs National Environmental Board (in Thai), online: <https://enlawfoundation.org/newweb/wp-content/uploads/mabtapud_pollutioncontrol_admincourt.pdf>.

¹¹⁹ See for example, Munger, “Globalization, Investing in Law, and the Careers of Lawyers for Social Causes”, *supra* note 96. at 779.; Rachel E Stern, “*Environmental Litigation in China*,” (Cambridge University Press: New York, 2013), at 84-88.; Pooja Parmar, *Indigeneity and legal pluralism in India: claims, histories, meanings, Cambridge studies in law and society*, (New York, NY: Cambridge University Press, 2015) at 195-200.

¹²⁰ Constitution of the Kingdom of Thailand B.E. 2540 (1997), *supra* note 69 section 56 paragraph (1) states, “The right of a person to participate with the State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and preservation of the quality of

interpreted and communicated that the 1997 Constitution enshrined environmental rights explicitly.¹²¹ PIELs' opinions on the right to a healthy environment are likely to influence their clients through their interactions. For instance, in the Klity Creek Lead Pollution Case, residents along Klity Creek filed a lawsuit against the Pollution Control Department (PCD) in the Administrative Court for violating their rights.¹²² These villagers claimed the government had failed to clean up the polluted creek. That failure violated their right to live in a healthy environment enshrined in section 56 of the 1997 Constitution.¹²³ In 2013, the Supreme Administrative Court decided in favor of the claimants. Although the court did not directly mention the right to a healthy environment in this judgment, the PIELs interpreted the Supreme Administrative Court judgment as a judicial acknowledgment of the right to a healthy environment in Thailand.¹²⁴ This example demonstrates the active role of the PIELs and the community in environmental rights development.

Another example of PIELs' role in introducing a new way of interpreting the law is the Map Ta Phut Industrial Pollution Case mentioned earlier. In this case, the Rayong Administrative Court ordered the National Environmental Board (NEB)—the most powerful national regulating body designed to protect the environment¹²⁵—to designate Map Ta Phut and the nearby areas to be the pollution control area to address environmental problems on March 3, 2009.¹²⁶ NEB appealed this judgment to the Supreme Administrative Court.¹²⁷ In 2017, the Supreme Administrative Court, for the first time, recognized that in interpreting and enforcing the Environmental Act, the state needs to take into account the precautionary principle adopted in the Rio Declaration on Environmental and

the environment for usual consistent standard of living in the healthy environment shall be protected, as provided by law.”

¹²¹ MRG online, *11th Year of 'Administrative Court' that Standing Firm Against Politic (in Thai)*, (14 March 2012), MGR, online: <<https://mgronline.com/specialscoop/detail/9550000033226>>.

¹²² Supreme Administrative Court Judgment Red No. A 753/2555 (2012), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department (in Thai), ENLAWTHAIFOUNDATION, online: <https://enlawfoundation.org/newweb/wp-content/uploads/klity_decision_supreme-administrative-court.pdf>.

¹²³ *Ibid* at 23.

¹²⁴ ENLAWTHAI Foundation, *Lessons Learned from Klity Case: Before Historic Judgment (in Thai)*, online: ENLAWTHAI Foundation - EnLAW <<https://enlawfoundation.org/newweb/?p=792>>; Human Rights Watch | 350 Fifth Avenue, 34th Floor | New York & NY 10118-3299 USA | t 12122904700, “*Klity Creek's neglected toxic lead legacy*”, (16 December 2014), online: *Human Rights Watch* <<https://www.hrw.org/news/2014/12/16/klity-creeks-neglected-toxic-lead-legacy>>.

¹²⁵ See the Enhancement and Conservation of National Environmental Quality Act B.E. 2535, section 12 and 13, Pollution Control Department, online: <<http://infofile.pcd.go.th/law/NEQA1992eng.pdf?CFID=93452&CFTOKEN=78351880>>.

¹²⁶ This power base on the Enhancement and Conservation of National Environmental Quality Act B.E. 2535, section 59, online: <<http://infofile.pcd.go.th/law/NEQA1992eng.pdf?CFID=93452&CFTOKEN=78351880>>.

¹²⁷ Ekapol Banlue, *10 Years Conclusion of Map Ta Phut Case: Pollution Control Zone and the Extremely Cost Paid by Society (in Thai)*, (18 October 2017), online: *THE STANDARD* <<https://thestandard.co/10-years-of-map-ta-phut-case/>>.

Development¹²⁸ and cannot claim absolute discretion when dealing with a critical environmental problem.¹²⁹ This creative interpretation of the Supreme Administrative Court followed the legal arguments initiated by PIELs.¹³⁰

Furthermore, outside state legal processes, the law is utilized by some PIELs in a way that may differ from state institutions and corporations. For example, instead of focusing their work on representing their clients in court like conventional lawyers, some PIELs have tried various ways to empower their clients to protect their rights by themselves. As a result, these educated citizens can assert their rights to solve environmental problems by themselves, such as speaking out to the public about environmental issues and rights violations¹³¹ or organizing demonstrations against destructive activities.¹³² These environmental rights movements, both inside and outside state institutions, play a significant role in shaping environmental rights development in Thailand.

Similar to other countries, in Thailand, environmental rights recognition leads to a gradual increase in the number of PIELs. PIELs make it possible for Thai citizens to gradually employ legal strategies to protect the environment rather than relying solely on protests and direct actions. It is interesting to understand the reasons behind this phenomenon and its consequences. To what extent do PIELs and aggrieved communities employ the new environmental rights and laws to protect the environment? The answers to these questions are essential to understanding the role of environmental law in advocating for a healthy environment and are the subject of this dissertation.

6. Structure of Dissertation

This chapter discusses the increasing environmental problems in Thailand that started with the introduction of the Economic and Social Development Plan in 1961. I pointed to the government's economic policies focusing on increasing private investment and the unpreparedness of environmental protection mechanisms as the primary cause of environmental problems. I also discussed how local communities around the country responded to threatening development projects, in which local communities adopted protests as the main approach to address environmental problems.

¹²⁸ The Supreme Administrative Court Order, No. A. 921/2560 (2017), Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 89.

¹²⁹ *Ibid* at 90.

¹³⁰ Rayong Administrative Court Judgment Red No. A 32/2552, *supra* note 118 at 12-13.

¹³¹ Pectcharath Kongvichienchep, *A discussion on the impacts of the Hin Son power plant project*, online: <<https://en.nationalhealth.or.th/a-discussion-on-the-impacts-of-the-hin-son-power-plant-project/>>. In this case, the residents carried out research to challenge the Environmental Impacts Assessment and has suspended the project for many years>.

¹³² See for example, THAIPUBLICA, *Tracking "Chevron" Announced to stop building Tasala deep-sea port, but has started the EHIA process for the permit (in Thai)*, (11 August 2013), THAIPUBLICA, online: <<https://thaipublica.org/2013/08/thasala-chevron-ehia-2/>>. In this case, residents could stop the development project without going to court.

In part two, I discussed how Thailand transformed its traditional legal system into a modern Civil Law system in which western countries played a critical role in the process. In this section, I also pointed to the attempts to use law reform and constitutions to change the relationship between people and the state from subjects to citizens. However, many military coups and the state's human rights violations have interrupted these attempts.

Part three discussed the promulgation of the 1997 Constitution as the turning point of rights development in Thailand. The public called this constitution the People's Constitution because of the broad public participation in the drafting processes, the recognition of various new rights, and the newly established regulating institutions. Although the coup leaders abolished this constitution in 2006, it became a model for the following constitutions, especially in rights recognition and regulating institutions.

Part four focused on recognizing environmental rights and new institutions in the 1997 Constitution that created the receptive conditions for environmental rights movements. Following the promulgation of the 1997 Constitution, many communities started to employ legal approaches in their advocacy to protect the environment. Law, legal strategies, and lawyers became crucial for environmental movements in this period.

I introduced PIELs as the new actors in Thailand's environmental rights movements in part five. I pointed to the 1997 Constitution as an essential factor contributing to the birth of PIELs. This part also discussed the unique position of PIELs, who used legal expertise to transform abstract legal concepts into concrete legal strategies to support local communities. I ended this section by pointing to the increasing roles of PIELs in environmental rights movements and why it is important to study this phenomenon.

This dissertation consists of seven chapters. Chapter 2 reviews the literature that informs and directs this research. I examine law and social change literature and emphasize how scholars understand the potential and constraints of law in creating social change, especially in environmental movements. In this chapter, I set out three framing impacts of legal strategies from reviewed literature: legal recognition, tangible benefits, and community empowerment.

Chapter 3 addresses research questions and methodology. This chapter lays out how I conduct this research. I introduce research questions and explain how I plan to answer these questions. I specifically focus on why I choose to study PIELs' works. This chapter describes how I select case studies, recruit participants and analyze data.

Chapter 4 provides the background of the six selected case studies. In this chapter, I highlight the nature of environmental problems and how they impact communities. This chapter documents various approaches communities adopt to address environmental issues, including legal tools. I explain how responsible parties react to community requests before communities turn to legal strategies. In the last part of each case study, I provide brief court case information that will be referred to in the following chapter.

Chapter 5 presents the findings of this research. This chapter applies frameworks from the reviewed literature on case studies. I present results in three categories: legal recognition, tangible benefits, and community empowerment. In this chapter, I emphasize the various impacts of legal strategies on environmental movements. First, I offer evidence to demonstrate how legal strategies lead to the affirmation and expansion of rights. Then, I present data to show how legal tools bring tangible benefits to aggrieved communities, such as financial rewards and environmental improvement. Finally, I move from legal recognition and concrete benefits to present evidence demonstrating that legal tools also contribute to community empowerment. This chapter also presents some limitations of legal strategies environmental movements experienced.

Chapter 6 is an analysis chapter where I analyze the findings in light of law and social change literature. In this chapter, I identify three important factors contributing to effective legal strategies: new legal opportunities, support from PIELs and NGOs, and community engagement. This chapter argues that without these three factors, it is unlikely that environmental movements can use legal tools to support their campaigns effectively. Data from the case studies show that new legal opportunities presented after the 1997 Constitution make it possible for environmental movements to mobilize legal tools to support their movements more powerfully. PIELs and NGOs are critical in helping communities to employ legal strategies. And, without community engagement, it is unlikely that environmental movements can utilize legal strategies to create change the way they did in this research. I end this chapter by arguing that environmental rights and environmental movements in Thailand empower each other, creating a virtuous cycle of empowerment.

Chapter 7 is a conclusion chapter. In this chapter, I revisit my research questions, key findings and arguments. I provide my observation on how my research can benefit stakeholders in Thailand, especially environmental movements. I also offer my thoughts on how this research can help readers better understand how law works in Thai society.

Chapter 2: Literature Review

1. Introduction

Why should scholars pay attention to law when they want to understand social change? One possible answer lies in the paradoxical relationship of law with society. On the one hand, citizens can employ the law to protect their rights and create a more egalitarian society.¹ On the other hand, states and elites can use the law to control and exploit citizens and resources, creating and sustaining inequality.² This chapter is interested in a similar theme and explores literature addressing the role of law in creating social change. It focuses on research that is oriented towards how to examine and evaluate the impacts of legal strategies on environmental rights movements.

Understanding the relationship between law and social change is crucial because law is one of the essential tools that people in many countries employ to alter undesirable social conditions.³ However, the roles of law are complicated and not always preferable for citizens; the government can also use law to constrain citizens' rights for the benefit of the elites who control the government.⁴ Seeing the varied ways law can contribute to social change helps scholars understand law's nuanced function in society. This understanding provides a framework to think about the role of law in fostering social change.

One appealing question about the roles of law is how we know whether law contributes to any change in society. This question leads to the area of research that is interested in the impact of law on society. This field of research explores various ways law contributes to

¹ Varun Gauri & Daniel M Brinks, *Courting social justice: judicial enforcement of social and economic rights in the developing world* (Cambridge University Press, 2008).; Michael Ignatieff, *The rights revolution*, Massey lectures series (Toronto: House of Anansi Press, 2000).; Charles R Epp, *The rights revolution: lawyers, activists, and supreme courts in comparative perspective* (Chicago: University of Chicago Press, 1998).; Helena Silverstein, *Unleashing Rights: Law, Meaning, and the Animal Rights Movement* (Ann Arbor, United States: University of Michigan Press, 1996).; Michael W McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, 1 edition ed (Chicago: University of Chicago Press, 1994).

² Jens Meierhenrich, *The remnants of the Rechtsstaat: an ethnography of Nazi law*, first edition ed (Oxford, United Kingdom: Oxford University Press, 2018).; Tom Ginsburg & Tamir Moustafa, eds, *Rule by law: the politics of courts in authoritarian regimes* (Cambridge [UK]; New York: Cambridge University Press, 2008).; Byron M Sheldrick, *Perils and possibilities: social activism and the law* (Halifax, N.S: Fernwood, 2004).; Ran Hirschl, *Towards juristocracy: the origins and consequences of the new constitutionalism* (Cambridge, Mass: Harvard University Press, 2004).; Mindie Lazarus-Black & Susan F Hirsch, eds, *Contested states: law, hegemony, and resistance*, *After the law* (New York: Routledge, 1994).; Marc Galanter, "Why the Haves Come out Ahead: Speculations on the Limits of Legal Change Essay" (1974) 9:1 *Law & Soc'y Rev* 95–160.

³ See for example, Malcolm Langford, ed, *Social rights jurisprudence: emerging trends in international and comparative law* (Cambridge, UK; New York: Cambridge University Press, 2008).; Varun Gauri & Daniel M Brinks, *supra* note 1.

⁴ Philippe Nonet & Philip Selznick, *Law and society in transition: toward responsive law* (New York: Octagon Books, 1978).; E P Thompson, *Whigs and hunters: the origin of the Black Act*, 1st American ed (New York: Pantheon Books, 1975).

social change by looking at the impacts of legal strategies both inside and outside state institutions. This literature examines the multifaceted effects of legal strategies by examining both the direct and indirect impacts on society. The research also studies the appropriate way to evaluate the effectiveness of legal strategies. Using the scholarship on the impact of law and legal strategies in society, this literature review aims to provide analytical frameworks for my research on the impact of legal strategies on the environmental rights movements in Thailand.

This chapter proceeds by first reviewing the broad debate on law and social change. Then, I explore two different approaches to studying law's impact that lead to different understandings of how law could bring about social change: a top-down and a bottom-up approach. Next, I review the literature on public interest environmental lawyers (PIELs), focusing on its definition and offer the revised version adopted in this research. The literature on PIELs provides an understanding of how written law, state institutions, and citizens interact and contribute to social change. Then, I review research that explores the impact of law on society. In this part, I explore two different ways of studying the direct and impacts of legal strategies. Then, I review the literature that addresses how to evaluate the outcome of legal strategies. This part focuses on the criteria used to identify the effectiveness of legal strategies.

Next, I summarize the analytical frameworks derived from the literature. There are three main analytical frameworks I adopted in this study. First, I consider both top-down and bottom-up approaches in this study. This means I pay attention to data from state institutions, such as laws, policies, and court orders, as well as data from informal institutions such as PIELs' files and participants' interviews. Second, I examine changes that created in courts and outside-of-court actions. In other words, I study multifaceted impacts of various legal strategies that are not limited to court cases. Third, I categorize impacts of legal strategies into three groups: legal recognition, tangible benefits and community empowerment and study them as indicators of changes in environmental movements. Finally, the conclusion is where I revisit the main points that I address in the paper.

2. Law and Social Change

Scholars interested in the role of law and social change have two different views on how law functions in social movements;⁵ some find law as a benefit for the movements,⁶ but

⁵ I define social movements as a temporal continued collective action taken by non-institutional groups to change existing unpreferable conditions for the better, see David A Snow et al, "Introduction" in *The Wiley Blackwell Companion to Social Movements* (John Wiley & Sons, Ltd, 2018) at 5.

⁶ See, for example, Stuart A Scheingold, *The Politics of Rights: Lawyers, Public Policy and Political Change* (Ann Arbor, UNITED STATES: University of Michigan Press, 2004); Michael McCann, *supra* note 1; Helena Silverstein, *supra* note 1; Charles R Epp, *supra* note 1; Boaventura de Sousa Santos, César A Rodríguez Garavito, eds, *Law and globalization from below: towards a cosmopolitan legality*, Cambridge studies in law and society (Cambridge, UK; New York: Cambridge University Press, 2005); Roberto Gargarella, et al, eds, *Courts and social transformation in new democracies: an institutional voice for the poor?* (Hampshire, England; Burlington, VT: Ashgate, 2006).

some see law as an ineffective tool for advancing the movements.⁷

For those who think citizens can turn to law and employ it to achieve their goals of changing unsatisfactory social conditions, law has the power to support the public interest, and citizens can use the law to create social change in many ways. For example, Epp argues that the victory of the civil rights movement in the United States in the late 1960s, which sustained the Supreme Court's attention and recognition of citizens' rights, was primarily possible because of the pressure from the well-organized movements, not from the judicial leadership.⁸ The victory of this movement was possible because of the existing support structure for legal mobilization, including "rights-advocacy organizations, rights-advocacy lawyers, and financial resources."⁹ This research recognizes the crucial role of law in creating social change but within specific social conditions.

McCann's study of the movement to challenge wage discrimination against women in the United States supports the same idea.¹⁰ However, instead of focusing on the United States Supreme Court, the author pays attention to how activists used law to support their movements. The author argues that although activists achieved fewer court victories, law played a crucial role in framing the equity struggle, and legal tactics gave the activists the power to pursue their goals.¹¹ McCann finds that citizens can use law in many ways to advance their cause: to build movements, force formal policy concessions, develop policy and implement it, and foster further struggle.¹² In other words, law can help citizens to bring about change in various arenas rather than just in state institutions.

In Brazil, Hoffmann and Bentes offer a similar argument.¹³ The researchers contend that the Brazilian courts uphold individuals' litigation to access medicine, enabling many Brazilians to get necessary public health services and improve public agencies' performance accordingly.¹⁴ This success is important in developing countries where many people cannot afford healthcare costs without state support.

⁷ See, for example, Gerald N. Rosenberg, *The hollow hope: Can court bring about social change?*, (The University of Chicago Press: Chicago and London, 2008); Janet E Halley & Wendy Brown, eds, *Left legalism / left critique* (Durham [NC]: Duke University Press, 2002); Alan Freeman, "Anti-discrimination Law: The View from 1989," in David Kairys, ed, *The Politics of Law: A Progressive Critique*, (New York: Pantheon Books, 1990); Gerald N Rosenberg, "Positivism, Interpretivism, and the Study of Law Review Section Symposium: Gauging the Impact of Law" (1996) 21 *Law & Soc Inquiry* 435-456, online: <<https://heinonline.org/HOL/P?h=hein.journals/lsociq21&i=453>> .

⁸ Epp, *supra* note 1 at 2.

⁹ *Ibid* at 3.

¹⁰ McCann, *supra* note 1.

¹¹ *Ibid* at 4.

¹² *Ibid* at 279-281.

¹³ Florian F. Hoffmann & Fernando R. N.M. Bentes, 3. Accountability for Social and Economic Rights in Brazil, in Varun Gauri & Daniel M Brinks, *supra* note 1.

¹⁴ *Ibid* at 134 and 144.

These studies suggest that citizens can, in varying degrees utilize law to address social problems and create social change to improve their living conditions.¹⁵

In contrast, many scholars have questioned the capacity of law to create social change. Scheingold disagrees with framing law as an indicator of social change; he argues that this idea leads scholars and activists to narrow the complexity of social problems and exaggerate the role of law and lawyers in creating social change.¹⁶

Hirsch agrees with Scheingold and argues that despite adopting a bill of rights in Israel, Canada, New Zealand, and South Africa, the quality of life of disadvantaged groups does not improve.¹⁷ The author points to various statistical data before and after the bill of rights adoption, such as the Gini coefficient, income distribution, access to education by marginal groups, and argues “the independent effect of constitutionalization on closing the substantive gaps in living conditions in South Africa and elsewhere has been, and will most likely continue to be, negligible.”¹⁸

In the same vein, in the study of the impact of the Supreme Court in the United States, Rosenberg finds that the Supreme Court has rarely produced significant social change.¹⁹ Three main constraints prevent courts from creating social change.²⁰ First is the nature of constitutional rights that recognizes some rights but excludes others. This exclusion prevents courts from hearing many significant claims brought by activists.²¹ Second, the lack of court independence from other branches of government makes it difficult for activists to achieve their goals. Activists often go to court when they face opposition from other branches of government; if courts are not independent of other branches, activists’ hopes are unlikely to be fulfilled.²² Finally, courts have no power to implement policies. In many cases, to implement court judgments, courts need help from the other branches of

¹⁵ It is implicit in this research that legal advocacy works well in a relatively strong/responsive state that operates according to the rule of law and a government that is responsive to the judiciary. These conditions, though, in a lower degree, exist in Thailand as well. Scholars describe the Thai state as a strong authoritarian state, but the Thai judiciary is relatively independent and respectful by the government and the general public. See, Christopher John Baker & Pasuk Phongpaichit, *A history of Thailand*, third edition ed (Port Melbourne, VIC, Australia: Cambridge University Press, 2014), at 282-284; Pornsakol Panikabutara Coorey, *Restraining arbitrary power in Thailand: the sociological approach in examining the rule of law* (Thesis, UNSW Sydney, 2010) [unpublished] at 308-309. Hence, it is possible that Thai people can use legal tools to create change as research demonstrates in other countries.

¹⁶ Scheingold, *supra* note 6 at 5.

¹⁷ Ran Hirschl, *supra* note 2 at 168.

¹⁸ *Ibid* at 162.

¹⁹ Rosenberg, *The Hollow Hope*, *supra* note 7 at 422.

²⁰ *Ibid* at 10-21.

²¹ *Ibid* at 10-13.

²² *Ibid* at 13-15.

government.²³ In Rosenberg’s words, “courts act as ‘fly-paper’ for social reformers who succumb to the ‘lure of litigation.’”²⁴

These studies point to the same conclusion—the ineffectiveness of law in creating social change—even in situations where citizens have the decisions from the highest court or bills of rights to back up their claims. Law reform that focuses on changing rules is ineffective in creating change if the reform does not include other changes. As Galanter puts it, “[r]ule-change is in itself likely to have little effect because the system is so constructed that change in the rule can be filtered out unless accompanied by changes at other levels.”²⁵ In other words, the law has its limitation in creating change in society.

Some scholars further argue that law does more harm than good for social movements. They contend that framing the movement under a legal strategy causes activists to sacrifice opportunities to have open-ended conversations about citizens’ political lives, and other far-reaching societal problems, and narrow the issues into constrained legal language that may not solve real problems.²⁶

According to these two strands of literature, the core disagreement is about the ability and limitation of law in creating social change. However, despite the lack of consensus, most scholars agree that the law can become a powerful tool to create change if people combine legal tools with other strategies rather than solely depend on the law. In the next section, I review the literature on two different approaches to the study of law—top-down and bottom-up—explaining why scholars hold different views on the role of law in creating social change and how to address this discrepancy.

3. Top-Down and Bottom-Up Approaches to the Study of Law

In this section, I start by reviewing literature that employs a top-down approach to the study of law. The top-down research approach explores how state institutions such as courts, legislature, and the government could create social change through the use of their powers. This literature explains why some scholars contend that law and legal strategies are unlikely to bring about social change. Then, I review research that adopts a bottom-up approach. The bottom-up research approach examines how non-state actors such as citizens, private lawyers, and non-governmental organizations think and utilize law to create change in society. This literature describes why some researchers insist that law can help people create change even when citizens get less support from state institutions. In conclusion, I analyze the strengths, weaknesses, identify the common ground of both approaches and contend that law can be used effectively as one tool in a larger social movement to effect change.

²³ Rosenberg, *The Hollow Hope*, *supra* note 7 at 10-21

²⁴ *Ibid* at 427.

²⁵ Marc Galanter, “Why the Haves Come out Ahead: Speculations on the Limits of Legal Change Essay” (1974) 9:1 *Law & Soc’y Rev* 95–160, at 149.

²⁶ Halley & Brown, *supra* note 7 at 19-20.

3.1 Top-Down Approach to the Study of Law

Scholars who employ a top-down approach to studying law tend to treat law or legal institutions as independent forces in given societies.²⁷ Researchers design their research by identifying specific laws, legal institutions, or judgments and examining their causal link with social phenomena. One common area of this kind of research is judicial impact studies, in which scholars investigate the crucial role of courts in creating change in given societies.²⁸

Researchers studying the role of courts in creating significant social change typically focus on the macro impacts of court cases on other parts of society. Although these studies usually pose a similar question—whether courts can cause significant effect on society—their answers are diverse.

Some scholars agree that courts can create a crucial change in society. For example, and most broadly, Spaeth observes that the Supreme Court in the United States has had more influence than other branches of government on framing and guiding American society.²⁹ This view is consistent with Neely, who argues that the courts in the United States have created laws in many fields that have dramatically impacted peoples' lives.³⁰

Outside of the United States, scholars find that courts in various countries play a significant role in advancing social rights³¹ and reforming bureaucracies.³² In one study of the Indian Supreme Court, for instance, Jain acknowledges the forceful impact of court judgments in Indian society, even though, in some cases, the author disagrees with the judgments.³³ In addition, Liebenberg, in a study of the South African courts, also points to various areas where court decisions contribute to improving the livelihood of marginalized groups.³⁴ In a study of the Brazilian courts, Piovesan finds that the court decision and legal strategies in the HIV-related medicine case lead to the change in law and state policy that benefits all

²⁷ Maurice Sunkin, Conceptual issues in researching the impact of judicial review on government bureaucracies, in M L M Hertogh & Simon Halliday, eds, *Judicial review and bureaucratic impact: international and interdisciplinary perspectives*, Cambridge studies in law and society (Cambridge, UK; New York: Cambridge University Press, 2004) at 65-66.

²⁸ Marc Hertogh & Simon Halliday, Introduction, in Marc Hertogh & Simon Halliday, eds, *ibid* at 1.

²⁹ Harold J Spaeth, *Supreme Court policy making: explanation and prediction* (San Francisco: W. H. Freeman, 1979) at 206.

³⁰ Richard Neely, *How courts govern America* (New Haven, Conn: Yale University Press, 1981) at 8-9.

³¹ See Langford, ed, *supra* note 3.

³² Malcolm M. Feeley, *Implementing Court Orders in the United States: Judges as Executives*, in Marc Hertogh, Simon Halliday, *supra* note 27.

³³ Nilanjana Jain, *Judicial Activism In India With Special Reference to the Quest* (Delhi : New Delhi: Kalpaz Publications, 2013) at 210.

³⁴ Sandra Liebenberg, *South Africa: Adjudicating Social Rights Under a Transformative Constitution*, in Langford, ed, *supra* note 3 at 101.

people living with HIV.³⁵ These studies illustrate how the court's judgements can create considerable change in societies.

However, some scholars insist that legal strategies and courts are unlikely to change society significantly. The belief that establishing rights through court cases can cause substantial social change is a misunderstanding because many barriers exist between court judgments and changes on the ground.³⁶

Rosenberg, in a study of the United States Supreme Court in the areas of civil rights, abortion and women's rights, the environment, reapportionment, criminal law, and same-sex marriage, supports this view when the author contends, "the U.S. courts can almost never be effective producers of significant social reform."³⁷ Also, another researcher who studies the impact of civil rights litigation in the United States, finds that the success of lawsuits of a few decades ago have not significantly changed the livelihood of most African-Americans.³⁸

Implementation of the court decisions is one of the key problems. Byrne and Hossain, in their study of court decisions on economic and social rights in Bangladesh, Nepal, Pakistan, and Sri Lanka, find that the essential court decisions are not adequately enforced or are not enforced at all.³⁹ Also, Rajagopal, in the study of the Indian Supreme Court in the Narmada Valley Dam case, finds that although the Supreme Court played an important role in delaying the project and contributing to an improvement in resettlement and rehabilitation policies, in the end, the Court allowed the project to continue.⁴⁰

Likewise, the study of Canada, Israel, New Zealand, and South Africa after adopting progressive social rights contends that the new bill of rights does not improve the living conditions of marginalized groups as promised.⁴¹

Scholars give at least four reasons why courts are unlikely to create significant social change. First, is the narrow nature of constitutional rights that enshrines certain rights but excludes others. As a result, courts would refuse to adjudicate many significant rights claims not recognized in constitutions or laws.⁴² Second, courts cannot create significant social change independently from the executive and legislative branches. The judiciary is

³⁵ Flavia Piovesan, *Brazil: Impact and Challenges of Social Rights in the Court*, in Langford, ed, *supra* note 3 at 189.

³⁶ Scheingold, *supra* note 6 at 5.

³⁷ Rosenberg, *Hollow Hope*, *supra* note 6 at 422.

³⁸ Freeman, *supra* note 6 at 128.

³⁹ Iain Byrne & Sara Hossain, *South Asia: Economic and Social Rights Case Law of Bangladesh, Nepal, Pakistan and Sri Lanka*, in Langford, ed, *supra* note 3 at 143.

⁴⁰ Balakrishnan Rajagopal, *Limits of law in counter-hegemonic globalization: the Indian Supreme Court and the Narmada Valley struggle*, in Santos & Garavito, eds, *supra* note 6 at 201-202.

⁴¹ Ran Hirschl, *supra* note 2 at chapter 5.

⁴² Rosenberg, *The Hollow Hope*, *supra* note 7 at 10-13.

likely to be helpful for social reformers if courts are independent of the other two branches.⁴³ Third, courts have no expertise to develop appropriate policies and power to implement complicated policies. Unlike the executive and legislative branches, judges are not prepared to deal with complicated social reform problems, and they have no power and resources to implement such complex social policies.⁴⁴ Finally, in the global south, the lack of support structure—rights-advocacy organization, rights-advocacy lawyers, and financial support—is the primary factor that prohibits courts from creating significant social change.⁴⁵

While these scholars examine the different areas of law and hold different positions about the roles of court and law in creating social change, they are similar in employing a top-down approach in their research. These studies examine the court or law reform from a macro perspective by examining court cases in particular jurisdictions or fields as the critical factor leading to change.⁴⁶ This approach expands the academic's understanding of law and social change but also attracts critiques.

Many scholars have challenged the narrow view of the top-down research approach that focuses on state institutions by pointing to its insufficiency in explaining social phenomena and suggesting a new approach to the study of law, a bottom-up approach,⁴⁷ which I address in the next section.

3.2 Bottom-Up Approach to the Study of Law

Generally, scholars who employ a bottom-up approach to studying law treat law as a contested idea; law can be a constraint and a supportive instrument for citizens.⁴⁸ In his study of the Black Act in eighteenth century England, Thompson explains how through citizens' struggles the law that the state invented to regulate and punish citizens evolved into a tool that constrains the state's abuse of power.⁴⁹ In this sense, the state does not exclusively construct law, but citizens play a crucial role in shaping the law. As Hunt puts

⁴³ *Ibid* at 13-15.

⁴⁴ *Ibid* at 15-21. See also, Scheingold, *supra* note 6 at chapter 8.; See also, Thomas and Saik'uz First Nation v. Rio Tinto Alcan Inc, 2022 BCSC 15. In this case, the judge was not able to reconcile section 35 aboriginal rights and common law rights.

⁴⁵ Epp, *supra* note 1 at 108-110.

⁴⁶ Hertogh & Halliday, *supra* note 27 at 2.

⁴⁷ See for example, Roger Cotterrell & Professor Austin D Sarat, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Milton, UNITED KINGDOM: Routledge, 2006) at chapter 2; Robert W. Gordon, *New developments in legal theory*, in David Kairys, ed, *The politics of law: a progressive critique* (New York: Pantheon Books, 1982).; Frank Munger, *Mapping law and society*, in Austin Sarat, *Crossing boundaries: traditions and transformations in law and society research* (Evanston, Ill.: Northwestern University Press : American Bar Foundation, 1998).

⁴⁸ See, for example, Nonet & Selznick, *supra* note 4.; Alan Hunt, *Explorations in law and society: towards a constitutive theory of law*, *After the law* (New York: Routledge, 1993); Santos & Garavito, eds, *supra* note 6; Sheldrick, *supra* note 2.

⁴⁹ Thompson, *supra* note 4 at 206-207.

it, “[r]ights take shape and are constituted by and through struggle.”⁵⁰ In other words, law or rights are not something out there to be discovered, but rather something that is created through ongoing social struggle.⁵¹ Following this line of reasoning, law is not something that the state can exclusively use to regulate citizens. Citizens, through their actions, are constructing the meaning of law to protect themselves from the state and corporate actors as well.

Generally, bottom-up research is interested in how citizens perceive, understand, and use law. This scholarship reflects a broad change in academic writings, which used to understand society as a fixed social arrangement, located separately from citizens, to focus on the role of citizens as active actors in society.⁵²

Ewick and Silbey, for instance, employ the bottom-up approach to examine how ordinary people in the United States use and think about law in their everyday lives.⁵³ The researchers find three different ways how people understand and use law.⁵⁴ First, some interviewees understand law as a separate sphere from their daily lives; for them, law is something that is relatively static and immune to change.⁵⁵ Second, some respondents perceive law as part of their daily lives; for them, law is similar to a game with pre-existing rules, but they can change the rules through practice.⁵⁶ Third, some interviewees perceive law as a powerful authority that prevents them from doing what they want; law is similar to a trap they try to escape.⁵⁷

The bottom-up research recognizes the critical role of citizens’ understanding of law that may differ from official state knowledge and practice. As Tully argues, “the civic understanding of the rule of law is of a network of relationships of negotiated practices. Law is a craft or practical art rather than a science.”⁵⁸ From this understanding, stakeholders can negotiate the meaning of the law, and the state does not have an absolute power to impose its meaning of law on them. In this sense, law is not static but dynamic and is open to negotiation.⁵⁹ The bottom-up academics argue that law and judicial review

⁵⁰ Hunt, *supra* note 48 at 247.

⁵¹ George C Pavlich, *Law & society redefined*, Themes in Canadian sociology (Don Mills, Ont: Oxford University Press, 2011) at 147-148.

⁵² Munger, *supra* note 47 at 41.

⁵³ Patricia Ewick & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life*, 1 edition ed (Chicago: University of Chicago Press, 1998).

⁵⁴ *Ibid* at 47.

⁵⁵ *Ibid*.

⁵⁶ *Ibid* at 48.

⁵⁷ *Ibid* at 47-49.

⁵⁸ James Tully, *Public philosophy in a new key*, Ideas in context, volume II: Imperialism and Civic Freedom (Cambridge, UK: Cambridge University Press, 2008) at 286.

⁵⁹ *Ibid* at 287.

cannot be understood as isolated events. Scholars must analyze the law in a specific context to understand its meaning.⁶⁰

Stern illustrates this point in the study of the *Zhang Changjian et al. v. Pingnan Rongping Chemical Plant* case in China. People perceived the small amount of compensation, about US\$63 per plaintiff, as a significant victory for environmental movements.⁶¹ The author gives four reasons to explain why this small compensation is considered a victory. First, this case happened in China, where citizens have limited political freedom to express their grievances.⁶² Second, villagers confronted both a big company and a local government that supported the company.⁶³ Third, despite threats from the local government, almost two thousand villagers participated in filing the lawsuit.⁶⁴ Fourth, even when villagers got remarkably little money, their stories got massive media coverage.⁶⁵ When one looks at this case from the bottom-up perspective, it makes sense to regard it as a success story rather than a failure.

In contrast to the top-down approach, bottom-up researchers focus on the relationship between law or courts and citizens as reciprocal interactions rather than a one-way affair. Silverstein observes, “[i]ncorporating legal meaning into thought and action involves reconstruction legal meaning. Hence, just as legal meaning constitutes individual and social identity, so too does individual and social identity constitute legal meaning.”⁶⁶ From this understanding, researchers pay attention to both sides of the relationship.

McCann, for instance, does not focus on court cases in his study of the women’s pay equity movement in the United States but highlights “how, when, and to what degree legal practices tend to be both [a resource and a constraint] at the same time.”⁶⁷ Instead of concentrating on how court cases create changes, the author examines the constitutive role of legal rights that changes groups’ relationships.⁶⁸

In the same vein, Dembowski focuses on the interaction between the government, judiciary, and civil society instead of court cases in the study of public interest environmental litigations in India.⁶⁹ The researcher finds that public interest litigation can

⁶⁰ Maurice Sunkin, *supra* note 27 at 65-67.

⁶¹ Rachel E Stern, *Environmental litigation in China a study in political ambivalence* (Cambridge [UK]; New York: Cambridge University Press, 2013).

⁶² *Ibid* at 219.

⁶³ *Ibid* at 75.

⁶⁴ *Ibid* at 76.

⁶⁵ *Ibid* at 77-78.

⁶⁶ Silverstein, *supra* not 1 at 8.

⁶⁷ McCann, *supra* note 1 at 12.

⁶⁸ *Ibid* at 7.

⁶⁹ Hans Dembowski, *Taking the state to court: public interest litigation and the public sphere in metropolitan India* (New Delhi ; Oxford: Oxford University Press, 2001).

contribute to social changes, and litigation, together with media coverage, can change bureaucrats' practices.⁷⁰

Sheldrick employs an activist's perspective rather than the state's perspective in studying social movement and legal activism in Canada and treats law and legal institutions as one available channel for social movements.⁷¹ Hence, the researcher argues that legal action must be put in the context of the broader social movement; court cases may not guarantee social change, but they can play an essential role in the campaign.⁷² Ceric also employs a bottom-up approach in the study of legal collectives, groups of primary non-lawyers who provide legal support to social movements in Canada and the United States.⁷³ The author finds, among other things, that through practice and reflection legal collectives question the legitimacy of existing state law and suggests new legal and political relation in the process.⁷⁴

Researchers who adopt the bottom-up approach have recognized the limitations of state institutions and understand that law is created, negotiated, and functions both inside and outside state institutions.⁷⁵ They understand that the role of law outside state institutions in some circumstances is more important than inside.⁷⁶ These researchers do not exclude formal legal institutions from their studies; they explore how citizens interact with formal and informal legal institutions in their social lives.⁷⁷

The top-down and bottom-up research examines the impact of law and legal strategies from different viewpoints. Consequently, researchers tend to focus on different aspects. In comparison, the top-down researchers focus on state institutions and on a specific moment in a social struggle such as when courts deliver a decision; the bottom-up researchers highlight how citizens interact with law in specific contexts over a longer period of time. These different approaches lead to different trends. On the one hand, the top-down approach often uses a macro change in societies as an indicator of social change; on the other hand, the bottom-up approach uses various micro-changes as an indicator of social change.

Despite the difference, one implicit agreement is that law and legal strategies have the potential to bring about social change in specific circumstances. This potential is likely to

⁷⁰ *Ibid* at 207-209.

⁷¹ *Ibid* at 14-15.

⁷² *Ibid* at 139.

⁷³ Irina Ceric, "Lawyering from Below: Activist Legal Support in Contemporary Canada and the US" (2021) York University, online: <https://www.academia.edu/82597709/Lawyering_from_Below_Activist_Legal_Support_in_Contemporary_Canada_and_the_US>.

⁷⁴ *Ibid* at 256.

⁷⁵ Munger, *supra* note 47 at 51.

⁷⁶ McCann, *supra* note 1 at 138.

⁷⁷ *Ibid* at 286.

be fulfilled when law and legal strategies work together with other tools in a conducive environment.

The strength of the top-down approach is its ability to explain the limitation of law or legal institutions in bringing social change when they function independently. However, its emphasis on the role of state institutions and disregarding non-state actors cannot explain change brought about by law on a smaller scale.

Compared to the top-down approach, the strength of the bottom-up approach is its focus on stakeholders' interaction rather than looking at individual actors or institutions. This approach highlights citizens' understanding of law and includes state viewpoints in its analysis. It reflects the multifaceted perspectives on the impacts of law on society that are often absent from top-down research. However, the shortcoming of the bottom-up approach is that its emphasis on change in specific cases could mislead researchers to overestimate the role of law in creating broad social change.

I consider both strengths and weaknesses of these two approaches and employ both top-down and bottom-up approaches in this research to complement each other. This research aims to understand the impacts of legal strategies on environmental rights movements, and these impacts can happen inside and outside state institutions. Building on both what other researchers have identified as benefits and criticisms to the two approaches, I conclude that the best way to grasp the whole picture of the impact of legal strategies for social movements is to combine these two approaches in the study. One way to gain entry into both top-down and bottom-up approaches is to focus on the intermediary professional practicing in a specific area of public interest law – PIELs – as a beginning locus of inquiry.

PIELs are important to study the impacts of law from the top-down and bottom-up because they work both in state institutions such as representatives in court and in communities as legal trainers or counsels in various venues. These roles allow them to see and act from multiple perspectives that is rarely present in other lawyering fields. The following section addresses literature about PIELs. This literature explores various ways PIELs use law to bring about social change. The literature examines how PIELs employ both the top-down and bottom-up approaches in advocating for a healthy environment and the results of these approaches.

4. Public Interest Environmental Lawyers

Public interest environmental lawyers are a subgroup of cause lawyers—a new term in the late twentieth century to describe lawyers who employ legal skills to advance social change.⁷⁸ The essence of cause lawyering is “about using legal skills to pursue ends and deals that transcend client service—be those ideals social, cultural, political, economic or, indeed, legal.”⁷⁹ Cause lawyers are different from conventional lawyers because

⁷⁸ Jens Meierhenrich, *supra* note 2 at 55.

⁷⁹ Stuart A Scheingold & Austin Sarat, *Something to believe in: politics, professionalism, and cause lawyering* (Stanford, Calif: Stanford Law and Politics, 2004) [*Something to believe in*] at 3.

conventional lawyers use expertise to solve clients' problems, whereas cause lawyers use legal skills to further social change.⁸⁰ In other words, while conventional lawyers try to address clients' problems that are brought to them, cause lawyers try to address social issues chosen in advance such as environmental problems.

Scholars describe PIELs in at least three different ways. The first version illustrates a public interest environmental lawyer who dedicates most of their time and energy to advocating for citizens, local communities, or non-government organizations to solve environmental problems.⁸¹ This definition highlights PIELs' passion for protecting the environment. As Bonnie illustrates, "[a]t the end of the day, as night falls, and most environmental lawyers head for bed, one small group of activists with law degrees lies awake worrying. How are they going to pursue their case to save a beach, a forest, or a child injured by toxic pollution who is subsisting on an economic shoestring?"⁸²

The second version defines PIELs as lawyers whose highest goal is to transform the unjust social structure into an equitable society.⁸³ PIELs' role is not only addressing specific environmental problems but to change social structure to better serve people. This definition comes from South Asia, where people have not benefited from constitutional rights and a prosperous society.⁸⁴ As Gomez argues, the PIELs' ultimate goal goes beyond solving specific environmental problems to transform the social and economic structure of the countries.⁸⁵

Finally, the last version defines PIELs as lawyers whose goal is to use legal skills to protect and promote the environment and human health.⁸⁶ This definition comes from the Canadian context, where environmental law is relatively advanced.⁸⁷ It focuses on PIELs' expertise in solving environmental and human health problems. According to Curran, the

⁸⁰ Although the term cause lawyer is new, but the story about a lawyer who uses legal skill to fostering social change is not new. At least, in Nazi era in Germany, there was lawyer whose practices are fitted under this term. See Meierhenrich, *supra* note 2 at 55.

⁸¹ John E Bonine, "Public Interest Environmental Lawyers - Global Examples and Personal Reflections Environmental Citizen Suits at Thirtysomething: A Celebration & Summit: Part II" (2003) 10 Widener L Rev 451-474, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlsj10&i=467>>.

⁸² *Ibid* at 452.

⁸³ Mario Gomez, *In the public interest: Essays on public interest litigation and participatory justice*, 1st edition ed (Colombo, Sri Lanka: Legal Aid Centre, Faculty of Law, University of Colombo, 1993).

⁸⁴ Parvez Hassan & Azim Azfar, "Securing Environmental Rights through Public Interest Litigation in South Asia Comment" (2003) 22 Va Env'tl LJ 215-248, online: <<https://heinonline.org/HOL/P?h=hein.journals/velj22&i=223>> at 246.

⁸⁵ Gomez, *supra* note 83 at 7.

⁸⁶ Deborah Curran, "Reflections on Public Interest Environmental Lawyering in British Columbia" (2009) 67 Advocate (Vancouver) 183-190, online: <<https://heinonline.org/HOL/P?h=hein.barjournals/advvba0068&i=189>>. at 184.

⁸⁷ D Paul Emond, "Are We There Yet - Reflections on the Success of the Environment Law Movement in Ontario" (2008) 46:2 Osgoode Hall LJ 219-242, online: <<https://heinonline.org/HOL/P?h=hein.journals/ohlj46&i=229>>.

PIELs' goal is to provide legal advice or represent clients in activities that sustain the environment and human health.⁸⁸

Considering all definitions, I propose a fourth definition for use in this research: a lawyer who prioritizes the public interest and exercises legal skills to sustain and foster the environment and human health.

5. The Impacts of Legal Strategies

The debate among scholars on studying the impacts of law and legal strategies on society is ongoing.⁸⁹ In this section, I discuss the impacts of legal strategies, defined as plans to achieve specific goals that embed legal components as part of the plans,⁹⁰ addressing what kinds of impacts researchers include when studying the impact of law or legal strategies.

This section applies the top-down and bottom-up approaches to analyze the impacts of legal strategies. It shows how lawyers and various groups employ both the top-down and bottom-up approaches when they employ legal tools. This section demonstrates how people utilize legal strategies and how these legal strategies contribute to social change. The literature shows various ways law and legal strategies can bring about social change. I proceed with this section by reviewing the literature on the direct impacts of legal strategies. Then, I move to discuss the indirect impacts. Upon reviewing the literature, four aspects of indirect impacts are most relevant to the Thai context: raising public awareness, supporting movements, increasing bargaining power, and changing legal consciousness. Hence, I highlight these four aspects.

5.1 Direct Impacts

Scholars identify direct and indirect impacts as two different forms of impacts derived from legal strategies. Researchers interested in the direct impact tend to explore causation between legal strategies and changes in given targeted groups.⁹¹ In other words, they are interested in the immediate effect of legal strategies on the behaviors of a targeted population. These scholars focus their study on state actors and state institutions' roles in

⁸⁸ Curran, *supra* note 86 at 184.

⁸⁹ See, for example, David A Schultz, ed, *Leveraging the law: using the courts to achieve social change*, Teaching texts in law and politics v. 3 (New York: P. Lang, 1998). This book debate on how to measure the impacts of law and litigation.

⁹⁰ Lynn M LoPucki & Walter O Weyrauch, "A Theory of Legal Strategy" (2000) 49:6 Duke Law Journal 1405–1486, online: <<https://www.jstor.org/stable/1373051>> at 1428. In this article the authors do not define legal strategy but define strategy as a plan for action intended to accomplish some goal.; See also, Steven Vago, *Social change*, 4th ed. ed (Upper Saddle River, N.J: Prentice Hall, 1999), at 333, where the author defines strategies as plans of action or policy. I adapt their strategy's definitions and apply specific to legal arena. Although legal strategies include more than litigation, this research primarily looking at the effectiveness of litigation.

⁹¹ See for example Joel F Handler, *Social movements and the legal system: a theory of law reform and social change*, Institute for Research on Poverty monograph series (New York: Academic Press, 1978) [Social movements and the legal system]; Rosenberg, The Hallow Hope, *supra* note 7; Hertough & Halliday, *supra* note 26.

creating change. In this sense, scholars interested in the direct impact tend to employ the top-down approach in their research.

For example, Rosenberg employs a direct impact idea when he examines the relationship between the United States Supreme Court judgments and substantive outcomes following court orders; he finds no link between the Supreme Court judgments and significant changes.⁹²

In the same vein, Feeley applies a direct impact concept in the study of prison reform where the courts play a significant role in prison reform by employing innovative techniques.⁹³ These techniques include engaging correction officials in the process, requiring correction officials to provide planning documents and compliance reports, and appointing experts to monitor compliance; together, these help courts overcome enforcement barriers.⁹⁴

Another instance is Berger's research on social and economic rights in post-apartheid South Africa; the researcher examines the gap between health and education rights enshrined in the new Constitution.⁹⁵ This research finds that solely winning court cases is unlikely to solve plaintiffs' real-life problems.⁹⁶

Among scholars focused on the direct impacts of legal strategies, there are different kinds of effects that researchers investigate. According to Silverstein, scholars interested in the direct impact of litigation look at four aspects of court cases. First, does litigation help or increase the number of citizens accessing courts? Do litigants win? Does litigation lead to new and beneficial precedent? Finally, are court orders implemented?⁹⁷ Their findings are mixed. Some find that legal strategies contribute to direct impacts; some do not find a connection.

Some research suggests that litigation contributes to considerable direct impacts on environmental rights globally. Researchers support their claims by indicating court judgments that have been delivered all over the world.⁹⁸ For example, Boyd explains the

⁹² Rosenberg, *The Hollow Hope*, *supra* note 7 at 35.

⁹³ Feeley, *supra* note 32 at 224.

⁹⁴ *Ibid* at 247-248.

⁹⁵ Jonathan Berger, *Litigating for Social Justice in Post-Apartheid South Africa: A Focus on Health and Education*, in Gauri & M Brinks, eds, *supra* note 1 at chapter 2.

⁹⁶ *Ibid* at 76-77.

⁹⁷ Silverstien, *supra* note 1 at 127-130.

⁹⁸ See, Oliver A. Houck, *Taking Back Eden: Eight Environmental Cases that Changed the World*, (Island Press: Washington/Covelo/London, 2010), for high-profile environmental case victories around the world that, in the author view, contribute to the progress of environmental rights; Jona Razzaque, *Public Interest Environmental Litigation in India, Pakistan, and Bangladesh*, (Kluwer Law International: Hague, 2004), for important environmental cases in India, Pakistan and Bangladesh; James R. May & Erin Daly, *Global Environmental Constitutionalism*, (Cambridge University Press: New York, 2016), to understand the trend of environmental constitutionalism that has expanded all over the world and also provides interesting court cases that contribute to strengthen environmental rights.

phenomenon that courts have enforced a right to a healthy environment through their judgments in many countries as positive impacts of environmental rights movements.⁹⁹

Likewise, Faure and Raja argue in the study of public interest litigation in India that winning court cases positively affects the environment by reducing environmental pollution.¹⁰⁰ In the same way, a study of Thai administrative courts finds that court case victories bring about positive impacts in Thai society.¹⁰¹ The researchers argue that some administrative environmental court judgments benefit people and improve long-term policies.¹⁰² In addition, in the study of public interest environmental litigation in China, Liu observes that the litigations led to successful enforcement in all three case studies that otherwise would not have happened.¹⁰³

Similarly, May and Daly argue in their study of constitutional environmental rights worldwide that in countries where courts are cautious about their judgments, like the Philippines, positive impacts are still noticeable. For instance, the Minors Oposa case victory forced the government to withdraw logging licenses,¹⁰⁴ and the Manila Bay case victory compelled the government to clean up Manila Bay.¹⁰⁵

However, some researchers hold that litigation is unlikely to impact the environment directly. For instance, Kalra argues that litigation could not solve complicated air pollution in Delhi because the court faced many obstacles in enforcing its judgment.¹⁰⁶ The researcher asserts that to make court victory work, activists need to think about the role of the market in fulfilling court judgments and how to increase participation and public awareness in their litigation.¹⁰⁷

⁹⁹ See, David R Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, 2011), [*The Environmental Rights Revolution*] at chapter 11.

¹⁰⁰ Michael G Faure & A V Raja, “Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables” (2010) 21:2 *Fordham Envtl L Rev* 239–294, online: <<https://heinonline.org/HOL/P?h=hein.journals/frdmev21&i=243>> [*Effectiveness of Environmental Public Interest Litigation in India*] at 288.

¹⁰¹ Frank W Munger, “An Alternative Path to Rule of Law: Thailand’s Twenty-First Century Administrative Courts” (2019) 26 *Ind J Global Legal Stud* 133–172, online: <<https://heinonline.org/HOL/P?h=hein.journals/ijgls26&i=143>> [An Alternative Path to Rule of Law]

¹⁰² *Ibid* at 166.

¹⁰³ Jingjing Liu, “Environmental Justice with Chinese Characteristics: Recent Developments in Using Environmental Public Interest Litigation to Strengthen Access to Environmental Justice Green Justice for All: International and Comparative Dimensions of Environmental Justice” (2011) 7 *Fla A & M U L Rev* 229–260, online: <<https://heinonline.org/HOL/P?h=hein.journals/floramulr7&i=247>> [*Environmental Justice with Chinese Characteristics*] at 259.

¹⁰⁴ Houck, *supra* note 98 at 55.

¹⁰⁵ May & Daly, *supra* note 98 at 170-171.

¹⁰⁶ Harsimran Kalra, *Courting Social Change - Lessons from the CNG Case in India*, in Giulia Jacovella, “International Law and the (De)Politicisation of Climate Change and Migration: Lessons from the Pacific” (2015) 2:1 *SOAS LJ* 76.

¹⁰⁷ *Ibid* at 159.

Similarly, in the United States context, Rosenberg argues that environmental litigation failed to establish a constitutional right to a healthy environment.¹⁰⁸ The results were mixed with positive and no impacts in enforcing environmental statutes.¹⁰⁹ Nevertheless, the positive impact cases forced administrative agencies to comply with procedural law, but courts rarely decided on the merit of cases.¹¹⁰ Consequently, court judgments had little impact on public policy.¹¹¹ In addition, Stern finds that two successful high-profile court cases in the study of environmental litigation in China demonstrate the limitation of direct positive impacts; courts provided only small compensation for victims of environmentally harmful activities.¹¹²

The research reviewed above illustrates one common characteristic; most researchers consider both court case victory and their implementation to assess the direct impacts of litigation. They rarely perceived the winning court cases by themselves as a positive impact, but court case victories must lead to some kinds of changes that benefit clients or the public at large. For instance, when Faure and Raja assess the success of the air pollution litigation in Delhi, their focus is not on the content of court judgments, but on how the enforcement of court cases contributes to reducing air pollution.¹¹³ In the same vein, Rosenberg assesses environmental litigation in the United States by examining both its ability to establish new precedence and how the judgments can change public policies.¹¹⁴ Stern assesses environmental litigation in China by examining what courts provide to compensate and solve environmental problems along the same lines. In other words, the researchers do not assume that winning court cases is the same thing as environmental improvement.¹¹⁵

In addition to examining litigation's direct impacts, research also explores other kinds of legal strategies to understand their direct impact. This research studies various approaches such as negotiations, structuring agreements, engaging in policies or law reform,¹¹⁶ establishing clinical programs, training legal and non-legal practitioners, networking with other lawyers and non-lawyers for mutual support, educating the general public, and

¹⁰⁸ Rosenberg, *supra* note 7 at 278.

¹⁰⁹ *Ibid* at 279.

¹¹⁰ *Ibid*.

¹¹¹ W A Bogart, *Consequences: the impact of law and its complexity* (Toronto: University of Toronto Press, 2002) [*Consequences*] at 240.

¹¹² Stern, *supra* note 61 at 95.

¹¹³ Faure & Raja, *supra* note 100.

¹¹⁴ Rosenberg, *supra* note 7 at chapter 10.

¹¹⁵ Stern, *supra* note 61 at chapter 3.

¹¹⁶ Scott L Cummings, "Empirical Studies of Law and Social Change: What Is the Field - What Are the Questions Colloquium" (2013) 2013 Wis L Rev 171-204, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlr2013&i=175>> [*Empirical Studies of Law and Social Change*] at 185.

engaging with international communities to support national work.¹¹⁷ As a result, researchers find direct impacts in many forms.

For instance, Kravchenko finds that PIELs played an essential role in the processes of international environmental law creation in Eastern Europe.¹¹⁸ The researcher argues that PIELs significantly influenced many European parliaments to ratify the Aarhus Convention by negotiating and advocating.¹¹⁹ This international convention, in turn, led many countries to establish environmental rights that enabled citizens and non-governmental organizations (NGOs) to protect the environment and human health.¹²⁰

PIELs also engage in national law or policy reform. As an illustration, PIELs at the Environmental Law Centre of the University of Victoria have engaged in various environmental law reforms in Canada.¹²¹ One of their works on regulating single-use plastics influenced the Canadian government to propose a policy to ban single-use plastics;¹²² however, Canada does not have a law banning single-use plastic. In the same vein, Boyd finds that some PIELs employ law reform strategies to help citizens to protect the environment.¹²³ He explains that PIELs from the Community Environmental Legal Defense Fund in the United States assist many communities in passing local ordinances that recognize the rights of nature and prohibit harmful activities.¹²⁴ However, corporations have brought many lawsuits to attack these ordinances and won many court cases that allowed corporations to continue their business in these communities.¹²⁵

¹¹⁷ Svitlana Kravchenko, “*Citizen Enforcement of Environmental Law in Eastern Europe Environmental Citizen Suits at Thirty something: A Celebration & Summit: Part II*” (2003) 10:2 *Widener L Rev* 475–502, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlsj10&i=491>> [*Citizen Enforcement of Environmental Law in Eastern Europe Environmental Citizen Suits at Thirty something*].

¹¹⁸ *Ibid* at 497-499.

¹¹⁹ *Ibid* at 498.

¹²⁰ *Ibid* at 499.

¹²¹ These law reform projects include Pursuing a National Plastics Strategy, Drafting a water policy for an Indigenous Nation, Reviewing options to protect land in a Biosphere Reserve, Getting Pharmaceuticals and other chemical out of the Salish Sea, Banning single-use plastics, Regulating pesticide spraying among a major salmon river, and proposing for province-wide campaign on Mining Law Reform to name as a few. See “2018-19 Annual Report – Environmental Law Centre”, online: <<http://www.elc.UVic.ca/publications/2018-19-annual-report/?hilite=%27annual%27%2C%27report%27>> at 8. There are many ELC follow this law reform model such as Transnational Environmental Law and Policy Clinic at the University of Windsor in Canada, online: <<http://www.uwindsor.ca/law/1587/transnational-environmental-law-clinic>>, and Emmett Environmental Law and Policy Clinic at Harvard University in the US, online: <<https://hls.harvard.edu/dept/clinical/clinics/emmett-environmental-law-and-policy-clinic/>>.

¹²² Jack Knox, “Jack Knox: PM’s push for plastics ban rooted at UVic”, online: *Times Colonist* <<https://www.timescolonist.com/news/local/jack-knox-pm-s-push-for-plastics-ban-rooted-at-UVic-1.23853922>>. And <https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-228/order-notice/page-11>.

¹²³ David R Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (Toronto, ON: ECW Press, 2017) [*The Rights of Nature*].

¹²⁴ *Ibid* at 114.

¹²⁵ *Ibid* at 128-129.

PIELs also support communities on a smaller scale, but in an engaging way. For example, Cummings finds that PIELs use their skills to create a legal framework for community organizations and promote community participation; with a potential lawsuit in the background, PIELs are able to convince a developer in downtown Los Angeles to cooperate with community and concede to its requests without filing a lawsuit.¹²⁶ Along the same line, in the study of PIELs and social movements in the United States, Marshall finds that PIELs perceive themselves as part of the movements and represent citizens both in courts and administrative procedures.¹²⁷ The authors argue that legal tools and social movements influenced the Nuclear Regulatory Commission, for the first time, to deny issuing a license to Louisiana Energy Services.¹²⁸

In addition, in the study of public interest environmental litigation in India, Dembowski explains that besides representing citizens in courts, PIELs also play a consultant role by providing legal advice to affected citizens and encouraging them to go to court by themselves.¹²⁹ As a result, some educated citizens took PIELs' advice and went to courts by themselves where many gained positive results from the litigation.¹³⁰ In the same way, Lin finds PIELs play an innovative role in helping citizens access environmental information and disseminate it to interested communities and NGOs in the study of the environmental legal clinic in China.¹³¹ Then PIELs, local communities, and NGOs worked together and successfully forced administrative agencies to solve environmental problems in Fuxian Lake.¹³²

According to the reviewed literature, when researchers broaden their inquiries to legal strategies beyond litigation, they find many ways legal strategies directly impact society. This research does not suggest that researchers should exclude litigation from their inquiry but rather include other forms of legal strategies in their research.

However, focusing solely on the direct impacts of legal strategies does not provide a comprehensive understanding of the impacts of legal strategies. The following section will focus on the indirect impacts of legal strategies.

¹²⁶ Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in Austin Sarat & Stuart A. Scheingold, eds, "Cause Lawyers and Social Movements", (Stanford University Press: Stanford, 2006) 326.

¹²⁷ Anna-Maria Marshall, *Social Movement Strategies and the Participatory Potential of Litigation*, in Austin Sarat & Stuart A. Scheingold, eds, "Cause Lawyers and Social Movements", (Stanford University Press: Stanford, 2006).

¹²⁸ *Ibid* at 175.

¹²⁹ Dembowski, *supra* note 69 at 176.

¹³⁰ *Ibid*.

¹³¹ Yanmei Lin, "Environmental and Biodiversity Law Clinic at Southwest Forestry University: A New Environmental Law Clinic Model in China Articles Section I: Part One of a Two Part Series: Innovating the Environmental Law Classroom" (2016) 18 Vt J Envtl L 18-36, online: <<https://heinonline.org/HOL/P?h=hein.journals/vermen118&i=22>> [Environmental and Biodiversity Law Clinic at Southwest Forestry University] at 26.

¹³² *Ibid*.

5.2 Indirect Impacts

Another way to study the consequence of legal strategies is to identify their indirect impacts. Scholars study the indirect impacts of legal strategies by examining their messages and implications.¹³³ As Galanter argues about the law's effects, "[i]t affects us primarily through the communication of symbols—by providing threats, promises, models, persuasion, legitimacy, stigma, and so on."¹³⁴ Hence, scholars interested in indirect impacts tend to examine the effects of legal strategies in a broader sense including people's understanding or behaviours resulting from legal strategies' messages rather than focusing on immediate changes.

To illustrate, in law reform movements, the direct impact is to create a new law. On the other hand, the indirect impact may be the empowerment citizens receive from engaging in law reform processes. While researchers interested in the direct impacts may point to a new law as a direct impact, researchers interested in indirect impacts would further examine how engaging in the law reform processes empowered citizens during and after the law reform movements.

Silverstein examines various indirect impacts of litigation in the study of animal rights movements in the United States that change the researcher's perspective on litigation.¹³⁵ These impacts include educating the public, building the movement, and influencing other social movements.¹³⁶ In other words, there is sound evidence of indirect impacts on the society that the direct impact researcher often overlooks.

Another example is McCann's research on pay equity reform in the United States. The researcher explores many aspects of the indirect impacts of law and litigation in the movement.¹³⁷ In this research, the author argues that beyond compliance, court cases can contribute to the movement in many ways which most scholars who are interested solely in compliance disregard.¹³⁸ These indirect impacts include strengthening the movements, compelling concession, leveraging implementation, and creating rights consciousness.¹³⁹

¹³³ *Ibid* at 161-162.

¹³⁴ Marc Galanter, *The Radiating Effects of Courts*, in Keith O Boyum & Lynn M Mather, eds, *Empirical theories about courts*, Longman professional studies in law and public policy (New York ; London: Longman, 1983) at 127.

¹³⁵ Silverstein, *supra* note 1 at 183-184.

¹³⁶ *Ibid* at 163.

¹³⁷ McCann, *supra* note 1.

¹³⁸ *Ibid* at 290.

¹³⁹ *Ibid* at 11.

Building on ideas from Silverstein¹⁴⁰ and McCann,¹⁴¹ this review focuses on the indirect impacts of legal strategies in four main areas: raising public awareness, supporting movements, increasing bargaining power, and changing legal consciousness.¹⁴² These four categories are relevant to the Thai context because the Thai government has historically utilized law to constrain rather than protect and fulfill citizens' rights.¹⁴³ Understanding how citizens think and utilize law to protect the environment is crucial to comprehending how Thai people have navigated their movements in the constrained political environment.¹⁴⁴ In this context, citizens' empowerment identified in these four indirect impacts is significant to elaborate on how legal strategies change Thai society.

5.2.1 Raising Public Awareness

Among various goals, raising public awareness by educating citizens is critical for social movements. Social movement activists include numerous public awareness activities in their legal strategies to increase support from both constituents and the general public.¹⁴⁵ They realize that most law reform activities are newsworthy, and they should incorporate publicity and educational aspects in their legal activities.¹⁴⁶ Scholars argue that legal strategies play a crucial role in increasing people's understanding of environmental problems,¹⁴⁷ shaming responsible public officials,¹⁴⁸ and changing government officials' behaviors.¹⁴⁹

To illustrate, Marshall observes that legal strategies play a critical role in drawing public attention to the transparency of the factory permitting process in the study of the

¹⁴⁰ Silverstein, *supra* note 1.

¹⁴¹ McCann, *supra* note 1.

¹⁴² The classification of impacts into four categories is for the purpose of better explanation, and it is not exclusive. There is often the overlap: one legal strategy can create impacts on more than one aspect. For example, legal strategies may inform citizens about ongoing environmental problems in their communities. These informed citizens may get involved in ongoing environmental movements that increase pressure on polluters or responsible public officials to take actions to solve environmental problems. In this example, the indirect impacts are three folds: education, supporting the movement, and increase movements' bargaining power.

¹⁴³ *Thongchai Winichakul, Full speech, The Legal Privileged State and The Royalist Rule of Law: The genealogy of Thai-style Rule by Law (in Thai)*, waymagazine.org | WAY", online: <<https://waymagazine.org/thongchai-winichakul-rule-by-law/>>, at 166.

¹⁴⁴ Frank Munger, "Globalization, Investing in Law, and the Careers of Lawyers for Social Causes: Taking on Rights in Thailand" (2008) 53:4 N Y Law Sch Law Rev 745–80 at 799.

¹⁴⁵ Silverstein, *supra* note 1 at 163.

¹⁴⁶ Handler, *supra* note 91 at 214.

¹⁴⁷ Lin, *supra* note 131.

¹⁴⁸ Marshall, *supra* note 127.

¹⁴⁹ Dembowski, *supra* note 69.

environmental justice movements in the United States.¹⁵⁰ In this study, activists and PIELs use evidence found during the discovery phase of a legal proceeding to educate the public about the tricky process of locating a plastic manufacturing factory in the area of impoverished African-American communities.¹⁵¹ PIELs publicized evidence demonstrating the problematic relationship between the plant and the Louisiana Department of Environment (LDE); the plant's staff promised to help LDE create the best record to justify the plant's location.¹⁵² This discovery raised public awareness and caused severe adverse publicity for many state actors responsible for licensing this project.¹⁵³

In the same way, Lin explains how legal strategies help raise people's awareness about environmental problems and lead to protecting the environment in the study of an environmental legal clinic in China.¹⁵⁴ In pushing public officials to enforce environmental laws to protect Fuxian Lake from pollution, PIELs started by educating local NGOs and residents about environmental problems around Fuxian Lake.¹⁵⁵ After learning about environmental problems, NGOs, residents, and PIELs became partners, and they worked together to solve the environmental issues.¹⁵⁶ Their cooperation finally forced the government to enforce environmental laws to address environmental problems, such as fining polluters, ordering a dozen factories to stop illegal activities, and taking comprehensive measures to assure no further leakage into the lake.¹⁵⁷

Other research in China confirms that legal strategies could raise public awareness and educate citizens about environmental problems and laws.¹⁵⁸ Discussing the impact of one successful high-profile case, Stern observes, "[n]ational headlines brought attention to rural environmental problems, discussed the burden of proof, and sparked debate about improving environmental law."¹⁵⁹ The researcher asserts that taking into account the Chinese government's mindset on economic growth, media coverage, in this case, is an achievement by itself.¹⁶⁰ In another litigation, PIELs filed a lawsuit on behalf of nature, and the courts dismissed the case because nature has no legal standing in China.¹⁶¹ However, this lost court case brought the legal standing of nature into the consciousness of

¹⁵⁰ Marshall, *supra* note 127 at 173.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ Lin, *supra* note 131.

¹⁵⁵ *Ibid* at 26-27.

¹⁵⁶ *Ibid* at 27.

¹⁵⁷ *Ibid.* at 27-30.

¹⁵⁸ Stern, *supra* note 61.

¹⁵⁹ *Ibid* at 78.

¹⁶⁰ *Ibid* at 77-78.

¹⁶¹ *Ibid* at 86.

more than 200,000 lawyers when this issue appeared in the national judicial examination.¹⁶² In China, where public political debate is limited, raising people's awareness of environmental law is significant.¹⁶³

Furthermore, the media coverage of court cases increases the reputation of people who succeed in courts; the general public widely recognized successful parties even with moderate successes.¹⁶⁴ Media coverage on environmental court cases, as a result, educated people to think of legal strategies as an appealing alternative to solve environmental problems.¹⁶⁵

This literature demonstrates that legal strategies can raise public awareness in many aspects. This potential can impact citizens' understanding of environmental problems, environmental decision-making processes, environmental laws, and change their behaviours.

5.2.2 Supporting Social Movements

Legal strategies also have indirect impacts on ongoing social movements. In some cases, PIELs and activists employ legal strategies with two goals in mind: to support citizens' advocacy and win legal disputes.

As an illustration, in the fight against a uranium enrichment plant in Louisiana, PIELs and activists used a hearing before the Nuclear Regulatory Commission as an opportunity to mobilize a massive demonstration against the plant.¹⁶⁶ They arranged for at least seventy-five people to attend the hearing each day.¹⁶⁷ They organized demonstrations outside the hearing room. Consequently, their movements attracted reporters to follow and cover the stories.¹⁶⁸ In other words, a legal strategy provides an ideal opportunity for people to mobilize against the project.

Another study in Israel illustrates how PIELs changed from litigation-oriented strategies to a more participatory approach.¹⁶⁹ The Israel Union for Environmental Defense (IUED), which depended solely on litigation, responded to the government's rejection to disclose

¹⁶² *Ibid* at 87.

¹⁶³ *Ibid* at 219.

¹⁶⁴ Dembowski, *supra* note 69 at 208.

¹⁶⁵ *Ibid*.

¹⁶⁶ Marshall, *supra* note 127 at 175.

¹⁶⁷ *Ibid*.

¹⁶⁸ *Ibid*.

¹⁶⁹ Noga Morag-Levine, *Transplantation and Transformation in an Israeli Environmental Cause-Lawyering Organization*, in Austin Sarat & Stuart Scheingold, eds, *Cause Lawyering and The State in A Global Era*, (Oxford University Press: New York, 2001).

air-pollution-monitoring information not by going to court, but by arranging a demonstration week requiring the disclosure. The demonstration received huge attention and support from the general public, and finally, the government disclosed the required information.¹⁷⁰ This successful campaign utilizes the unsuccessful legal strategy to mobilize the movement.

These two examples show how properly designed legal strategies could support ongoing movements, or start the movements, rather than impede the movements, as some scholars are concerned about.¹⁷¹

5.2.3 Increasing Bargaining Power

Another indirect impact of legal strategies is to increase bargaining power for the environmental movements in their interaction with corporations or governmental agencies. In the pay equity movement study, McCann argues that pressure created by using legal strategies functions well in many cases without court victories or filing a lawsuit at all.¹⁷²

To illustrate, in Cumming's study of PIELs' roles in community economic development in Los Angeles, local communities tried to negotiate with the developer to gain economic benefit for local communities.¹⁷³ The researcher finds that success in convincing the developer to join the negotiating process is mainly because of the leverage from legal strategies.¹⁷⁴ In Cummings's words, "FCCEJ's success in bringing the developer to the negotiating table, for example, was premised in large part on the threat that it could, in fact, successfully litigate the environmental claims."¹⁷⁵ In other words, a legal strategy increases people's bargaining power over the developer.

In the same vein, Dembowski's study of PIELs in India demonstrates that legal strategies had an indirect impact on pressuring public officials to change their behaviours.¹⁷⁶ The author argues that the administration in Howrah began to respond to citizens' complaints

¹⁷⁰ *Ibid* at 348.

¹⁷¹ See, for example, Rosenberg, *supra* note 7; Halley & Brown, *supra* note 7; Rajagopal, *Limit of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle*, in Santos & Rodriguez, eds, *supra* note 6. See the alternative views, for example, Michael W. McCann, *How does law matter for social movements?*, in Bryant G Garth & Austin Sarat, *How Does Law Matter?* (Northwestern University Press, 1998); Sheldrick, *supra* note 2; and Michael McCann & Helena Silverstein, *Rethinking Law's "Allurements": A Relational Analysis of Social Movement Lawyers in the United States*, in Austin Sarat & Stuart A. Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities*, (Oxford University Press: New York, 1998).

¹⁷² McCann, *supra* note 1 at 138.

¹⁷³ *Cummings*, *supra* note 126.

¹⁷⁴ *Ibid* at 325.

¹⁷⁵ *Ibid*.

¹⁷⁶ Dembowski, *supra* note 69 at 209.

to solve environmental problems because they feared being sued by citizens.¹⁷⁷ In Demboski's words, "[t]he (implicit or explicit) threat to take a matter to court may set an otherwise inert government in motion."¹⁷⁸ This study highlights the indirect impact of a legal strategy on environmental movements.

This research provides exceptional examples of how legal strategies can increase citizens' bargaining power in various venues of the struggles and lead to change.

5.2.4 Changing Legal Consciousness

The last indirect impact is the impact of law and legal strategies on people's understanding of law—legal consciousness. This impact may demonstrate through new understanding, belief, and action when people encounter legal problems. Scholars provide various definitions of legal consciousness.¹⁷⁹

For example, in his study of contemporary literature on legal consciousness, Engel suggests that scholars understand legal consciousness in two different ways.¹⁸⁰ While some scholars refer to legal consciousness as peoples' knowledge and ability to utilize legal substantive rules and procedures, others refer to legal consciousness as ideas people have about legal rules and institutions in terms of symbolic power.¹⁸¹ These two different ideas of legal consciousness implicitly point out that different groups of people are likely to have dissimilar ideas about the law. Thus, legal strategies could impact both citizens' and public officials' legal consciousness in different ways.

Somanawat's study of environmental and land rights activists in Thailand, for example, finds that two activist leaders who were convicted and served their time in jails have constructed legal consciousness out of their unsatisfactory experience in the legal system.¹⁸² After experiencing many criminal charges resulting from their environmental movements, the researcher explains that these two activists saw many unreasonable aspects of the legal system.¹⁸³ Because of the first-hand unjust experience, these activists believed that the legal system was not fair.¹⁸⁴ Consequently, they had never accepted those

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ See for example, Ewick & Silbey, *supra* note 53 at 45; McCann, *supra* note 1 at 7.

¹⁸⁰ David M. Engel, *How does law matter in the constitution of legal consciousness?*, in Bryant G. Garth & Austin Sarat, eds, *How does law matter?*, (Northwestern University Press: Evanston, 1998), at 139.

¹⁸¹ *Ibid.*

¹⁸² Kitpatchara Somanawat, *Legal Consciousness of Resistant Citizens for Environment and Natural Resources Management* (in Thai), (2012), online: <<https://www.tci-thaijo.org/index.php/CMUJLSS/article/view/64590>> at 111.

¹⁸³ *Ibid* at 106-107.

¹⁸⁴ *Ibid* at 106-109.

convictions as fair judgments but condemned the judicial system for wrongly punishing them.¹⁸⁵ This study does not directly demonstrate how legal strategies impact people's legal consciousness, but it explains how the interaction with the legal system can change citizens' legal consciousness.

Not only do citizens change their legal consciousness after engaging with the environmental rights movements, but government agencies can also change. For example, in the study of public interest litigation in India, Dembowski finds a change in government agencies' legal consciousness.¹⁸⁶ The researcher argues that because of various citizens' lawsuits in Howrah against public officials, the government agencies' attitude toward citizens has changed positively; government agencies have begun to take citizens' petitions seriously and have solved some of these petitions.¹⁸⁷ This change would not have happened without many lawsuits previously filed.

These two examples from different countries and different actors in environmental rights struggles demonstrate how legal strategies can bring about new legal consciousness among involved citizens and public officials. In other words, messages disseminated from legal strategies can change stakeholders' legal consciousness.

According to the reviewed literature, legal strategies have at least four indirect impacts: increasing public awareness, supporting movements, increasing bargaining power and changing stakeholders' legal consciousness. This research points in the same direction that legal strategies can create change in two different ways: directly and indirectly. From the reviewed literature, both the direct and indirect impact research improves scholars' understanding of how legal strategies could impact society. However, to focus separately on either direction is not sufficient to grasp the complexity of impacts brought about by legal strategies. Hence, when researchers evaluate the effectiveness of legal strategies, they need to consider changes in a broader sense by assessing both the direct and indirect impacts, which I address in the next section.

On the one hand, the weakness of the direct impact research is its narrow understanding of the law that focuses on state institutions. This limited understanding leads researchers to examine legal impacts on or created by formal institutions, including access to courts, court cases' results, court precedent, and the implementation of court orders. This research provides an insightful understanding of how law works through state institutions but leads scholars in one limited direction. Consequently, researchers overlook what happens outside state institutions; this oversight makes their findings incomplete.

On the other hand, the indirect impact research's weakness is that it tends to pay less attention to the direct impact of legal strategies from state institutions. These researchers expand the understanding of the impacts of law by demonstrating how law contributes to

¹⁸⁵ *Ibid* at 111.

¹⁸⁶ Dembowski, *supra* note 69.

¹⁸⁷ *Ibid* at 176.

changes beyond formal institutions. However, disregarding the direct impact of law or legal strategies created by state institutions means understanding only one side of the story as well. Hence, this research takes into account both direct and indirect impacts of legal strategies to understand the whole picture of their effects on environmental movements.

6. Evaluating Legal Strategies

The challenge of evaluating the outcomes of legal strategies is that there are many ways to do it; it depends on the criteria employed in the evaluation and what one defines as legal success.¹⁸⁸ This section addresses three common ways that scholars assess the effectiveness of legal strategies: legal recognition,¹⁸⁹ tangible benefits,¹⁹⁰ and citizen empowerment.¹⁹¹ This list is not exhaustive¹⁹² and by no means exclusive; many scholars employ more than one criterion to evaluate the outcome of legal strategies. Nevertheless, it is helpful to discuss these criteria separately because it indicates different approaches (the top-down and bottom-up) and various impacts (the direct and indirect impacts) researchers employed. In part 6.1, I review literature that employs legal recognition; this literature tends to apply the top-down approach and focus on the direct impacts. In part 6.2, I discuss research that uses tangible benefits to evaluate legal strategies' outcomes; this research combines both top-down and bottom-up approaches and the direct and indirect impacts. In part 6.3, I review literature that uses citizen empowerment to assess legal strategies'; this research employs the bottom-up approach and highlights the indirect impact of legal strategies. Finally, in part 6.4, I explain the analytical framework I derive from this literature and use as the organizing research approach for this PhD project.

¹⁸⁸ Handler, *supra* note 91 at 34-41. See also, Scott L Cummings, "The Pursuit of Legal Rights - and Beyond" (2012) 59:3 UCLA L Rev 506. at 548-549.

¹⁸⁹ See, for example, Boyd, *supra* note 99; Emond, *supra* note 87; C.M. Jariwala, 13: The Direction of Environmental Justice: An Overview, in S K Verma et al, eds, *Fifty years of the Supreme Court of India: its grasp and reach* (New Delhi ; New York: Oxford University Press, 2000) [*Fifty years of the Supreme Court of India*] at chapter 13; Houck, *supra* note 98.

¹⁹⁰ See, in the context of the U.S., for example, Handler, *supra* note 91; Rosenberg, *supra* note 7; Hertogh & Halliday, eds, *supra* note 27; Gauri & Brinks, *supra* note 1.

¹⁹¹ See for example, Scheingold, *supra* note 6; McCann, *supra* note 1; Sheldrick, *supra* note 2; Dembowski, *supra* note 69.

¹⁹² See for example, Handler, *supra* note 91 at 222-233, in which Handler employs power distribution as one of indicator to evaluate legal strategies.

6.1 Legal Recognition

The first way to evaluate legal strategies is to look at a legal outcome; an effective legal strategy means the winning parties get legal recognition. Legal recognition may be in the form of written constitutions, statutes, court decisions or administrative orders. The evaluation is straightforward; legal recognition by the state is an achievement. One advantage of this method is its simplicity. As one scholar observes, in the context of litigation, “[one] advantage of studying court cases is that it is relatively clear who has won and who has lost.”¹⁹³ In other contexts, like law-reform movements, winning means getting new constitutional provisions or statutes.

Some scholars treat legal recognition as an achievement by itself because, in some situations, activists or legal reformers who initiate legal strategies solely intend to advocate for new laws or legal precedents.¹⁹⁴ Alternatively, reformers believe that legal recognition is necessary for the next step of movements, and other groups will take further action to utilize their victories.¹⁹⁵ As a result, an effective legal strategy is the one that wins legal recognition.

For example, Emond employs legal recognition to evaluate the achievement of environmental lawyers and professors in Canada since the 1960s that include better environmental statutes, better legal precedents, and new environmental bills of rights.¹⁹⁶ The author points to many new environmental laws and concludes that these lawyers partially succeeded.¹⁹⁷ However, when considering the quality of the environment, the author concedes that the legal achievement may not directly lead to better environmental conditions.¹⁹⁸

In the same vein, Boyd adopts constitutional recognition of environmental rights as achievement indicators in his study of global environmental rights. He observes, “[t]he rights to live in a healthy environment enjoys explicit recognition in ninety-two constitutions. No other human right has achieved such a broad level of constitutional recognition in such a short period of time.”¹⁹⁹ Moreover, when the author argues that constitutionalizing environmental rights has tangible impacts, he primarily uses several statutes and judicial orders relying on constitutional environmental rights as indicators of impacts.²⁰⁰

¹⁹³ Paul Burstein, “*Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity*” *American Journal of Sociology* 26 at 1212.

¹⁹⁴ Handler, *supra* note 91 at 36-37.

¹⁹⁵ *Ibid* at 36-37. See also, Boyd, *supra* note 106 at 287.

¹⁹⁶ Emond, *supra* note 83 at 225.

¹⁹⁷ *Ibid* at 239.

¹⁹⁸ *Ibid* at 239-240.

¹⁹⁹ Boyd, *supra* note 106 at 76.

²⁰⁰ *Ibid* at Chapter 5.

In addition, Houck applies the same criterion in his study of high-profile environmental court cases worldwide.²⁰¹ He argues, for example, in the Minor Oposa case²⁰² that the most important benefit of this case is its aspiration of creative legal precedent to protect the next generation.²⁰³

The reviewed literature demonstrates that some scholars perceive legal recognition as an indicator of the effectiveness of legal strategies. These scholars assume, to different degrees, that legal recognition would lead to a better environment. Although some scholars are skeptical²⁰⁴ or concede that legal recognition does not always lead to tangible benefits or a better environment,²⁰⁵ they are relatively optimistic.

Many scholars disagree with the idea that legal recognition would lead to a better environment.²⁰⁶ In different contexts, Scheingold labels this assumption the myth of rights.²⁰⁷ In reality, there are many barriers between legal or rights recognition and change on the ground.²⁰⁸ Because of this critique, I turn to literature that employs tangible benefits to evaluate the effectiveness of legal strategies.

6.2 Tangible Benefits

The second way to evaluate the outcome of legal strategies is to look at the tangible benefits. For scholars who disagree with using legal recognition as an indicator of achievement, the tangible benefit is a crucial criterion for identifying achievement.²⁰⁹ If people get tangible benefits, regardless of legal recognition, they win. On the other hand, they lose if they achieve only legal recognition. To illustrate, if social reformers employ a legal campaign to stop logging in their communities and file a lawsuit to revoke forest concessions in that area, in this scenario, they win if they can stop logging. On the other hand, they lose if they get a court decision to revoke the forest concession, but the logging can continue its business as usual.

Tangible benefit is easy to identify in some contexts. For example, in the context of disabled persons fighting for access to public transportation, the tangible benefit is precise:

²⁰¹ Houck, *supra* note 103.

²⁰² In this case plaintiffs asked the Supreme Court of Philippines to revoke forest concessions. The Supreme Court ruled, among other things, that the plaintiffs have right to file a lawsuit to protect the next generation.

²⁰³ *Ibid* at 56.

²⁰⁴ *Ibid* at 287.

²⁰⁵ Emond, *supra* note 83 at 239-240.

²⁰⁶ See for example, Rosenberg, *supra* note 7; Hertogh & Halliday, eds, *supra* note 27; Gauri & Brinks, *supra* note 1.

²⁰⁷ Scheingold, *supra* note 6 at 5.

²⁰⁸ *Ibid*.

²⁰⁹ See for example, Rosenberg, *supra* note 7; Hertogh & Halliday, eds, *supra* note 27; Gauri & Brinks, *supra* note 1.

whether these disabled persons get access to public transportation.²¹⁰ The disabled plaintiffs understand they win when they get access to public transportation and lose if they cannot.²¹¹

Likewise, if legal strategies focus solely on compensation for wrongdoing, the tangible benefit is easy to identify. For example, in the study of public interest environmental litigation in China, Stern observes that in some cases, getting partial compensation from the court decision is an achievement for both clients and lawyers.²¹²

In the same vein, when a developer proposes a new development project that will cause environmental harm, scholars would examine whether the proposed projects have materialized or whether the developers significantly adjusted the project to protect the environment.²¹³ For example, in the study of the movement to stop a proposal to build a uranium enrichment plant between two African-American communities in the United States, the Nuclear Regulatory Commission's rejection to license Louisiana Energy Service to build the plant is an apparent achievement.²¹⁴

However, the tangible benefit is difficult to identify in some contexts when there is a long chain of causation from legal recognition to change on the ground. For example, in solving environmental problems from multiple sources, does stopping one factory from polluting the environment count as an achievement? Do researchers need to examine the quality of the environment to see change? In this situation, some scholars accept legal measures introduced by public authorities as an indicator of achievement rather than evaluating change in pollution levels.

For instance, Lin treats the government's legal measures as an indicator of achievement in the study of PIELs who tried to solve pollution problems in Fuxian Lake in China.²¹⁵ The researcher argues that the government's orders that require ten phosphorus fertilizer companies and three cement plants to control air, water, and solid waste pollution and put proper technology to prevent further pollution are victories.²¹⁶

In addition, Stoel describes various tangible benefits from successful court cases in the article discussing environmental litigation.²¹⁷ Among these tangible benefits, the author includes a court decision that caused the United States Environmental Protection Agency

²¹⁰ Susan M Olson, *Clients and lawyers: securing the rights of disabled persons*, Contributions in legal studies no. 28 (Westport, Conn: Greenwood Press, 1984) [*Clients and lawyers*] at 112-113.

²¹¹ *Ibid* at 112.

²¹² Stern, *supra* note 61 at 82.

²¹³ Handler, *supra* note 91 at 195.

²¹⁴ Marshall, *supra* note 127 at 175.

²¹⁵ Lin, *supra* note 131.

²¹⁶ *Ibid* at 30.

²¹⁷ Thomas B Jr Stoel, "Environmental Litigation from the Viewpoint of the Environmentalist" (1974) 7 Nat Resources Law 547-554, online: <<https://heinonline.org/HOL/P?h=hein.journals/narl7&i=559>> at 547.

to significantly reduce the amount of lead permitted in gasoline as one of the achievements.²¹⁸ This kind of victory is appealing because the success of one case could lead to broader benefits.

Some scholars adopt tangible benefits to evaluate the effectiveness of legal strategies. They believe that successful legal strategies must bring concrete benefits to clients or the environment rather than only legal recognition. However, some scholars criticize using solely tangible benefits as an indicator of achievement by pointing to the limited definition of effectiveness. These critics propose citizen empowerment as a better indicator of achievement.²¹⁹

6.3 Community Empowerment

The third way to evaluate the outcome of legal strategies is to examine the contribution of legal strategies to empowerment—defined as creating the capacity of individuals, groups, or communities to take control over decisions altering their lives.²²⁰ Scheingold's idea of the politics of rights suggests that law reformers should use rights to initiate and foster political mobilization rather than focusing on direct impacts.²²¹ The author proposes many ways to examine how legal strategies can empower citizens. These include how legal strategies contribute to establishing a collective political identity, strengthening an organization, and increasing political support.²²² This idea encourages scholars to adopt citizen empowerment to assess the achievement of legal strategies.

McCann expands the politics of rights idea and employs it to study women's movements for pay equity reform in the United States.²²³ In this study, McCann divides how law contributes to social movements into four stages: starting movements, forcing formal changes, controlling implementation, and influencing other movements; then, he examines how legal strategies impact each stage.²²⁴ He argues that the most positive benefit of legal strategies is in the first stage. In this stage, activists and lawyers used legal strategies to build active supporters, and they were successful in getting more active supporters.²²⁵

²¹⁸ *Ibid* at 548.

²¹⁹ See, for example, McCann, *supra* note 1; Scheingold, *supra* note 6; Marshall, *supra* note 127; Sheldrick, *supra* note 2; Dembowski, *supra* note 69.

²²⁰ Luke W Cole, "Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law" *Ecology law quarterly*. 1992;19(4):619–83, at 657.; Richard C Rich et al, "Citizen Participation and Empowerment: The Case of Local Environmental Hazards" *American journal of community psychology*. 1995;23(5):657–76, at 659.

²²¹ Scheingold, *supra* note 6 at 131.

²²² *Ibid* at Chapter 9.

²²³ McCann, *supra* note 1.

²²⁴ *Ibid* at 11.

²²⁵ *Ibid* at 279.

Likewise, Marshall points to how activists use legal strategies not as the primary measure of the movement but as a supplementary one in the study of social movement and cause lawyers.²²⁶ The author argues that legal strategies have participatory potential; they can foster ongoing social movements. As a result of interaction with the legal system, citizens learn to make the state accountable.²²⁷ This study demonstrates how being involved in using legal strategies shapes citizens' legal consciousness in a way that empowers them.

In addition, in societies where the concept of rights or the rule of law is not stable, empowering people to think of themselves as rights bearers rather than legal objects is a significant achievement. For example, in studying the tenant farmers movement in Thailand, Haberkorn finds that law can become an essential tool of liberation when tenant farmers see and use law to hold the state and landlords responsible.²²⁸ The author argues, "they [Thai famers] became revolutionaries when they made themselves not only the objects but also the subjects, of the law, and forced landowners and the state to become accountable to them."²²⁹ In this sense, changing farmers' understanding of the law in a way that empowers them is significant progress.

In the same vein, Stern's study of environmental litigation in China demonstrates how legal strategies become a tool to empower the victims of environmentally harmful activities.²³⁰ In the *Zhang Changjian et al. v. Pingnan Rongping Chemical Plant* case, the researcher describes the political environment in Pingnan City that threatens victims who want to get compensation from the company that caused their sickness.²³¹ However, litigation allows them to come together and see themselves as rights bearers. As a result, almost two thousand villagers joined the lawsuit despite the company's and the local government's threatening tactics.²³² This vast number of plaintiffs involved in the dire circumstance is considered a victory.²³³ In addition, strategies can also change lawyers' understanding of the law. Stern finds that lawyers' legal consciousness has changed slowly from seeing the law as solely the state's tool to perceiving the law as the citizens' tool to protect themselves.²³⁴

Another way legal strategies can contribute to empowering citizens is to legitimize ongoing movements. It is not unusual that the government or corporations turn to law to stop citizens

²²⁶ Marshall, *supra* note 127.

²²⁷ *Ibid* at 178.

²²⁸ Tyrell Haberkorn, *Revolution interrupted: farmers, students, law, and violence in northern Thailand*, New perspectives in Southeast Asian studies (Madison, WI: The University of Wisconsin Press, 2011) [*Revolution interrupted*] at 21.

²²⁹ *Ibid* at 6.

²³⁰ Stern, *supra* note 61.

²³¹ *Ibid* at 75-76.

²³² *Ibid* at 76.

²³³ *Ibid* at 77.

²³⁴ *Ibid* at 225-226.

from exercising their rights.²³⁵ In this situation, legal strategies can reassure citizens and make it possible to continue their movements. In Sheldrick's study of social activism and law, the author explains that citizens need to engage in the legal realm in many situations because the state or corporations launch criminal or civil cases against them.²³⁶ In this situation, citizens need legal strategies to free them from jail or liability and enable them to keep fighting.²³⁷

The last aspect of legal empowerment is encouraging citizens to continue their active roles. McCann calls this aspect "the transformative legacy of legal action."²³⁸ To illustrate, Dembowski's study of environmental litigation in India argues that the legal victory in Howrah Matter—protecting the public park from illegal encroachment—has encouraged NGOs to develop more activities and brought more environmental cases to courts.²³⁹ These activities, in turn, improve their political influence.²⁴⁰

Also, in China, winning an environmental case encourages much environmental activism.²⁴¹ Zhang, the leading plaintiff in *Zhang Changian et al. v. Pingnan Rongping Chemical Plant*, established a new environmental NGO and has worked full time in this organization after getting partial compensation through the court decision.²⁴²

This research broadens the understanding of the effectiveness of legal strategies by including empowering aspects into the equation. The main argument is that successful legal strategies should not solely solve individual problems or provide immediate relief; they must also empower citizens to sustain their activities in the long run. In this view, empowering citizens is one of the key indicators of effective legal strategies.

To sum up, researchers view effective legal strategies in three different ways by using different indicators. Some scholars use legal recognition to identify effectiveness. For these scholars, written constitutions, statutes, or court decisions are evidence of effectiveness. Others prefer tangible benefits as an indicator. For them, achievement means something concrete, such as compensation and stopping ongoing projects. Finally, some scholars think citizen empowerment is one of the critical indicators. For these scholars, successful legal strategies should strengthen social movements. For them, achievement means citizens are empowered in dealing with the state or corporations.

²³⁵ See, for example, Sheldrick, *supra* note 2 at chapter 3; Sally Engle Merry, *The Criminalization of Everyday Life*, in Marianne Constable & David Engel, *Everyday Practices and Trouble Cases* (Northwestern University Press, 1998); Hunt, *supra* note 48 at chapter 2.

²³⁶ Sheldrick, *supra* note 2 at 77-78.

²³⁷ *Ibid* at 78.

²³⁸ McCann, *supra* note 1 at 11.

²³⁹ Dembowski, *supra* note 69 at 177.

²⁴⁰ *Ibid*.

²⁴¹ Stern, *supra* note 61 at 78.

²⁴² *Ibid*.

However, these three ways of evaluating successful legal strategies are by no means exclusive; some scholars employ more than one criterion.²⁴³ The reviewed literature points to the crucial aspect of studying the numerous impacts of the law on society. Researchers need to be aware of this broad sense of impacts and make explicit what type of impacts they are studying.

6.4 Analytical Frameworks

When researchers understand law as a negotiated practice and perceive citizens as legal actors, law and legal strategies can contribute to social change in various ways. The top-down and bottom-up approaches are not exclusive. Legal strategies usually impact state institutions and social movements; hence, both approaches should be employed to understand how legal strategies create change in society. While the top-down approach helps us see the potential and limitation of legal strategies, the bottom-up approach expands our understanding of impacts that transcends state institutions to environmental movements. Understanding changes in these two realms is crucial to thinking about the role of law in Thai society because changes inside state institutions rarely happen automatically and do not always lead to change on the ground. Studying changes in state institutions needs to be accompanied by examining changes in citizens' understanding and practice. In this line of reasoning, to understand the impacts of legal strategies, scholars need to explore both the direct and indirect impacts brought about by legal strategies and evaluate their effectiveness from a broad perspective. From this starting point, below I summarize the analytical frameworks that direct my research.

First, the reviewed literature points to the broader way of understanding the role of law in creating social change. When applied together, the top-down and bottom-up research approaches provide a broad view to study law and legal strategies. These two approaches enable researchers to explore law and legal strategies from multifaceted perspectives. The literature suggests that to understand how law functions in society, I need to broaden the analysis to explore the role of law inside and outside state realms and combine top-down and bottom-up approaches in the study.

Second, the reviewed literature suggests that PIELs employ various legal strategies targeting change for state actors, institutions, and citizens. The reviewed research suggests examining two main areas of the direct impacts: court cases and outside-of-court action. The direct impacts of court cases usually explore the result of court cases, legal precedent, and the enforcement of court cases. In addition to these direct impacts, researchers also examine administrative cases, dispute resolution, and new laws or regulations resulting from legal strategies. The reviewed literature examines changes in public awareness, social movements, bargaining power, and legal consciousness when studying the indirect impacts. These four areas of indirect impact are indicators of citizens' empowerment. Combining these direct and indirect impacts can provide researchers with a nuanced view of how legal strategies bring about social change. This framework suggests that to

²⁴³ See for example, Handler, *supra* note 91; McCann, *supra* note 1; Rosenberg, *supra* note 6.

comprehend how legal strategies contribute to social change in Thai society, I need to incorporate both direct and indirect impacts in an analysis.

Third, the reviewed literature points to an expansive way to evaluate the outcome of legal strategies. The research suggests that relying solely on legal recognition is not an adequate indicator of effective legal strategies and that weighing tangible benefits is better. In addition to tangible benefits, researchers also suggest including citizen empowerment in the evaluation. In other words, to fully understand the effectiveness of legal strategies, researchers need to assess whether and to what extent legal strategies contribute to legal recognition, tangible benefits, and citizen empowerment. Combining these three indicators is significant in Thai contexts where researchers cannot understand law functions solely by examining legal texts or recognition.

7. Conclusion

This chapter laid down relevant literature that would direct my research. I started by reviewing literature addressing the role of law and social change. I found that scholars have two main contrasting views about the role of law. Some find law useful for social movements, but some find it ineffective for creating change in society. In section two, I examined two different approaches that scholars employ to research the role of law and social change: the top-down and the bottom-up. These two different approaches lead to different research focuses. While the top-down research focuses on state actors or institutions and explores how their activities cause changes in given societies, the bottom-up research highlights non-state actors' roles and examines how they understand and interact with law and legal institutions. Instead of choosing one approach over the other, I found that these two approaches complement each other. The third section addressed the literature on public interest environmental lawyers and two different ways legal strategies could impact society: the direct and indirect. Finally, in the fourth section, I reviewed literature that addressed how to evaluate the outcome of legal strategies by paying particular attention to public interest environmental law literature. I set out three framing criteria to evaluate the effectiveness of legal strategies: legal recognition, tangible benefits, and citizens' empowerment. In this part, I also summarize the analytical framework that I will apply to my research.

Chapter 3: Methodology

1. Introduction

This research examines legal strategies employed by public interest environmental lawyers (PIELs) on behalf of aggrieved communities to understand their potential and limitation in advancing environmental rights in Thailand. I have two goals in studying legal strategies: examining the impacts of legal strategies on environmental rights advocacy and identifying key factors contributing to effective and ineffective legal strategies. I evaluate legal strategies' effectiveness by examining changes brought about by various stakeholders in six environmental cases. Since adopting the 1997 constitution, aggrieved communities around the country have gradually embedded legal strategies in their environmental advocacy: these six cases are examples of such phenomena. This study examines how law, legal strategies, lawyers, citizens, and officials interact in the struggle to protect rivers, farmland, mountain, air, soil, freshwater, and livelihood from industries or development projects.

In these six cases, I conducted semi-structured interviews with aggrieved community members, PIELs, non-governmental organization members, and governmental agencies. The research aims to understand the roles of legal strategies and how legal processes create change in these six specific environmental movements. In addition to the interviews, I analyze environmental lawsuits and court orders to understand the relationship between communities' demands, PIELs' arguments, and courts' opinions. Further, I examine citizens' petitions and government policies, rules, and orders to examine the link between communities' demands, PIELs' arguments, and the government's reactions. Finally, I analyze news reports and publications to understand how these cases generate public discussion.

The central part of this research is Thai communities' struggles to protect their communities, livelihood, and the environment from industry and development projects initiated by private companies and approved by the government or, in some cases, initiated by the government. These are the struggles between the powerful government and corporations on the one hand and the local communities with limited means and resources on the other hand. In this context, this research aims to understand how and to what extent communities can employ legal strategies to support their movements. I adopt James Tully's understanding of law that highlights the crucial role of stakeholders, including aggrieved community members, in shaping how law works through their struggles.¹ I wish to reduce power imbalance by helping PIELs and aggrieved communities better understand the potential and limitations of legal strategies that environmental movements have used to foster their causes. Therefore, they can tailor legal strategies to support their advocacy more effectively. Furthermore, this research can assist the government in recognizing the

¹ James Tully, *Public philosophy in a new key*, Volume II: Imperialism and Civic Freedom (Cambridge; New York: Cambridge University Press, 2008) at 286.

weaknesses of the legal system and be more prudent in designing and implementing laws to address environmental problems and respect citizens' and community rights.

I divided this chapter into eight parts. The following section restates the research questions that guide this study. Then, part three discusses the case studies method I adopt in this research. Part four explains public interest environmental lawyers and why I choose them as the key participants in this research. Part five describes my position in this research and how I conduct research from an insider position and sustain objectivity. In part six, I explain the empirical research processes I follow to answer the research questions. I describe how the COVID-19 pandemic has affected this research in section seven. Finally, I revisit the main ideas discussed in this chapter.

2. Research Questions

The research questions set out here function as goals that this research aims to answer at the end of the study. The questions focus on how legal strategies contribute to multidimensional change in the environmental movements and why some legal strategies are more effective than others. The overall research questions are: What were the impacts of legal strategies on developing environmental rights, and what factors made legal processes effective in advocating for a healthy environment in Thai society?

This research addresses the following questions:

1. How have PIELs contributed to developing constitutional principles for a healthy environment?
2. How have legal strategies changed Thai society so citizens can advocate for a healthy environment?
3. How have legal strategies changed the relationship between citizens and the government in dealing with environmental and human health disputes?
4. What essential factors make it possible for legal strategies to empower Thai citizens to advocate for a healthy environment more effectively?

In answering these research questions, I use various data sources: interviews; PIELs' files; court cases; government policies, rules, orders, reports, media coverage, and publications. I adopt a case study research approach to acquire data and answer these questions. Thus, I justify why a case study approach is appropriate for this research in the following section.

3. Case Studies Approach

The research's main question centers on how the environmental rights recognized in the constitutions and statutes in Thailand work in practice. Answering this question is complicated because it involves various stakeholders in state institutions, such as courts and government agencies, and private actors, such as citizens, lawyers, and civil society. Tully clearly demonstrates the complexity of law when he describes the civic understanding of law:

[M]en and women in ministries draft rules (as Bills) to govern the relationships of their political associations; legislators debate, negotiate and vote on enacting them as laws; lobbyists lobby; administrators struggle to translate them into executable legislation and rules for application; civil servants apply them and officers enforce them; subjects try to figure out how to obey them in individual cases; experts advise them; ordinary citizens, corporate citizens, civil society organizations and media discuss and challenge them and take them back to their representatives or to the courts; lawyers argue pro and contra; judges discuss, interpret, judge, write majority and minority decisions; the legislatures respond, and so on.²

This description suggests that researchers must recognize the system's complexity when studying how law functions in real life. They cannot focus only on written law or court cases, but must include other stakeholders' voices in their studies. A case method commonly used in law school³ is not fitted to answer how law works in practice because this method focuses on court opinions and legal principles, making social and geographical contexts irrelevant in the study.⁴ As such, the case method is inappropriate for approaching research questions beyond court cases.

Instead of applying a case method in my study, I chose a case studies method, widely used in social research, as my research approach. Merriam and Tisdell define a case study method as “an in-depth description and analysis of a bounded system.”⁵ The case study approach focuses on studying a case or a few cases over a period of time and thoroughly investigates many aspects of selected cases.⁶ This method requires researchers to gather and use various sources of information to answer research questions.⁷ As a result, researchers can provide a detailed description and in-depth explanation of a specific phenomenon.⁸

² Tully, *supra* note 1 at 286.

³ Janet Ainsworth, “Law in (Case)books, Law (School) in Action: The Case for Casebook Reviews Casebook Review: Preface” (1996) 20:2 Seattle U L Rev 271–276, at 271.

⁴ Deborah Curran, Putting Law in Its Place: Field School Explorations of Indigenous and Colonial Legal Geographies, in Deborah Curran et al, eds, *Out there learning: critical reflections on off-campus study programs* (Toronto: University of Toronto Press, 2019), at 135.

⁵ Sharan B Merriam & Elizabeth J Tisdell, *Qualitative Research: A Guide to Design and Implementation* (Newark, UNITED STATES: John Wiley & Sons, Incorporated, 2015), at 37.

⁶ W Lawrence Neuman, *Social research methods: qualitative and quantitative approaches*, 5th ed (Boston: Allyn and Bacon, 2003), at 33.

⁷ Robert K Yin, *Case study research: design and methods*, 4th ed, Applied social research methods series v. 5 (Los Angeles, Calif: Sage, 2009), at 18.

⁸ Bruce L Berg & Howard Lune, *Qualitative research methods for the social sciences*, 8th ed (Boston: Pearson, 2012), at 325.

The approach matches well with studying law in practice since legal processes compose many stages and parties requiring painstaking investigation. The case study method provides an opportunity to explore the law's complicated impacts in chronological order.⁹ Adopting a case studies method in legal research requires a researcher to look into the whole system and consider multiple perspectives to develop a comprehensive answer.¹⁰

In this research, I choose case studies not only for their importance as identified by PIELs but also by employing purposeful sampling. Purposeful sampling means “selecting information-rich cases to study, cases that by their nature and substance will illuminate the inquiry question being investigated.”¹¹ A researcher identifies the information-rich cases that provide helpful information and knowledge to answer research questions in purposeful sampling.¹² All case studies in this research are about citizens employing law, legal institutions and other tools to protect the environment in different circumstances around the country.

As my research questions are relevant to social contexts and various stakeholders, it is insufficient to focus on one group of actors: lawyers, judges, government officials, non-governmental organizations, or citizens. The appropriate way is to study all key stakeholders. Adopting the case study method is preferable to examine legal principles, practices, and interactions among relevant parties. That is why I adopted a case studies method for my research. The following section addresses the questions: what are your cases, and why do you choose them?

4. Public Interest Environmental Lawyers

This section has two parts. I start by addressing a definition of public interest environmental lawyers (PIELs) and revise the definitions to fit my research. Then, I explain the distinct roles of PIELs in Thai contexts to illustrate how environmental law works in practice.

4.1 Who are Public Interest Environmental Lawyers?

PIELs are a subgroup of cause lawyers. It is essential to understand the term cause lawyer before exploring the meaning of PIELs. A cause lawyer is a new term that scholars invented in the late twentieth century to describe lawyers who employ legal skills to advance social change.¹³ Specifically, cause lawyers are lawyers who “commit themselves and their legal

⁹ Aikaterini Argyrou, “Making the Case for Case Studies in Empirical Legal Research Special Issue: Methodology of Legal Research: Challenges and Opportunities” (2017) 13:3 Utrecht L Rev 95–113, at 102.

¹⁰ see below to more analysis choices of public interest environmental lawyers, client and community members, nongovernment organization representative, and government agencies.

¹¹ Michael Quinn Patton, *Qualitative research & evaluation methods: integrating theory and practice*, fourth ed (Thousand Oaks, California: SAGE Publications, Inc, 2015), at 264.

¹² *Ibid* at 308.

¹³ Jens Meierhenrich, *The Remnants of the Rechtsstaat: An Ethnography of Nazi Law* (Oxford University Press, 2018), at 55.

skills to furthering a vision of the good society.”¹⁴ The essence of cause lawyering, in Scheingold and Sarat’s words, “is about using legal skills to pursue ends and ideals that transcend client service—be those ideals social, cultural, political, economic or, indeed, legal.”¹⁵ From these explanations, the most distinct characteristic differentiating cause lawyers from conventional lawyers is their understanding of their role in society. Traditional lawyers are legal professionals who use expertise to solve clients’ problems, whereas cause lawyers are legal professionals who use legal skills to further social change.¹⁶

Within this broad vision of acting as a legal practitioner to create social change, scholars define PIELs in at least three different ways. The first definition defines PIELs as lawyers who dedicate most of their time and skills to litigating or campaigning on behalf of citizens, local communities, or non-government organizations to solve environmental problems.¹⁷ This definition highlights the considerable time and professional skills that PIELs give to pursue their causes to protect the environment compared to conventional lawyers.

The second definition defines PIELs as lawyers aiming to transform an unjust social structure into an equitable society.¹⁸ In other words, PIELs’ role is to address the root of environmental justice by improving upon the existing unfair society. This definition comes from South Asia, where people have not benefited from constitutional rights and a prosperous society; hence, it emphasizes the goal of changing the unfair social structure rather than focusing on individual environmental problems.¹⁹

Finally, the last definition defines PIELs as lawyers whose goal is to use legal skills to protect and promote the environment and human health.²⁰ In this definition, PIELs are legal experts who commit to using legal capacity to advocate for a healthy environment. This

¹⁴ Austin Sarat & Stuart Scheingold, Chapter 1 Cause Lawyering and the Reproduction of Professional Authority: An Introduction, in Austin Sarat & Stuart Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press, 1996) [*Cause Lawyering*], at 3.

¹⁵ Stuart A Scheingold & Austin Sarat, *Something to believe in: politics, professionalism, and cause lawyering* (Stanford, Calif: Stanford Law and Politics, 2004), at 3.

¹⁶ Austin Sarat & Stuart A Scheingold, Chapter 1 State Transformation, Globalization, and the Possibilities of Cause Lawyering: An Introduction, in Austin Sarat & Stuart A Scheingold, eds, *Cause lawyering and the state in a global era*, Oxford socio-legal studies (Oxford; New York: Oxford University Press, 2001), at 13.

¹⁷ John E Bonine, “Public Interest Environmental Lawyers - Global Examples and Personal Reflections Environmental Citizen Suits at Thirty-something: A Celebration & Summit: Part II” (2003) 10 *Widener L Rev* 451–474, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlsj10&i=467>>, at 452.

¹⁸ Mario Gomez, *In the public interest: Essays on public interest litigation and participatory justice*, 1st edition ed (Colombo, Sri Lanka: Legal Aid Centre, Faculty of Law, University of Colombo, 1993), at 7.

¹⁹ Parvez Hassan & Azim Azfar, “Securing Environmental Rights through Public Interest Litigation in South Asia Comment” (2003) 22 *Va Env'tl LJ* 215–248, online: <<https://heinonline.org/HOL/P?h=hein.journals/velj22&i=223>>, at 246.

²⁰ Deborah Curran, “Reflections on Public Interest Environmental Lawyering in British Columbia” (2009) 67 *Advocate* (Vancouver) 183–190, online: <<https://heinonline.org/HOL/P?h=hein.barjournals/advvba0068&i=189>>, at 184.

definition comes from the Canadian context, where environmental law is relatively advanced; thus, it focuses on PIELs' expertise in solving ecological problems.²¹

Considering all these definitions, for this research, I propose a fourth definition of PIELs, which are lawyers who prioritize public interest over private interest cases²² and exercise legal skills to sustain and foster the environment and human health.

4.2 Why Study Public Interest Environmental Lawyers?

I have two reasons for studying PIELs' work. First, as one of the PIELs who practiced law in Thailand for ten years, I recognized, as some scholars observe, that most written environmental rights and laws were rarely implemented.²³ To benefit from legal opportunities, people require, among other things, assistance from lawyers to understand and use them. However, until recently, in Thailand, many aggrieved communities had not hired lawyers to represent them because of their economic situations.²⁴ If they can hire a lawyer, their lawyers would likely treat their cases as personal disputes and use legal skills to solve these individual problems without considering the broader aspect of environmental cases.²⁵ This situation has changed in the last twenty years when a handful of PIELs offered a free-legal-services to people affected by pollution or development projects and treated environmental cases as public interest issues. PIELs, although still few in number, have become crucial players in the ecological movements in Thailand because they make it possible for ordinary people to realize constitutional rights that create an impact beyond individual clients.²⁶ The realization of these constitutional rights has broader implications for Thai society, which has been left with unfulfilled constitutional promises since its first constitution in 1932.

²¹ D Paul Emond, "Are We There Yet - Reflections on the Success of the Environment Law Movement in Ontario" (2008) 46:2 Osgoode Hall LJ 219–242, online: <<https://heinonline.org/HOL/P?h=hein.journals/ohlj46&i=229>>, at 239.

²² Michael Potacs, Public Interest in Legal Interpretation, in Luboš Tichý & Michael Potacs, eds, *Public Interest in Law* (Intersentia, 2021), at 52-53.

²³ Vipon Kititnasorchai & Panat Tasneeyanond, "Thai Environmental Law" (2000) 4:1 Sing J Int'l & Comp L 1–35, at 33-34.; Timothy Wale & Rick Levinthal, Chapter 15: Thailand, in Terri Mottershead, ed, *Environmental law and enforcement in the Asia-Pacific Rim* (Hong Kong: Sweet & Maxwell Asia, 2002), at 507-508.

²⁴ Frank Munger, "Globalization, Investing in Law, and the Careers of Lawyers for Social Causes: Taking on Rights in Thailand" (2008) 53:4 NY L Sch L Rev 745–804, at 769-770, at 773-774.

²⁵ This issue is similar to the discussion about the difference between cause lawyers and conventional lawyers in legal literature. See, Austin Sarat and Stuart Scheingold, *The Dynamics of Cause Lawyering: Constraints and Opportunities*, in Austin Sarat and Stuart Scheingold, eds, "The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice," (Stanford University Press: Stanford, 2005), at 1.

²⁶ See testimony from one of key environmental lawyer in Frank Munger, *Cause Lawyers and Other Signs of Progress: Three Thai Narratives*, in Scott L Cummings, *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (New York, United States: Cambridge University Press, 2011), at 261.

Second, the Thai constitutions since 1997 have adopted environmental rights²⁷ and set up various institutions to implement these rights.²⁸ These rights are fascinating because their ultimate goal is to guarantee a healthy environment for everyone: this goal is the common good that everyone shares both benefits and impacts. The Thai state responded to these new rights by establishing many institutions, such as Environmental Tribunals in the Administrative Court,²⁹ the Court of Justice³⁰ and the Committee of Environment of the Royal Council of Thailand.³¹ Lawyers established a few public interest law offices in the private arena to engage with these new rights.³² These developments, both inside and outside official spheres, corresponded to the emergence of these new rights.

Finally, legal texts and institutions represent only a part of the legal process, namely that of the state's perspective. These written laws and institutions do not tell us much about what happens when aggrieved communities put these legal texts and institutions into practice to protect their livelihood and the environment. Studying PIELs' work can fulfill this missing component because they involve various legal processes and parties. Understanding PIELs' works will contribute to a comprehensive understanding of law in practice. In other words, to fully understand environmental rights in Thailand, we need to understand the legal texts, how state institutions respond to these texts, and how PIELs, and their clients, understand and respond to these rights.

5. Researcher's Positionality

Scholars divide researchers into two main groups using researchers' relationship with the research participants as a primary criterion: an insider-researcher and an outsider-researcher. In comparison, an insider researcher studies the group a researcher belongs to, while an outsider-researcher studies the group a researcher does not belong to.³³ Insider research and outsider research have different advantages and disadvantages.³⁴ My research

²⁷ Kititansasorchai & Tasneeyanond, *supra* note 23 at 6.

²⁸ These institutions include an Ombudsman, a National Human Rights Commission, and Administrative Courts, see the Thai Constitution 1997 article 196-198, 199-200, and 276 respectively.

²⁹ The Supreme Administrative Court President's Decree on The Establishment of Environmental Tribunal in The Supreme and Lower Administrative Courts, Government Gazette, book 128, section 54 g, July 4, 2011, at 16-17.

³⁰ Krissana Changglom, *Environmental Courts and Problems of Thai Judicial Systems*, (Winyuchon: Bangkok, 2013), at 34.

³¹ The Lawyers Council of Thailand's Regulation on Departments Division and Power and Duty of Lawyer Council Committee, Government Gazette, book 130, special section 189 ng, December 25, 2013, at 41-45.

³² There is no official record on public interest environmental law offices in Thailand. According to news report and the author professional connection, these are incomplete active public interest environmental law offices: ENLAWTHAI Foundation, Community Resource Centre Foundation, Center for Protection and Revival of Local Community Rights, Legal Rights and Environmental Protection Association, Stop Global Warming Association.

³³ Sema Unluer, "Being an Insider Researcher While Conducting Case Study Research" (2012) 17:29 *The Qualitative Report* 1-14, at 1.

³⁴ Teusner, Annabel. "Qualitative Insider Research", in Paul Atkinson, et al, eds, *SAGE Research Methods Foundations*, (London: SAGE Publications Ltd, 2022), *SAGE Research Methods*, online:

focuses on PIELs in Thailand, of which I have been a member since 2006. In this sense, I am an insider researcher. My journey to being part of the PIELs' community started in 2001 when I was a student that had opportunities to experience first-hand fervent environmental movements throughout the country that followed the adoption of the 1997 "People Constitution."³⁵

After being involved in student social justice movements in the first year, I decided to change my career path from engineering to law. The reason being that law became a powerful tool for social justice movements in that period and I wanted to contribute to this movement. During my law school years, my colleagues and I organized several environmental seminars inside universities and arranged many field trips in the countryside. We learned from aggrieved communities how government policies and development projects impacted their livelihood. Our focus was learning, but many of us thought about contributing to these social justice movements in the future. I chose to be a lawyer and use legal skills to support ongoing social movements.

I immediately started to work as a PIEL at an environmental legal organization after graduating from law school in 2006. I worked as a PIEL for ten years before moving to academia.³⁶ As a PIEL, I had various roles, such as representing aggrieved communities in courts, providing legal consultancy to communities, training young lawyers and villagers on environmental law, and conducting research to support law reform.³⁷ I experienced how law worked and did not work both inside and outside state institutions. I saw a wide gap between written law and implementation. I recognized how government officials, businesses, and villagers interpreted and used the same law differently. These experiences made me skeptical that the 1997 constitutional rights and other environmental laws will ultimately lead to meaningful change in practice. These experiences have troubled me, but at the same time, they encouraged me to take on this research and unearth how environmental rights and law have developed after the 1997 Constitution. In other words, this research comes from my passion for environmental rights movements, and I approach it as an insider researcher to gain an in-depth understanding.

<https://doi.org/10.4135/9781526421036845676>; Teresa Brannick & David Coghlan, "In Defense of Being 'Native': The Case for Insider Academic Research" (2007) 10:1 *Organ Res Methods* 59–74; Sion Jenkins, "Methodological challenges of conducting 'insider' reflexive research with the miscarriages of justice community" (2013) 16:5 *Int J Soc Res Methodol* 373–387.

³⁵ From 2001 to 2005, when I was an undergraduate student at Thammasat University, Thai society experienced the first advanced liberal constitution—the 1997 Constitution—with enthusiasm. There were movements to demand the government to fulfill constitutional rights all over the country. The environmental rights movement was one of the most active movements in that period. I engaged in student environmental groups that often took students to villages to learn about environmental problems and conflicts directly from affected communities throughout the country.

³⁶ I started my work as a PIEL at ENLAWTHAI Foundation, a public interest environmental law firm in 2006, then in 2014 moved to work at EarthRights International, an international public interest environmental law firm. Finally, I moved to work as an instructor at the Faculty of Law, Chiang Mai University, Thailand, in 2016 before starting Ph.D. study in 2018. From 2016 to 2018, I continued my engagement with PIELs through providing consultancy and legal training to PIELs, non-governmental organizations, and villagers.

³⁷ It is common that PIELs in Thailand play diverse roles in environmental rights movements, however their focuses are generally different.

Scholars explain various advantages of an insider researcher, such as getting access to participants, having a cultural understanding of studied groups, not interrupting natural social interaction, and having greater familiarity for better explaining and judging collected information.³⁸ As an insider researcher, I found many advantages that resonated with this literature. First, I had no difficulty accessing participants because of my long professional connection with many participants, especially PIELs. PIELs also helped connect me to their clients, community members, non-governmental organizations, and government officials. Second, I had the privilege to experience law from multifaceted perspectives that I had never considered when studying at law school.³⁹ Because of this background, I am positioned to see a gap in the understanding of environmental rights between different actors in legal processes. I can ask diverse and interesting questions that scholars, who have different orientations, might not ask. The research questions mainly derive from, or are inspired by, being one of the PIELs in that period. Finally, I am familiar with environmental law, legal procedures, and environmental movements in Thailand, which helped me determine the credibility of the acquired data.

However, this background also raises a question of objectivity in the research process: how can I objectively research while I am one of the PIELs? In designing this research, I am aware that many scholars raise an issue of the value-neutrality of a researcher in carrying out research: researchers should not impose their views on social and political issues.⁴⁰ These scholars are concerned about bias introduced by researchers or participants.⁴¹ However, it is unlikely any research can be value-neutral; at least, the chosen topic often derives from researcher-oriented position.⁴² How should a researcher deal with this situation?

Teusner proposes reflective and reflexive practices to help an insider-researcher to overcome biases. Reflection means thinking about past experiences, and reflexivity means self-awareness while the experience is happening.⁴³ One way to apply these in practice is to take field notes during the interview parallel with applying theory to the observation.⁴⁴ An insider researcher can use this practice both during and after collecting data.

³⁸ Unluer, *supra* note 33 at 1.; Teusner, *supra* note 34 at 2.

³⁹ Thammasat law faculty is one of the most influential law schools in Thailand. In my school years, 2001-2005, the law school curriculum modelled on the civil law legal system that focused on doctrinal aspect of law and pay little attention to other aspects. Legal knowledge and skills from the law school did not well prepare me to deal with law in the real world when I started to work as a PIEL in 2006.

⁴⁰ Bruce L Berg, *Qualitative research methods for the social sciences*, 6th ed (Boston: Pearson/Allyn & Bacon, 2007), at 180.

⁴¹ Jacques Hamel, Stephane Dufour & Dominic Fortin, *Case study methods*, *Qualitative research methods* v. 32 (Newbury Park: SAGE, 1993), at 23.

⁴² Berg, *supra* note 40 at 180.

⁴³ Teusner, *supra* note 34 at 5.

⁴⁴ Paul Hodkinson, "'Insider Research' in the Study of Youth Cultures" (2005) 8:2 *Journal of Youth Studies* 131-149, at 146.

Researchers can adopt a triangulation process—observing something from multiple perspectives—widely recognized in social sciences research⁴⁵ to address validity. For example, Zinn adopts the triangulation method by collecting data from various sources to prevent validation problems arising from the researcher’s insider position.⁴⁶ This method assures that collected data will not come from and represent simply a single view, but will be checked and balanced by other views.

Furthermore, instead of being value-neutral, Bruce insists that researchers should be transparent to readers by allowing the readers to understand who conducted the research, why the researcher chose this topic, and how the research proceeds.⁴⁷ In this sense, transparency will enable the readers to comprehend the research well, whether positive or negative. Having researchers who have in-depth familiarity with the issue carrying out the research does not compromise the quality of the research; in contrast, it provides a profound understanding of the research.⁴⁸

Drawing from this methodological literature, I adopted three methods to strengthen the validity of my research. First, I embraced transparency in conducting research. I made it clear that the choice to study PIELs directly derives from my oriented position as a PIEL; I wanted my research to contribute to the improvement of academic and environmental rights development. Second, I applied reflective and reflexive practices by taking notes. I took notes during the interviews, documenting the interviewees’ responses. Then after the interview, I recorded my thoughts about the interviewees and their answers. This practice allowed me to reflect on both the interviews and my thought processes. Third, I balance PIELs’ perspectives with other stakeholders’ perspectives. I did not rely solely on PIELs’ viewpoints but took into account other involved parties and used various data sources to strengthen the validity of this research.

For example, besides PIELs, research participants included clients, community members, non-governmental organizations members, and government officials. Data sources included transcripts, field notes, lawyers’ files, government orders and policies, court orders and judgments, constitutions and statutes, media coverages, and publications. These various groups of participants and diverse data sources created protection against a bias toward any viewpoint. By adopting these methods, I am confident that my position can broaden the understanding of how law works in the context of environmental rights development in Thailand and not compromise the quality of this research.

6. Empirical Research Processes

I started this research by focusing on the development of environmental rights from 1997 to the present. I highlighted historical backgrounds and debates on ecological rights

⁴⁵ Neuman, *supra* note 6 at 137-138.

⁴⁶ Maxine Baca Zinn, “Field Research in Minority Communities: Ethical, Methodological and Political Observations by an Insider.” *Social problems* (Berkeley, Calif). 1979;27(2):209–19, at 216-217.

⁴⁷ Berg, *supra* note 40 at 181.

⁴⁸ *Ibid* at 181.

provisions in Thai constitutions and the emergence of government institutions related to environmental rights. Then, I explained the historical context of PIELs. These historical contexts relied on interviews, government records, media coverage, statutes, decrees, and publications.

Next, I undertook an interactive process to select the case studies that are the subject of this dissertation. I recruited five well-recognized and experienced public interest environmental lawyers using two criteria: experience in environmental rights advocacy and professional and public recognition for public interest environmental works. I interviewed these PIELs and asked each of them to provide me with, in their opinion, the two most effective cases for changing environmental law or community outcomes and one important but less effective case with which they have been involved. Following these three suggested cases, I asked them a series of questions about these cases. I used the criteria in the literature review chapter (Chapter 2) to select six from fifteen suggested cases to examine in depth. From these six cases, I recruited 12 clients or community members, six non-governmental organization members, and three government agency representatives who engaged in these cases.

These interviews aimed to identify conditions leading to environmental disputes, legal strategies, direct and indirect impacts, and key factors contributing to effective legal strategy. The interview focused on court cases, legal precedents, enforcement of court judgments, government agency orders, and policies for the direct impacts of legal strategy. I also highlighted how legal strategies empower citizens by raising public awareness, by supporting ongoing movements, by increasing bargaining power, and by changing legal consciousness for indirect impacts.

Next, drawing on collected data, I analyzed legal strategies' direct and indirect impacts on state institutions such as government agencies and courts. I also assessed the indirect effects of legal strategies outside state institutions, emphasizing how legal strategies contribute to the empowerment of aggrieved communities.

From this analysis, first, I categorize the impacts of legal strategies into three groups: legal recognition, tangible benefits, and community empowerment. Then, I analyzed three key factors that contributed to the effectiveness of legal strategies: new legal opportunities, support from PIELs and NGOs, and community engagement.

Lastly, I explained how the research's findings broaden our understanding of how environmental rights and law work in Thai society: they are symbiotic. In this part, I recommended that stakeholders revise and tailor their work to protect the health, livelihood, and the environment better. The following section explains the expected contributions from each participant's group.

6.1 Expected Contribution from Participants

I conducted a semi-structured interview with four participant groups to answer the research questions. I asked each group different questions depending on their roles in the selected

cases. The table below shows the expected contributions from each participant interviewee group.

Participants	Expected contributions
1) Public interest environmental lawyers	<ol style="list-style-type: none"> 2) To understand various legal strategies PIELs employed to support communities advocating for a healthy environment. 3) To understand why PIELs choose one legal strategy over the others. 4) To understand PIELs' relationship with clients/community members, non-government organizations representatives, government agencies, and the judiciary. 5) To understand what PIELs perceive as the most effective and less effective cases and how they define them. 6) To understand the impacts of legal strategies on clients/community members, government practice, legal principles, and the public. 7) To understand factors contributing to effective legal strategies.
2) Clients/Community members	<ol style="list-style-type: none"> 1) To understand their reasons for turning to law and PIELs to address environmental problems. 2) To understand their expectations from legal strategies. 3) To understand various roles related to legal strategies. 4) To understand how they think about the law before, during, and after engaging in legal strategies. 5) To understand the relationship with PIELs, non-government organizations representatives, government agencies, and courts. 6) To understand the impacts of legal strategies on their livelihood and the environment. 7) To understand factors contributing to effective legal strategies.
3) Non-governmental organization representatives or experts	<ol style="list-style-type: none"> 1) To understand their reasons for working with PIELs and communities to solve environmental problems. 2) To understand their expectations from legal strategies.

	<ol style="list-style-type: none"> 3) To understand their roles related to legal strategies. 4) To understand the impacts of legal strategies on clients/community members, government practice, legal principles, and the public. 5) To understand factors contributing to effective legal strategies.
4) Government officials	<ol style="list-style-type: none"> 1) To understand how they respond to legal strategies and the reasons behind the responses. 2) To understand the impacts of legal strategies on government agencies, clients/community members, and the public. 3) To understand factors contributing to effective legal strategies. 4) To understand how government agencies' thinking changes throughout legal processes.

6.2 Participant Recruitment

I adopted purposeful and snowball sampling to recruit participants in this research. When applied to participants' recruitment, purposeful sampling means "researchers use their special knowledge or expertise about some group to select subjects who represent this population."⁴⁹ As an insider, I took advantage of special knowledge about PIELs in Thailand to identify PIELs as participants. I also used snowball sampling⁵⁰ to reach out to more participants. I asked PIELs to identify clients or community members, non-governmental organization representatives, and government officials involved in the selected cases. By adopting these sampling methods, I can solve participants' recruitment hindrances, specifically, accessibility to participants and gaining trust.⁵¹

I recruited participants from four groups for interviews: PIELs, clients, community members, non-governmental organization representatives, and government officials. These participants have experience and knowledge about how legal strategies work because they directly engage in environmental movements and, specifically, the cases that are the subject of this research. Their experience and knowledge provided rich data that assisted in answering the research questions.

⁴⁹ Berg, *supra* note 40 at 44.

⁵⁰ Deborah K Van den Hoonaard, *Qualitative research in action: a Canadian primer*, Themes in Canadian sociology (Don Mills, Ontario, Canada: OUP Canada, 2015), at 108.

⁵¹ Rosemary Lysaght et al, "Participant Recruitment for Studies on Disability and Work: Challenges and Solutions" (2016) 26:2 J Occup Rehabil 125–140, at 126.; Neuman, *supra* note 6 at 213.

I divide this section into four parts. In part one, I introduce five PIELs and explain why I recruit them for my research. Part two describes how I recruit clients and community members and why they are essential for my research. Next, I explain how I recruit non-governmental organization representatives and why I include them in this research. The final part describes how I recruit government agency representatives and how these officials help answer research questions.

6.2.1 Public Interest Environmental Lawyers

In identifying PIELs, I took advantage of my ten-year work as a PIEL to identify five active and experienced PIELs in Thailand. These five PIELs have played leadership roles in these five public interest legal organizations: the ENLAWTHAI Foundation (ENLAW), the Community Resource Centre Foundation (CRC), the Human Rights Lawyers Association (HRLA), the Center for Protection and Revival of Local Community Rights (CPCR), and the Environmental Committee of the Lawyers Council Under Royal Patronage (ECLC). I deliberately selected these five PIELs for my studies based on their experience.

First, these five PIELs, through their work, have gained public and professional recognition, either national or international. For example, the PIEL at ENLAW has sustained national⁵² and international acclaim for public interest in environmental lawyering.⁵³ This lawyer is the first public interest environmental lawyer who received an honorary doctorate degree from a public law school for public interest works.⁵⁴ The PIEL at CRC is known for representing affected villagers in a high-profile gold mining case.⁵⁵ In another case, this lawyer is one of the few Thai lawyers who have worked on the first transboundary environmental case in Thailand, the Xayaburi Dam Case.⁵⁶ The PIEL at HRLA has received a reputation for supporting many local communities to protect their communities from industrial and development projects.⁵⁷ Because of his extensive experience, this lawyer has served in many committees established to investigate various

⁵² Apinya Wipayayotin, “Lead contamination victims win historic B4m payout”, *Bangkok Post* (11 January 2013).

⁵³ Ashoka, “PIEL”, online: *Ashoka Everyone Chang* <<https://www.ashoka.org/en-CA/fellow/surachai-trongngam>>.

⁵⁴ Prachatai, “Prince of Songkla University gives honorary doctorate degree of law to 'PIEL' a human rights and environmental lawyer”, Prachatai, (21 September 2021), online: <<https://prachatai.com/journal/2021/09/95094>>.

⁵⁵ Itsarin Tisantia, “Gold mine should cough up, say locals”, *Bangkok Post*, (3 October 2018), online: <https://www.bangkokpost.com> <<https://www.bangkokpost.com/news/general/1550858/gold-mine-should-cough-up-say-locals>>.

⁵⁶ The Nation, “Lower Mekong dam decision to be appealed”, online: *The Nation*, (23 September 2017) <<http://www.nationmultimedia.com/detail/politics/30327501>>.

⁵⁷ Isranews, “Turn Crisis to Opportunity, Lawyer Suggests Rights Activists Using Cases for Telling the Truth”, Isranews, (9 May 2016), online: <https://www.isranews.org/isranews-news/46828-news_46828.html>; Amnesty International Thailand, “20 years of Universal Declaration on Human Rights Defenders: The protection yet to be available in Thailand”, online: <<http://www.amnesty.or.th/en/latest/news/9898/>>.

human rights violations.⁵⁸ The PIEL at CPCRC has long engaged in land rights movements and land rights law reform.⁵⁹ Because of this experience, the government appointed this lawyer as a committee member to address land rights issues.⁶⁰ Finally, the PIEL at ECLC has gained a reputation as a leading lawyer in many broad-impact environmental cases.⁶¹ This lawyer represents large groups of aggrieved plaintiffs and makes it possible to make polluters accountable.⁶² These PIELs are experts in their field whom people in need can ask for help. Their contributions to the development of environmental rights have resulted in public and professional recognition.⁶³ This recognition demonstrates their considerable contribution to the environmental rights movement in Thailand.

Second, these PIELs and their affiliated organizations employ relatively different legal strategies in addressing environmental problems. For example, PIELs at ENLAW use various legal tools to work with clients and communities, such as providing legal training for citizens, conducting law reform research, hosting public seminars and representing communities in courts.⁶⁴ When they litigate, they focus on a few pollution cases, mainly using administrative law approaches to support aggrieved communities.⁶⁵ In contrast,

⁵⁸ Greennews, "Seminar on Lessons Learned from Loei Mining, Company Used Lawsuits to Threaten Villagers and Create Fear", (11 May 2016), online: (*GreenNews*) <<https://greennews.agency/?p=9315>>; Artit Kenmee, "Wang Saphung Gold Mine, Influence above community rights", (16 June 2014), online: *waymagazine.org* / *WAY* <<https://waymagazine.org/goldmine-loey/>>.

⁵⁹ Apinya Wipatayotin, "Land reforms come up short", *Bangkok Post*, (18 May 2017), online: <https://www.bangkokpost.com> <<https://www.bangkokpost.com/news/politics/1251578/land-reforms-come-up-short>>.

⁶⁰ The Community Organizations Development Institute, "Ethnic Groups Push for Community Land Title to Solve Land Problems on Highland", CODI, (10 June 2009), online: <<https://ref.codi.or.th/2015-08-04-11-01-52/11641-2010-09-14-04-26-58>>;

⁶¹ The Nation Thailand, "Compensation for mining company's 'poisoning' not enough: plaintiffs", *The Nation Thailand*, (12 July 2016), online: <<http://www.nationmultimedia.com/detail/national/30290434>>. Beside being an active member of ECLC, this PIEL is also a leader of Legal Rights and Environmental Protection Association that provides legal aid to people as well.

⁶² Khaosodonline, "Civil Court Grants Villagers filing a Lawsuit against Gold Mine as Class Action", *Khaosodonline*, (11 February 2020), online: <https://www.khaosod.co.th/around-thailand/news_3557919>; "Mae Sot Villagers Prepare to Appeal the Cadmium Polluted River Case, Lawyer Says the Outcome is Regressive" *Prachatai*, (13 July 2016), online: <<https://prachatai.com/journal/2016/07/66862>>.

⁶³ All these PIELs were invited to work as pro bono lawyers at legal aid program under the Lawyers Council Under Royal Patronage—the national professional organization that regulates all practicing lawyers in Thailand. Some of these PIELs were invited to talk to legal profession both domestically and internationally. See for example, Seminar on Rights of Access to Environmental Justice, where a PIEL was invited to speak about his work to administrative judges who responsible to adjudicate environmental cases, The Administrative Court, (27 February, 2013), <<http://www.admincourt.go.th/admincourt/site/04activitydetail-1197.html>>; See also, United Nation Forum for Business and Human Rights, GENEVA, 25-27 November 2019, where another PIEL was invited to talk at the Forum about PIEL's work. (25 November 2019), online: <<https://2019unforumbhr.sched.com/event/U98l/corporate-accountability-lessons-from-recent-legal-cases>>.

⁶⁴ ThaiPublica, *EU, Konrad Foundation and ENLAWTHAI Foundation organize legal empowerment project for communities in 18 provinces* (in Thai), ThaiPublica, (17 May 2015), online: <<https://thaipublica.org/2015/05/enlaw-6/>>.

⁶⁵ ENLAWTHAI, *Environmental Judgment* (in Thai), ENLAWTHAI Foundation, online, <https://enlawfoundation.org/newweb/?page_id=860>. There are about 11 cases that PIELs at ENLAWTHAI Foundation represented and had judgements since ENLAWTHAI established in 2001.

PIELs at CRC provide legal aid to needy people by receiving all kinds of environmental cases, including transnational issues unfamiliar to other PIELs.⁶⁶ PIELs at CRC use administrative and civil litigations to address ecological problems. PIELs at HRLA focus on educating and empowering aggrieved communities to take control of their problems; they prioritize community engagement in legal strategies design and community empowerment.⁶⁷ This intensive community engagement took PIELs at HRLA many years, working on one case before moving to another. PIELs at the CPRC focus on protecting environmental activists in criminal cases and providing legal advice to activists for land rights movements.⁶⁸ These lawyers played a supplementary role in the campaign by giving activists legal advice and representing them in courts when they faced criminal charges. Finally, PIELs at ECLC focus solely on litigation, primarily large-group tort cases that other organizations cannot handle.⁶⁹ This type of litigation is typical for environmental problems but poses challenges to PIELs with limited resources. These diverse legal strategies provide different perspectives and information for understanding PIELs' roles and how different legal strategies work.

Third, these PIELs are all information-rich participants. They have practiced public interest environmental law for more than ten years to protect the environment and human health. Their focus on using legal strategies and long-term engagement in this field makes them exceptional participants in exploring how environmental rights function in Thai society. They possess first-hand experience with how legal strategies work and do not work in various circumstances. Their works would help scholars understand how environmental rights function from the bottom of Thai society—in communities affected by development projects—and from the top, such as courts, government agencies, and the legislature.

In sum, I recruited these five PIELs because their rich experience in employment law to protect the environment would allow me to examine how law and legal strategies unfold in practice and how they change environmental movements.

After interviewing all PIELs, I identified six cases. These six cases come from PIELs' recommendations; five of them are cases that PIELs recommended as the most effective cases they have done, and the last one is important but not effective. Although this research

⁶⁶ Sor Rattanamanee Polkla, "Mekong villagers in fight for their rights", Bangkok Post, (30 November 2015), online: <https://www.bangkokpost.com> <<https://www.bangkokpost.com/opinion/opinion/779937/mekong-villagers-in-fight-for-their-rights>>; Rina Chandran, "Rights in poorer nations must be upheld as Thai firms go abroad, activists say", Reuters (10 April 2018), online: <<https://www.reuters.com/article/us-thailand-landrights-lawsuit-analysis-idUSKBN1HH02Q>>.

⁶⁷ Tanakorn Wongpanya, "Fight to Protect Rights...But Received Lawsuits? New Strategies Using Lawsuits to Stop Villagers to Speak Out", *THE STANDARD*, (7 August 2017), online: <<https://thestandard.co/news-thailand-legal-mechanisms/>>.

⁶⁸ Prachatai, "The Supreme Court decided Karen villagers did not violate the Forest Act because they lived there before an announcement of the Preservation Forest, but must leave the area" (in Thai), | Prachatai, (22 March 2017), online: <<https://prachatai.com/journal/2017/03/70691>>.

⁶⁹ MGRonline, "A lawsuit against Padaeng-Tak Mining for polluting cadmium demands more than three billion baths" (in Thai), MGRonline, (22 June, 2013), online: <<https://mgronline.com/local/detail/9560000075706>>. In this case there were more than 1,000 plaintiffs represented by lawyers from the Environmental Committee of the Lawyers Council Under Royal Patronage.

focuses on the effectiveness of legal strategies, I examine one case that is perceived as a winning court case but created negative impacts on environmental movements in order to attain a more comprehensive picture of the impacts of legal strategies. Then, I identified and recruited 12 clients and community members, 6 non-governmental organization representatives, 3 government agency representatives and one more PIEL involved in these six cases for further interviews.

6.2.2 Clients and Community Members

Clients and community members are front-line people affected or likely to be affected by environmental problems. They are people who try to solve ecological issues in their locales and face the outcomes, whether they are positive or negative. These people are the center of environmental disputes who experience ecological problems and use various tools, including legal strategies, to address the issues from the beginning to the end. They bring environmental concerns to lawyers, so PIELs can work on the case and introduce legal strategies to environmental movements. Their experience is crucial to comprehend practical aspects of the law, such as how aggrieved communities think about law and legal strategies, how they fit legal strategies in their struggles, how legal strategies work for and against them and how they change their views throughout the process.

In Thailand, the difference between clients and community members is that the clients generally refer to people who appoint PIELs to represent them in legal processes. However, community members refer to people involved in environmental cases without PIELs' representation. For example, in the Chiang Rai Biomass Power Plant Case in the north of Thailand, local villagers filed a lawsuit to revoke the permit of the Biomass Power Plant; there were 100 claimants and about 1,500 supporters.⁷⁰ In this case, 100 claimants were represented by PIELs, so they were clients. In contrast, the 1,500 supporters were not a party in the court procedures and not represented by PIELs, but they engaged in this case by supporting the lawsuit: they are community members. Environmental cases may involve only clients or community members, or both.

I identified twelve clients or community members from six legal cases selected in the previous stage for interviews. The interview focused on their reasons for turning to legal strategies and their expectations. Furthermore, I highlighted their understanding of law before, during, and after experiencing legal strategies. Finally, I paid attention to how they think about the impact of legal strategies on their livelihood and the environment.

6.2.3 Non-Governmental Organization Representatives

PIELs and aggrieved communities often work with non-governmental organizations and environmental experts on specific environmental problems. Non-governmental organizations and experts are significant in supporting affected communities and PIELs to protect the environment and livelihood. The main reason non-governmental organizations

⁷⁰ ThaiPBS, "*Chiang Rai Residents Expect Administrative Court to Revoke Biomass Power Plant Permit*" (in Thai), Thai PBS, (18 June 2013), online: <<https://news.thaipbs.or.th/content/177803>>.

and experts are crucial for legal advocacy is the nature of environmental problems that often transcends legal knowledge to other unfamiliar fields for PIELs and laypersons. PIELs and communities need assistance to help them understand and properly design legal strategies. PIELs also depend on non-governmental organizations to organize clients and community members and collect evidence. Therefore, their roles in legal strategies are essential.

I identified and recruited six non-governmental organization representatives involved in six legal cases selected in the previous stage for interviews. The interview focused on their roles, thoughts, and expectations from legal strategies and their perspective on the impacts of legal strategies.

6.2.4 Governmental Agency Representatives

Governmental agencies play a significant role in most environmental problems, from permitting, regulating, enforcing, and monitoring adverse ecological activities. They are state authorities responsible for ensuring that environmental rights enshrined in constitutions are respected and implementing environmental laws to protect or restore the environment and preserve natural resources.

However, their responses to constitutional rights or written law cannot be taken for granted; there is a gap between written law and law in practice.⁷¹ Their roles in environmental struggles are complicated. On the one hand, they are responsible for addressing or preventing environmental problems before they happen. On the other hand, they cannot prevent all environmental problems and depend on citizens who bring the issues to their attention. However, if citizens file a complaint or lawsuit about environmental problems to or against governmental agencies, they implicitly accuse the agencies of not doing their job correctly. These actions typically force officials to defend their actions or inactions.

This dilemma makes governmental agencies' responses to legal strategies interesting because it illustrates how officials translate and apply legal texts in responding to citizens' actions. Government officials' interaction with other stakeholders demonstrates how their understanding of law influences environmental movements and the other way around.

I identified six government agency representatives involved in six selected cases for interviews but could recruit only three of them. The interviews focused on their roles in cases, their thoughts about environmental rights, laws and citizens' use of legal strategies to solve environmental problems. I highlighted how and why they changed or did not change their practices in responding to legal strategies. I used other data sources to compensate for the missing interviews for the cases in which I could not interview participants.

⁷¹ Thawilwadee Bureekul, *Access to Environmental Justice and Public Participation in Thailand*, in Andrew Harding, ed, *Access to environmental justice: a comparative study*, London-Leiden series on law, administration and development v. 11 (Leiden ; Boston: Martinus Nijhoff Publishers, 2007) at 286.; Frank Munger, "Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand" (2007) 40:2 Cornell Int Law J 455-476, at 473.

In summary, by adopting purposeful and snowball samplings, I recruited 27 participants from four stakeholder groups: PIELs, clients and community members, non-government organization representatives, and government officials. These groups' diversity is crucial to understanding how legal strategies work because it reflects how different stakeholders view what happens inside state institutions and communities. These multiple perspectives gave a comprehensive picture of each case from the beginning to the end. This information and data from other sources provided adequate evidence to deliberate and answer the research questions I discuss in the following chapters.

7. COVID-19's Impact on Research

The Chinese government reported the first COVID-19 virus case in China in December 2019.⁷² The infection was widespread worldwide, and the World Health Organization announced the COVID-19 situation as a pandemic in March 2020.⁷³ The pandemic affected this research in many ways, particularly because the original research plan was to conduct all in-person interviews.

First, it poses an additional risk for doing fieldwork. When COVID-19 is widespread worldwide, fieldwork researchers take on the risk of acquiring the disease and spreading it to others. This situation forced me to comprehend how to continue the fieldwork while avoiding unnecessary risk. As a result, I revised my data collection from in-person interviews to virtual-interviews whenever possible. I limited in-person interviews solely for participants who could not conduct online interviews.

Second, the researcher must justify in-person interviews and revise research procedures. In response to the COVID-19 pandemic, the University of Victoria announced several research guidelines.⁷⁴ Among many requirements, these guidelines required the researcher to justify conducting an in-person interview and propose additional measures to align with

⁷² World Health Organization, "Archived: WHO Timeline - COVID-19", WHO, (27 April 2020), online: <<https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>>.

⁷³ World Health Organization "WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020", (11 March 2020), online: <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>>.

⁷⁴ Sandra Gibbons & Chris Lalonde, UVic Human Research Ethics Covid-19 Bulletin # 1, (University of Victoria: Victoria, 2020), accessed on January 1, 2022, online: <[covid-19_human_research_ethics_bulletin_no.1-march_23.pdf](#)>; Sandra Gibbons & Chris Lalonde, UVic Human Research Ethics Covid-19 Bulletin # 2, (University of Victoria: Victoria, 2020), accessed on January 1, 2022, online: <[covid-19_human_research_ethics_bulletin_2-june_02.pdf](#)>; Sandra Gibbons & Matt Murphy, UVic Human Research Ethics Covid-19 Bulletin # 3, (University of Victoria: Victoria, 2020), accessed on January 1, 2022, online: <[covid-19_human_research_ethics_bulletin_3-jul_16.pdf](#)>; Sandra Gibbons & Matt Murphy, UVic Human Research Ethics Covid-19 Bulletin # 4, (University of Victoria: Victoria, 2020), accessed on January 1, 2022, online: <[covid-19_human_research_ethics_bulletin_4-nov-26.pdf](#)>; Sandra Gibbons & Matt Murphy, UVic Human Research Ethics Covid-19 Bulletin # 5, (University of Victoria: Victoria, 2021), accessed on January 1, 2022, online: <[covid-19_human_research_ethics_bulletin_5-feb_25.pdf](#)>; Sandra Gibbons & Matt Murphy, UVic Human Research Ethics Covid-19 Bulletin # 6, (University of Victoria: Victoria, 2021), accessed on January 1, 2022, online: <[covid-19_human_research_ethics_bulletin_6-jul_21.pdf](#)>.

COVID-19 public health regulations.⁷⁵ In my case, I had insisted on conducting in-person interviews in Thailand because meeting participants in person is the best way to gain their trust and cooperation. Furthermore, many participants lived in areas that could not access regular telephone or internet connections. However, I revised my research methods to mix in-person and remote interviews and followed COVID-19 health measures during fieldwork.

Third, it delays the fieldwork. I initially planned to conduct the fieldwork in the Fall semester of 2020. However, COVID-19 forced me to start a virtual interview in the spring of 2021 and conduct an in-person interview in the spring of 2022. The main reason was that COVID-19 was so widespread worldwide that many countries, including Canada⁷⁶ and Thailand,⁷⁷ closed their borders. In addition, the University of Victoria did not permit a researcher to conduct in-person research for a time.⁷⁸ As a result, I delayed my fieldwork for more than one year. The COVID-19 pandemic has affected everyone differently; this research is no exception. The situation forced me to think and revise research methods to reflect the changed situation. In response to the unprecedented crisis, I adjusted my research methods and put the necessary measures to ensure my fieldwork aligned with public health guidelines. This situation and adjustment delayed my fieldwork for about one and a half years, but it was necessary.

8. Conclusion

This chapter laid down the methodology that I embedded for conducting this research. I started the chapter by explaining how I proceeded with this research and collected data. Then, I introduced two main research questions: what were the impacts of legal strategies on the development of environmental rights, and what factors made legal strategies effective in advocating for a healthy environment in Thai society. Next, I justified why I chose to study the work of PIELs. This part highlighted PIELs' crucial roles in assisting aggrieved communities to use legal tools to protect the environment and livelihood that transcend individual interests. Part four introduced the case studies approach and explained how it fitted with this research. Section five discussed the researcher's position. In this part, I clarified that my insider position was crucial in framing the research questions; however, I did not take PIELs' perspective as the final word. I adopted three methods to help prevent bias: embracing transparency, taking notes while interviewing, and relying on various data sources. Part six described how I recruited participants and what I expected from their interviews. This part highlighted multiple views from different participation groups on how

⁷⁵ Office of Research Services, In-person Research with Human Participants Under COVID-19 Restrictions Community (off-campus) Research1 - Instructions for Human Research Ethics, (University of Victoria, 2021), accessed on January 1, 2022, online: <[covid-19_hre_community_in-person_research_instructions.pdf](#)>.

⁷⁶ Rachel Aiello, "Canada shutting the border to most non-citizens due to COVID-19: PM Trudeau", (16 March 2020), online: *Coronavirus* <<https://www.ctvnews.ca/health/coronavirus/canada-shutting-the-border-to-most-non-citizens-due-to-covid-19-pm-trudeau-1.4854503>>.

⁷⁷ Mongkol Bangprapa & Wassana Nanuam "All doors closed to foreigners", Bangkok Post, (26 March 2020), online: <<https://www.bangkokpost.com/thailand/general/1886395/all-doors-closed-to-foreigners>>.

⁷⁸ Gibbons & Lalonde, *supra* note 74.; Office of Research Services note 75.

legal strategies contribute to environmental rights development. Part seven discussed how the COVID-19 pandemic affected my research. The next chapter introduces six selected case studies providing background information for further discussion in the following chapters.

Chapter 4: Six Public Interest Environmental Cases

1. Introduction

This chapter introduces the environmental law cases that are the subject matter of this research. I selected these cases from fifteen cases recommended by public interest environmental lawyers (PIELs). PEILs recommended five of these six as the most effective public interest environmental cases they have worked on. The last case is important, but some academics criticize the court case as a bad judgment,¹ and PIELs who worked on the case see it as the least effective case. However, their clients and community members see the outcome as significant and useful for their communities. These six cases are not representative of environmental cases in Thailand. However, they are exemplars of public interest environmental law cases that demonstrate how communities in Thailand can effectively use legal strategies to address their environmental problems.

I organize this chapter by paying attention to my thesis framework, the impacts of legal recognition, tangible benefits, and community empowerment. In other words, if we consider the effectiveness of environmental law cases in terms of a continuum, this chapter begins with the most effective case to the least effective one. I divide this chapter into eight parts. Following this introduction, I introduce the six cases in sections two to seven and conclude in section eight. I start with cases that lead to results in all three framework impacts on environmental movements: Klity Creek Lead Pollution Case, Mab Ta Phut Industrial Pollution Case, Khuha Mountain Quarry Mine Case, Chana Pipeline and Industrial Estate Case. Then, I move to cases that lead to some of these three impacts: Non Mak Keng Waste Pollution and Mae Om Ki Land Rights Case.

In each case, I provide brief information about the case, highlighting the nature and degree of environmental problems. I describe how stakeholders respond to the situation focusing on how aggrieved communities interact with polluters and responsible government agencies, and how communities employ legal strategies and their results. Finally, in part eight, I highlight key aspects of these six case studies that lay the ground for the following chapter.

This chapter aims to provide only background information on the case studies. I will provide further evidence for the case studies in the following chapters.

¹ Kanokrat Sasiroj, “Academics suggest judges to apply community rights in land cases arguing that land tax bill becomes politics”, News Center for Community, Isranews, (25 June, 2012), online: <<https://www.isranews.org/content-page/item/7347-2012-06-25-08-57-08.html>>.

2. Klity Creek Lead Pollution Case

The Klity Lang Village is an indigenous Karen community² in western Thailand in Kanchanaburi province near the Thung Yai Naresuan Wildlife Sanctuary complex, a World Heritage site.³ With a population of 269, this small village is located deep in the forest, far away from cities: the closest city is about 85 kilometres.⁴ Most of the villagers are farmers.⁵ All villagers are Karen who have sustained their distinct culture, especially their livelihood which depends more on nature and less on the market.⁶ One of this community's most critical natural resources that provides villagers with protein, such as fish and other aquatic animals, is Klity Creek—the village's main water supply.⁷

In 1967, a mining company started a floating lead mine operation about 8 kilometres from the Klity Lang village.⁸ Later, the lead⁹ from the mine caused unprecedented serious harm to the environment, villagers' livelihood and health.¹⁰ Since the mining began its operation, villagers have observed that Klity Creek's water quality has deteriorated.¹¹ The water was muddy and smelly. Villagers often saw floating fish and other dead animals in the creek. They felt faint after drinking the water and itchy when bathing or playing in the creek.¹² Although they noticed unusual changes in the creek, villagers continued to use natural

² Network of Indigenous Peoples in Thailand, “Indigenous Peoples of Thailand ヒューライツ大阪”, (December 2010), online: <<https://www.hurights.or.jp/archives/focus/section2/2010/12/indigenous-peoples-of-thailand.html>>.

³ Churnrurtai Kanchanachitra et al. ed, *Thai Health 2014: Self-management communities: foundation of national reform*, (Nakhon Pathom: Institute for Population and Social Research, Mahidol University, 2014), at 68.

⁴ Jeerawan Buntowtook, *Coping with Environmental Change Effecting Health from a Gender Perspective: A Case Study of Karen Village at Lower Klity, Kanchanaburi Province*, (Mater Degree Thesis, Political Science Faculty, Chulalongkorn University: 2004) at 83.

⁵ Kanchanachitra et al., *supra* note 3 at 68.

⁶ Buntowtook, *supra* note 4 at 93-98.

⁷ Malee Sitthikriengkrai & Nathan Porath, “Environmental Illness at Klity Creek (Thailand): A Karen Village's Quest for Justice” in Maguni Charan Behera, ed, *Shifting Perspective Tribal Stud Anthropol Approach Interdiscip Cons* (Singapore: Springer, 2019) 149, at 152.

⁸ *Ibid.*

⁹ Lead is a toxic substance that causes serious harm to wildlife and human health, even with a small amount. See, Niels Kanstrup & Thorsten Johannes Skovbjerg Balsby, “Danish pheasant and mallard hunters comply with the lead shot ban” (2019) 48:9 *Ambio* 1009–1014. at 1009; European Chemical Agency, *ANNEX XV INVESTIGATION REPORT: A review of the available information on lead in shot used in terrestrial environments, in ammunition and in fishing tackle*. (ECHA: Helsinki, 2020), at 62.; U N Environment, “Lead and cadmium”, (13 September 2017), online: *UNEP - UN Environ Programme* <<http://www.unep.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/lead-and-cadmium>>.

¹⁰ Bantawtook, *supra* note 4 at 137-169.

¹¹ Keurmaetha Rerkpornpipat, *Klity: Stream Community and Lead Poison*, (Campaign for Alternative Industrial Network: 2007), at 27-28.

¹² Bantawtook, *supra* note 4 at 137.

resources because they had no other water supply.¹³ The exposure to lead for many years caused serious health problems among the Klity Lang villagers.¹⁴

After recognizing the unwanted change in Klity Creek, and the impact on their livelihood and health, villagers tried various ways to deal with the water pollution. First, they adapted to the changing environment. For example, recognizing muddy water, they stored it for use and consumption when it was not too muddy or dirty.¹⁵ Some villagers went to the mine to negotiate with a mining manager and asked him to stop releasing wastewater from the mining process to the creek. The manager accepted their requests, but did not keep his promise.¹⁶ Villagers consulted their local leaders and several government agencies about the problems, but they could not help.¹⁷ They tried to address environmental problems for almost 30 years, but to no avail. Later, they got help from a non-governmental organization that brought a handful of reporters to this community to report the unusual plight of Klity Lang villagers to the general public.¹⁸

The public had not known about this small community until 1998 when several national newspapers reported strange illnesses among villagers connected with lead contamination in Klity Creek.¹⁹ Reporters noted severe cases of lead pollution in Klity Creek—the lead concentration in the water was more than 50 times over the drinking water standard—directly linked to the lead mine factory above the village.²⁰ The media illustrated unusual illnesses among the villagers and claimed there was a high volume of lead in the villagers’ blood.²¹ Journalists showed pictures of children with abnormally large heads and a blind woman. They also raised a question about a mysterious death in the village that might be linked to lead poison. Furthermore, the news reported the deaths of cattle, fish, and ducks related to the polluted creek.²² These extensive reports made Klity Creek an issue of great interest for several government agencies.

The media coverage of lead contamination and health problems in the Klity Lang village instigated government agencies to respond to villagers’ requests.²³ Since 1998, many government agencies have taken some action, but their responses were fragmented and

¹³ The Klity Creek was an only water supply for villagers until 1995 when the village was connected to other water supply from the mountain. *Ibid.*

¹⁴ *Ibid* at 148-169; Rerkpornpipat, *supra* note 11 at 40-45.

¹⁵ Rerkpornpipat, *ibid* at 38.

¹⁶ *Ibid* at 28.; Bantawtook, *supra* note 4 at 186.

¹⁷ Bantawtook, *ibid* at 185-192.

¹⁸ *Ibid* at 192-193; NKT, interviewed on September 12, 2021, at 2-4.

¹⁹ Kanchanachitra et al., *supra* note 3 at 68-71.

²⁰ Vanchai Tantivitayapitak, “Mysterious Death of Karen in Klity Village” (in Thai), online: <https://www.sarakadee.com/feature/2002/07/secret_death.htm>.

²¹ Rerkpornpipat, *supra* note 9 at 74-75.

²² Tantivitayapitak, *supra* note 20.

²³ Rerkpornpipat, *supra* note 11 at 47-49.

inadequate to solve the problems.²⁴ For example, in 1998, the Department of Mineral Resources fined the mining company 2,000 baht (approximately 80 CAD) for illegally releasing wastewater into the creek. The agency also suspended its mining license but did not order the company to clean up Klity Creek.²⁵ The Pollution Control Department (PCD) monitored water quality, sediment, plants, and aquatic animals, all of which the agency found lead levels exceeding legal standards.²⁶ Later, the PCD asked the mining company to clean up Klity Creek.²⁷ However, when the mining company did not follow the clean-up plan, the PCD failed to force the company to fulfill its obligation. The PCD continued to monitor the lead levels, but never cleaned up the creek. Instead, the PCD advocated for letting the polluted creek recover on its own.²⁸ The government and mining companies' responses to the problems did not reflect the seriousness of the problems villagers had endured.²⁹

When Klity Lang villagers recognized that the government and mining company would not clean up the creek, with help from NGOs, they contacted PIELs to help them in the legal realm.³⁰ During 1998-2001, villagers employed legal tools, such as sending petitions to responsible agencies asking them to address their issues. In 2002, they also requested help from the National Human Rights Commission, asking the commission to investigate the problems.³¹ However, these government agencies and independent institutions either rejected their requests or lacked the authority to address their issues. Faced with this stalled situation, in 2003, villagers requested help from PIELs.³² Then, with the support of PIELs, villagers filed two civil lawsuits against a mining company in 2003³³ and 2007³⁴ and one administrative lawsuit against the Pollution Control Department in 2004,³⁵ asking courts

²⁴ Keurmaetha Rerkpornpipat, Analysis of Public Policy Process in Solving Pollution Problems from Mining Activities: A Case Study of Lead Contamination at Klity-Lang Village, Kanchanaburi Province, in *Environment and Natural Resources Journal* Vol. 5, No.2, Dec 2007, at 131; Kanchanachitra et al., *supra* note 3 at 71.

²⁵ Rerkpornpipat, *supra* note 11 at 47.

²⁶ Songkrant Pongboonjun & Surachai Trong-ngam, Klity Creek's Environmental Remediation: Case Victory Reveals Failed System, in *CMU Journal of Law and Social Sciences*, Vol. 14 No. 2, 2021, at 92.

²⁷ Rerkpornpipat, *supra* note 11 at 48-49.

²⁸ Chakkapan Kangwan, When the Klity Case Enter the Administrative Court, in Darunee Paisanpanichkul, ed., *The Environmental Rule of Law: Essays and Interviews about Environmental Cases Book 2*, (EnLAW: Bangkok, 2008), at 131-132.

²⁹ Rerkpornpipat, *supra* note 24 at 131.

³⁰ NKT, *supra* note 18 at 8; Buntowtook, *supra* note 4 at 188.

³¹ Buntowtook, *ibid* at 186-188, 198-199.

³² *Ibid* at 188.

³³ The Kanchanaburi Provincial Court Judgement No. Red 1565/2549 (2006), Kamtorn Seesuwannamala and 7 plaintiffs V Lead Concentrate (Thailand) Ltd. and 2 defendants.

³⁴ The Kanchanaburi Provincial Court Judgment No. Red 1290/2553 (2010), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants

³⁵ The Central Administrative Court Complaint Black No. 214/2547 (2004), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department.

to force the company and the government to compensate them for their losses and clean up the polluted creek.

In the first civil case, the Klity villagers selected eight villagers who had a medical record from a specialized doctor confirming they were sick because of lead pollution as plaintiffs.³⁶ They asked for two main remedies from the mining company: compensation and restoration of Klity Creek.³⁷ Judges from the Court of First Instance,³⁸ Appeal Court³⁹ and the Supreme Court decided in favor of the plaintiffs affirming their rights to live in a healthy environment based on principles in the Thai Constitution. The court states that the right to live in a healthy environment and benefit from natural resources gives the plaintiffs entitlement to compensation. In the Supreme Court's own words:

Eight defendants and Klity Lang villagers are local indigenous communities with the right to preserve and participate in natural resources and environmental management in a sustainable and balanced way. They have the right to participate with the state and communities to maintain and benefit from natural resources and biodiversity. In addition, they have the right to protect, promote, and preserve environmental quality for the defendants and Klity Lang villagers to live their normal lives sustainably in a healthy environment. They have a duty to preserve natural resources according to the 1997 Constitution sections 46, 56, and 69.⁴⁰

In this statement, the Supreme Court reaffirms that the right to a healthy environment, participation in natural resources management and benefit from natural resources recognized in the 1997 Constitution sections 46 and 56 are enforceable. When the mining company violated these rights, the Klity Lang villagers had the right to get compensation from the violators. This is the first judgment in Thailand that the Supreme Court has applied the constitutional provisions in environmental cases and recognized the important role of the Constitution in adjudication. Victims of environmentally harmful activities can now utilize the constitution and courts to force responsible parties to respect their environmental rights. In other words, this judgment demonstrates that environmental constitutional rights are not ineffective legal texts, but powerful and enforceable.

³⁶ Jeerawan Bantowtook, Karen Way of Life: The Way of Fighting and Accessing to the Court of Justice of Klity Lang Villagers, in Darunee Paisanpanichkul, ed., Nitithammachat: Essays and Interviews on Environmental Cases Book 2, (Pappim Printing:2008) at 105-107.

³⁷ The Kanchanaburi Provincial Court Judgment, No. Red 1565/2549 (2006), *supra* note 33 at 4-6.

³⁸ *Ibid* at 38-39.

³⁹ The Appeal Court Region 7 Judgment No. Red 3426/2550 (2007), Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, at 30-31.

⁴⁰ The Supreme Court Judgement No. 15219/2558 (2015), Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, at 37-38.

The Supreme Court also ordered the mining company to pay 20,200,000 baht (approximately 808,000 CAD) and a 7.5% interest rate of this compensation from January 30, 2003, to the date of full payment to the plaintiffs.⁴¹ The compensation and interest added up to 40,894,900 baht (approximately 2,463,592 CAD) when the plaintiffs received a part of the compensation in 2016, 13 years after the lawsuit.⁴²

This case paved the way for the following civil case, where 151 Klity Lang villagers filed another civil lawsuit against the mining company and its executives.⁴³ Judges in the second case followed the first case by ordering the defendants to clean up the polluted creek with their expenses and pay 36,050,000 baht (approximately 1,442,000 CAD) and a 7.5% interest rate of this amount from October 19, 2007, to the date of full payment to the plaintiffs.⁴⁴ In this case, the compensation and interest add up to 74,413,208 baht (approximately 2,976,528 CAD).⁴⁵ The second case breaks a record set by the first case regarding compensation awarded for environmental cases.⁴⁶

In the administrative case, the community filed a lawsuit against the Pollution Control Department, arguing that the department was responsible for cleaning up the creek but had not fulfilled its duty.⁴⁷ The Lower Court⁴⁸ and the Supreme Administrative Court⁴⁹ decided in favor of the plaintiffs. The Supreme Administrative Court, in particular, affirmed that Klity Lang villagers have the right to participate in maintaining and benefiting from natural resources and protecting environmental quality; so, they can live in a normal, healthy environment.⁵⁰ In other words, the courts affirm that the right to live in a healthy environment is enforceable. The courts agreed that the PCD had a duty to clean up the

⁴¹ *Ibid* at 42-43.

⁴² I calculate the interest rate of 20,200,000 Baht from January 30, 2003 to August 31, 2016, two weeks before the defendants and the plaintiffs reached an agreement and received 20,200,000 on September 13, 2016.; see, the Appeal Court Region 7 Judgment No. Red 3426/2550 *supra* note 39 at 30-31; The Kanchanaburi Provincial Court No. Red 1565/2549 (2006), A petition to discard to enforce court judgment, Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, at 3.

⁴³ The Kanchanaburi Provincial Court Judgment No. Red 1290/2553 (2010), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants.

⁴⁴ The Supreme Court Judgement No. 10797/2559 (2016), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 44-45; The Appeal Court Region 7 Judgment No. 2604/2554 (2011), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 56; *Ibid* at 27-28.

⁴⁵ I calculate the interest of 36,050,000 Baht from October 19, 2007 to 26 December, 2021, the date I interview one of the plaintiffs and the result is 38,363,208 Baht (approximately 1,534,528 CAD).

⁴⁶ Piyarat Chongcharoen, “Klity Creek villagers win 19-year legal battle”, (11 September 2017), online: <<https://www.bangkokpost.com/thailand/general/1322371/klity-creek-villagers-win-19-year-legal-battle>>.

⁴⁷ The Central Administrative Court Complaint Black No. 214/2547, *supra* note 35 at 7-11.

⁴⁸ The Central Administrative Court Judgment No. Red 637/2551 (2008), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department.

⁴⁹ The Supreme Administrative Court Judgment No. Red A. 743/2555 (2012), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department.

⁵⁰ *Ibid* at 77.

polluted creek but did not fulfill its duties and unreasonably delayed doing it for years.⁵¹ Therefore, the Court ordered the PDC to compensate 22 plaintiffs for 3,898,390 baht (approximately 155,935 CAD). And, for the first time in Thai history, the Court ordered the PCD to clean up the polluted creek and report back to the community regularly until the level of lead in water, soil, plants, and aquatic animal is not exceeded acceptable standards.⁵²

These legal outcomes are impressive. The Klity Lang villagers, with assistance from NGOs, and PIELs, won all three cases. They were able to convince the courts to order the company and the PCD to pay them compensation as well as to clean up the polluted creek. For the first time, the courts affirmed the right to live in a healthy environment as an enforceable right. Besides court cases, their numerous petitions and movements pushed the Thai government to suspend and reject extending the mining license. These outcomes are significant for the marginalized villagers who had never used legal tools to challenge government agencies and businesses.

In the following section, I introduce another pollution case where local people turned to legal strategies to address their environmental problems. However, the Mab Ta Phut Industrial Pollution Case is a larger and more complicated environmental issue than the Klity Creek Lead Pollution.

3. Mab Ta Phut Industrial Pollution Case

Map Ta Phut is a sub-district in Mueang Rayong district, Rayong province, 200 kilometers east of Bangkok. It is an exceptional case to illustrate how far citizens can utilize legal tools to protect themselves from the impacts of industries and government policies. It also highlights the conflict between citizens concerned about the health and environmental problems on the one side and the government and businesses that are concerned more about economic growth on the other side.⁵³ Legal strategies, especially court cases, help us to understand the potential and limitations of litigation in protecting citizens' rights in a society where the legal system is unlikely to function well in regulating the government.⁵⁴

The Thai government initiated the Eastern Seaboard Development Plan to promote the Thai economy in the 1980s.⁵⁵ In the 1990s, the government established Map Ta Phut Industrial

⁵¹ *Ibid* at 72-74.

⁵² *Ibid* at 81-85.

⁵³ Wannathepsakul, Nopanun, Network Bureaucracy and Public-Private Firms in Thailand's Energy Sector, in Pasuk Phongpaichit & Christopher John Baker, eds, *Unequal Thailand: aspects of income, wealth and power* (Singapore: NUS Press, 2016), at 112.

⁵⁴ Charan Khosananan, *Law and Rights and Liberty in Thailand: The Parallel from 1932 to Present* (in Thai), (Religious Cooperation for Society Group, 1985); Thongchai Winichakul, *The Legal Privileged State and the Royalist Rule of Law: The Genealogy of the Thai-style Rule by Law* (in Thai), (Waymagazine.org, 2020), 166, online: <<https://waymagazine.org/thongchai-winichakul-rule-by-law/>>.

⁵⁵ Václav Mach et al., "Persistent organic pollutants in Thai Polluted Areas" (in Thai), (accessed April 14, 2019), , online: *ResearchGate*

Estate⁵⁶ as the first industrial estate pursuant to this plan.⁵⁷ Later, the government established four more industrial estates in Map Ta Phut - Eastern Hemaraj Industrial Estate, Asia Industrial Estate, RIL Industrial Estate, and Pa Daeng Industrial Estate. These five industrial estates became Map Ta Phut Industrial Complex, the largest industrial park in Thailand and the eighth-largest petrochemical hub globally.⁵⁸ This complex occupies an area of approximately 30 square kilometers,⁵⁹ with 151 factories that employ about 30,000 workers.⁶⁰ It contributes substantially to the country's Gross Domestic Product (GDP).⁶¹

For example, in 2018, Rayong Province, where the Complex is located, had a Gross Provincial Product per capita of 1,067,449 baht per annum (approximately 43,676 CAD) and ranked number one out of 77 provinces.⁶² In other words, statistically, people in this Province contribute the most to the country's economy mainly because of industries in the complex. The economic contribution is why some commentators expressed deep concern about financial impacts when the Central Administrative Court halted 76 industrial projects in this area.⁶³ In other words, Map Ta Phut Industrial Complex, the most significant industrial park, is a product of Thai government development policies that have played a crucial role in the Thai economy for years.⁶⁴

While the government and industrialists have praised Map Ta Phut Industrial Complex as a crucial economic generator for the country, Map Ta Phut residents have raised concerns

<https://www.researchgate.net/publication/330280701_sarmlphistkkhangyawnanniphunthimlphiskhxngthiy>, at 21.

⁵⁶ *Ibid.*

⁵⁷ Kanongnij Sribuaiam, *Environmental and Health Legal Procedures: Lessons from Map Ta Phut Case* (in Thai), (Nonthaburi: Health System Research Institute, 2009), 290-293.

⁵⁸ Martin Bystrianský et al., "(PDF) Toxic Hot Spots in Thailand," 20, accessed April 14, 2019, online: *ResearchGate* <https://www.researchgate.net/publication/334600149_Toxic_Hot_Spots_in_Thailand>, at 10.

⁵⁹ *Ibid* at 11.

⁶⁰ The Nation, "IEAT creating over 7,400 jobs as it expedites Map Ta Phut Smart Park project", (25 August 2020), online: *nationthailand* <<https://www.nationthailand.com/business/econ/30393480>>.

⁶¹ Phattraporn Soyong & Ranjith Perera, "Spatial analysis of the environmental conflict between state, society and industry at the Map Ta Phut-Rayong conurbation in Thailand" (2017) 19:3 *Environ Dev Sustain* 839–862, accessed April 14, 2019, online: <<https://doi.org/10.1007/s10668-016-9768-9>> at 842-843.

⁶² Office of the National Economic and Social Development Council, *Gross Regional and Provincial Product: Chain Volume Measures 2018 Edition*, (Office of the National Economic and Social Development Council: 2018), at 44.

⁶³ Thomas Fuller, *In Industrial Thailand, Health and Business Concerns Collide*, *New York Time*, (1923-), (December 19, 2009), at A5.

⁶⁴ Chatree Bunnag, "Struggle History of Local Community for Participation in Map Ta Phut Area Industrialization Process" (in Thai), accessed April 14, 2019, in *Politics, Administration, and Law Journal*, Year 9th vol. 3, Sep-Dec, 2017, online:< <http://www.polsci-law.buu.ac.th/journal/document/9-4/14.pdf>> at 499.

about health problems related to pollution from the industrial complex for years.⁶⁵ Local people have concerns about various health problems such as cancer, allergies, asthma, respiratory disease, and skin rash.⁶⁶ In 2000-2001, Map Ta Phut and Rayong residents had the country's highest number of respiratory disease patients.⁶⁷ Saetang & Mooksuwan, in their study of the health impact in the Map Ta Phut area, describe the health impacts as "manifest direct impact and linked to pollution and in some cases are cumulative impacts."⁶⁸ Information from government agencies, the National Cancer Institute and the Rayong Public Health Office confirmed citizens' concerns by indicating that Rayong province had a higher cancer patient rate than the national average.⁶⁹

The most infamous event happened in 1997 when an accident occurred in a factory in the industrial complex and it released air pollution that severely impacted approximately 1,000 school students and teachers.⁷⁰ After this abhorrent incident, the Ministry of Education approved relocating the school five kilometres from its location.⁷¹ This event was the beginning of local people's collective action to ask the government to solve environmental problems in Map Ta Phut.⁷² For local people, Map Ta Phut Industrial Complex is the primary cause of environmental degradation and health problems requiring government intervention.⁷³

After protests and negotiations with the government to solve Map Ta Phut's environmental problems for many years, Map Ta Phut residents and civil society incorporated legal strategies into their movements. Local communities started raising their concerns about air

⁶⁵ Piya Pangsapa, "Environmental justice and civil society", in Routledge Handbook of Environment and Society in Asia, accessed April 14, 2019, online: <<https://www.routledgehandbooks.com/doi/10.4324/9781315774862.ch3>> at 43.

⁶⁶ Kanvee Viwatpanich, "Suffering from Industrial Estate Development A Case Study in Map Ta Phut, Thailand." (2012), accessed April 14, 2019, online: <https://www.researchgate.net/publication/319622168_Suffering_from_Industrial_Estate_Development_A_Case_Study_in_Map_Ta_Phut_Thailand> at 10.

⁶⁷ Penchom Saetang & Walaiporn Mooksuwan, *The Health Impact Assessment of Map Ta Phut Industrial Development and Its Vicinity* (in Thai), (Health System Research Institute, 2003), at 103.

⁶⁸ *Ibid.*

⁶⁹ Phattraporn Soyong & Ranjith Perera, "Use of GIS Tools for Environmental Conflict Resolution at Map Ta Phut Industrial Zone in Thailand" (2014) 6:5 Sustainability 2435-2458, accessed April 14, 2019, online: <<https://www.mdpi.com/2071-1050/6/5/2435>> at 2440.

⁷⁰ Soyong & Perera, "Spatial analysis of the environmental conflict," *supra* note 61 at 845.

⁷¹ Rane Hassarungsee & Suntaree Kiatiprajuk, "Time to rethink industrial development", online: <<https://www.socialwatch.org/book/export/html/12114>>.

⁷² Bunnag, *supra* note 64 at 498.

⁷³ Carole Excell & Elizabeth Moses, *Thirsting for Justice* (2017), accessed April 14, 2019, online: <<https://files.wri.org/s3fs-public/thirsting-for-justice.pdf>>, at 19-20; Soyong & Perera, "Use of GIS Tools for Environmental Conflict Resolution" *supra* note 69 at 2440; MGRonline, "Map Ta Phut Residents Protest Demanding Government to Address Pollution" (in Thai), (June 12, 2008), accessed April 14, 2019, online: <<https://mgronline.com/local/detail/9510000068980>>.

pollution from 1993-1997 to no avail.⁷⁴ In 2006, they requested the government to designate the Mab Ta Phut area as a pollution control zone, but the government rejected it.⁷⁵ Then, on April 9, 2007, communities sent a formal complaint to the National Environmental Board (NEB), asking them to systematically solve Map Ta Phut's environmental problems by designating the area's pollution control zone.⁷⁶ When the NEB did not respond to their complaint, in October 2007, 27 residents filed an administrative lawsuit against the NEB. They claimed that the NEB did not fulfill its duty or had an unreasonable delay in designating the pollution control area and asked the Court to order NEB to do so.⁷⁷

In March 2009, the Rayong Administrative Court decided in favor of the villagers and ordered the NEB to create Mab Ta Phut and its vicinity as a pollution control zone to solve pollution problems within 60 days.⁷⁸ One month later, the NEB designated Mab Ta Phut and the nearby area a pollution control zone.⁷⁹ However, the NEB appealed the Supreme Administrative Court's judgment, arguing that they were not negligent in performing their duty.⁸⁰ In 2017 the Supreme Administrative Court dismissed the case because the NEB had already complied with the Rayong Administrative Court's judgment.⁸¹

After the pollution control zone announcement, the government initiated two main measures to solve the problems in the pollution control zone. First, the government of Rayong Province created the Plan to Mitigate and Reduce Pollution (Mitigation Plan) and sought approval from the NEB. Second, the NEB set up three committees to coordinate, supervise, and monitor the implementation of the Mitigation Plan.⁸²

⁷⁴ Decharat Sukkamnoed, et al., *The Future of Rayong: A Road to a Healthy Society*, (Office of National Health Commission: Nonthaburi, 2008), at 18.

⁷⁵ *Ibid* at 74.

⁷⁶ The Rayong Administrative Court Complaint Red No. A 32/2552 (2009), Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 35.

⁷⁷ Surachai Trong-ngam et al., "Justice Problems and Environmental Dispute Resolution: Case Studies from Legal Aid Experience, in *Politics and Environmental Crisis*" (in Thai), in *Papers Presented at the 10th King Prajadhipok's Institute Conference 2007*, King Prajadhipok's Institute, (Nonthaburi: King Prajadhipok's Institute, 2008), 247.

⁷⁸ The Rayong Administrative Court Complaint Red No. A 32/2552 *supra* note 76 at 71.

⁷⁹ The National Environmental Committee, *The Announcement of Pollution Control Zone*, *Gazette* (in Thai), accessed April 14, 2019, online: <http://www.ratchakitcha.soc.go.th/RKJ/announce/search_result.jsp?SID=A40C6AD72A797F4FEC6323F77228E7C5>.

⁸⁰ THE STANDARD, "10 Years Conclusion of Map Ta Phut Case: Pollution Control Zone and the Extremely Cost Paid by Society" (in Thai), (18 October 2017), online: *THE STANDARD* <<https://thestandard.co/10-years-of-map-ta-phut-case/>>.

⁸¹ Supreme Administrative Court Order No. A 921/2560, (2017), Charoen Dechkhoom and 16 claimant vs National Environmental Board, 90-91..

⁸² Sutin Yoosuk, "The Outputs of the Map Ta Phut Monitoring Sub Committee", in *Knowledge Forum for Map Ta Phut 1: The State of Pollution, Health and Urban Planning* (in Thai), Vorawan Chaipaitoon, ed, accessed April 15, 2019, online: <<http://www.tei.or.th/publications/2011-download/2011-maptaphut-SENSA-Stage1.pdf>>.

Following the pollution control zone judgment, in June 2009, Map Ta Phut residents and non-governmental organizations filed another administrative lawsuit against eight government agencies. They asked the Court to revoke permissions these eight agencies granted for 76 industrial projects to construct or operate in the Map Ta Phut Industrial Complex. They claimed that these projects did not align with the requirements of section 67, paragraph 2 of the Constitution, which aimed to protect the right to live in a healthy environment of the plaintiffs and Thai people.⁸³ The plaintiffs also requested an injunction to temporarily stop the 76 projects until the court delivered its judgment, which the court granted, leading to the suspension of all disputed projects.⁸⁴

The defendants appealed the injunction to the Supreme Administrative Court and were partially successful. In December 2009, the Supreme Administrative Court revised the injunction allowing 11 out of 76 projects to continue. The court justified this revision by stating that these projects were unlikely to cause a severe impact on the environment and human health; hence, they could continue.⁸⁵

In September 2010, the Central Administrative Court revoked 2 out of 76 projects. The court's main reason for allowing 74 projects to go forward was that according to a new regulation enacted after the lawsuit, these 74 projects did not fall under the definition of a project that needed to comply with the Constitution section 67 paragraph 2.⁸⁶ Thus, 74 industrial projects could continue their construction or operation.⁸⁷

The claimants disagreed with the judgment and appealed to the Supreme Administrative Court.⁸⁸ In 2021, the Supreme Administrative Court provided a final judgment in favor of

⁸³ The Central Administrative Court Judgment, Red No. 1352/2553 (2010), Stop Global Warming Association and 42 claimants vs National Environmental Board and 7 defendants, at 6; The Thai Constitution 2007 section 67 paragraph 2: Any project or activity which may seriously affect the quality of the environment, natural resources and biological diversity shall not be permitted, unless its impacts on the quality of the environment and on health of the people in the communities have been studied and evaluated and consultation with the public and interested parties have been organized, and opinions of an independent organization, consisting of representatives from private environmental and health organizations and from higher education institutions providing studies in the field of environment, natural resources or health, have been obtained prior to the operation of such project or activity, accessed April 15, 2019, online: <<http://www.asianlii.org/th/legis/const/2007/1.html>>.

⁸⁴ Administrative Court, "The Central Administrative Court Issued an Injunction to Halt 76 Projects for Protecting Map Ta Phut Communities" (in Thai), 4-5, accessed April 15, 2019, online: <http://admincourt.go.th/admincourt/upload/webcms/Oldnews/attach/news_attach/2009/09/hotnews908-52.pdf>.

⁸⁵ The Supreme Administrative Court Order No. 592/2552 (2009), Anti-Global Warming Association and 42 claimants vs National Environmental Board and 7 defendants, 62-64, accessed April 15, 2019, online: <<https://enlawfoundation.org/newweb/wp-content/uploads/040.pdf>>, [The Supreme Administrative Court Order No. 592/2552].

⁸⁶ The Central Administrative Court Judgment, Red No. 1352/2553 *supra* note 86 at 113-114.

⁸⁷ Prachatai, "Administrative Court Revoked 2 Out of 76 Industrial Projects in Map Ta Phut felling in Severe Impact Projects" (in Thai), (September 3, 2010), online: <<https://prachatai.com/journal/2010/09/30948>>.

⁸⁸ Thai PBS, "Anti-Global Warming Association Appeals Map Ta Phut Case to Supreme Administrative Court" (in Thai), (1 October 2010), online: *Thai PBS* <<https://news.thaipbs.or.th/content/217633>>.

the government and businesses.⁸⁹ This case took the Supreme Administrative Court 11 years, a huge time lag for environmental movements. The court disagreed with the claimants and the Central Administrative Court, asserting that according to the constitution and existing law, the defendants properly followed all necessary legal requirements when giving companies permits for all 76 projects. Thus, they used their discretion properly under the existing law, making their decisions legal.⁹⁰ The Supreme Administrative Court reversed the lower court judgment and dismissed the case.⁹¹

Thus, Map Ta Phut Industrial Complex represents opposing views from different groups. It is a successful model for the government and investors that have supported economic growth for decades. However, for locals, it is a significant cause of health and accumulative environmental problems that must be addressed systematically. Although the Supreme Administrative Court dismissed the two lawsuits, litigation significantly fostered the environmental movement in this case, as I will present in the following chapter.

The following section introduces an environmental problem from a limestone mine that seriously harms communities surrounding the mine and how communities combine various tools, including legal strategies, to solve the issues. The case demonstrates different ways communities could use legal tools to support their movements.

4. Khuha Mountain Quarry Mine Case

Khuha Mountain is located in the Khao Khuha Tai sub-district, Rataphum district, Songkla province, in the south of Thailand.⁹² It is a stand-alone mountain that has three streams flowing from it. The mountain was covered by forest and was a habitat for various wildlife.⁹³ Several communities have been located nearby this mountain and have received multiple benefits from the mountain. For example, the stream at the mountain's base provides a water supply for agriculture around the mountain. In other words, the mountain is a key part of food security for these communities. Some local communities also extracted rock from this mountain for local use.⁹⁴ Furthermore, this mountain can become a potential tourist attraction in the Songkhla province.⁹⁵

⁸⁹ The Supreme Administrative Court Judgment No. Red A. 884/2564 (2021), Anti-Global Warming Association and 42 claimants vs National Environmental Board and 7 defendants.

⁹⁰ *Ibid* at 109-110.

⁹¹ *Ibid* at 113-114.

⁹² Suwan Onrak et al, "The impact of limestone mining on the tourism potential of Songkhla Province, Thailand" (2020) 9 *Tour Leis* 9, at 1.

⁹³ Eakachai Issarata et al., Final Research Report on "Citizens' Political Consciousness about Local Natural Resources Allocation: A Case Study of Khuha Mountain Community Rights Protection Network, Rattaphum district, Songkhla province, (Office of Political Development Council, King Prajadhipok's Institute, 2011), at 3.

⁹⁴ Issarata & et al., *supra* note 93 at 4-9.

⁹⁵ Onrak et al, *supra* note 92 at 2.

The Thai government has contradictory policies on how to manage Khuha Mountain. On the one hand, in 1989, the government announced that Khuha Mountain and its surrounding areas were a level 1B river basin—a river basin that needed special protection.⁹⁶ On the other hand, in 1997, the cabinet passed a decree to allow mining operations in a level 1B river basin area if the areas are in a potential mineral site.⁹⁷ This decree opens a gate for the mining industry to operate in a level 1B river basin throughout the country under the condition that the Industrial Ministry must designate those basins as potential mineral sites.

In 1997, the Industrial Minister designated potential mineral areas, including Khuha Mountain.⁹⁸ These various moves by the Thai government made it possible for businesses to operate their mine in the level 1B river basin, including Khuha Mountain. Finally, in 1999 and 2000, the government permitted two mining companies to operate limestone mines on Khuha Mountain.⁹⁹

This industrial-scale mining operation on the mountain surrounded by several communities caused several problems.¹⁰⁰ The most obvious was the impact of a bombing technique used in mining. The blasting sent rock far away from the mining site to surrounding communities, damaging nearby houses, making agricultural land inappropriate for growing plants, and threatening local people's safety.¹⁰¹ In addition, vibrations from the blasting caused severe impact on houses.¹⁰² Local people were interrupted daily by the blasting, vibrations, and the possibility of being hit by flying rocks from the mine. Furthermore, mining destroyed the forest and impacted the water at the base of the mountain.¹⁰³ The mine made it difficult for local people to access the mountain to collect food and fish as they had previously done.¹⁰⁴

Villagers tried to address these environmental problems by employing various methods. They complained directly to the mining company about their problems, asking the companies to solve the environmental issues. The mining companies responded by compensating some villagers, but the most affected villagers did not receive

⁹⁶ Usaman Whangsani et al., “Community Conflict Management Guidelines: Lessons Learn from a Case of Khao Khuha Stone Quarry, Rattaphum District, Songkhla Province” (2022), *Journal of Community Development and Life Quality*, 10(1), 83–93. Retrieved from <https://so02.tci-thaijo.org/index.php/JCDLQ/article/view/252054>, at 84.

⁹⁷ *Ibid* at 86.

⁹⁸ *Ibid*.

⁹⁹ Onrak et al, *supra* note 92 at 2.

¹⁰⁰ Whangsani et al, *supra* note 96 at 87-88.

¹⁰¹ Supot Jingjit, et al., Exploring Southern Development Plan, (Southern Development Plan Educational and Monitoring Group: 2013), at 271-272.

¹⁰² *Ibid* at 292-294.

¹⁰³ Whangsani et al, *supra* note 96 at 88.

¹⁰⁴ Issarata & et al., *supra* note 84 at 9.

compensation.¹⁰⁵ Villagers organized public protests by blocking the entrance to the mining site.¹⁰⁶ They spoke to the media about their problems.¹⁰⁷ They petitioned a municipality and local government agencies, but many affected villagers were not compensated, and the mine continued its operation as usual.¹⁰⁸

The situation changed when villagers learned about legal procedures for extending mining licenses that needed approval by the cabinet.¹⁰⁹ The mining licenses would expire in 2009 and 2010. Hence, the villagers filed a petition to the Prime Minister as the head of the cabinet, asking him to delay the approval process, arguing that the mining caused environmental impacts on communities and violated constitutional rights.¹¹⁰ This petition delayed the extension process because the responsible Minister did not approve the request from the company.¹¹¹

Villagers invited PIELs to train them more about law and rights. They sent petitions to the National Human Rights Commission on December 17, 2009, and to the Ombudsman on September 13, 2010, asking them to use their power to investigate the case.¹¹² These independent institutions investigated and released reports that helped communities, but they could not revoke the mining licenses or force the company to stop its operation.¹¹³ Then villagers, with help from PIELs, filed lawsuits against the companies.

The villagers filed three civil lawsuits against the mining companies, and the courts decided to favour the villagers in all three cases. The villagers filed the first two civil cases in 2010, asking the courts to order the mining companies to pay compensation for the mining activities' damages to their properties, livelihood, and health.¹¹⁴ The courts agreed with the plaintiffs that the mines were responsible for the plaintiff's damages because, among other reasons, mining activities violated the plaintiffs' rights to live in a safe environment, free

¹⁰⁵ Nathapop Sangkate, "The Long Story of Limestone Mine on Andaman Coast: Past Victory and the Beginning of Failure", (6 May 2022), online: *Decode* <<https://decode.plus/20220417/>>.

¹⁰⁶ CKH1, interviewed on December 12, 21, at 2.

¹⁰⁷ Issarata & et al., *supra* note 93 at 24-26.

¹⁰⁸ CKH1, *supra* note 108 at 2; NKH, interviewed on September 14, 2021, at 3.

¹⁰⁹ Issarata & et al., *supra* note 93 at 13.

¹¹⁰ *Ibid* at 29.

¹¹¹ The Songkhla Provincial Court, Complaint, No. Black 664/2554 (2011), Peerapol Mining Company Ltd. plaintiff vs Eakachai Issarata and 8 defendants, at 2-3.

¹¹² Issarata & et al., *supra* note 93 at 31-37.

¹¹³ The National Human Rights Commission, Investigation Report No. 436/2556 (2013), June 12, 2013, Community Rights: Khuha Communities Affected from Limestone Mine in Rattaphum District, Songkhla Province, (National Human Rights Commission: 2013), at 17; MGRonline, "Unpacking the Ombudsman's 'confidential' Report Urging Government to Terminate Khuha Mountain Limestone Mine", (23 March, 2015), online: <<https://mgronline.com/south/detail/9580000034785>>.

¹¹⁴ The Songkhla District Court Judgment No. Red 313/2554 (2011), Renu Saengsuwan and 5 plaintiffs v Peerapol Mining Company Ltd. defendant, at 1.; The Songkhla Provincial Court Judgment No. Red 854/2556 (2013), Nareumon Chantasuwana and another plaintiff v Peerapol Mining Company Ltd. and another defendant, at 1-4.

from worrying about the effects of the mining operation.¹¹⁵ In other words, the court agreed with the plaintiffs' argument about the violation of the right to live in a healthy environment.¹¹⁶ Hence, the courts ordered the mines to pay 491,000 baht (approximately 15,722 CAD) and 1,582,487 baht (approximately 53,789 CAD) compensation to the plaintiffs in the first¹¹⁷ and second cases,¹¹⁸ respectively.

The villagers filed a third civil case against the mining company in 2012.¹¹⁹ This was in a response to the mining company's lawsuit against nine community leaders in 2011, which the mining company withdrew before a trial began.¹²⁰ The nine village leaders saw the lawsuit against them as a threat to stop their movements and damage their reputation. Thus, villagers launched a third lawsuit against the mining company, asking for compensation.¹²¹ The courts agreed with the plaintiffs and ordered the mining company to compensate 560,000 baht (approximately 22,400 CAD) to the plaintiffs.¹²²

Khuha communities employed various legal strategies to support their movements to receive compensation and address environmental issues. The combination of legal tools and working with media and other networks,¹²³ created several positive changes in their communities. They delayed the process of extending the mining license for many years. The courts also awarded some villagers compensation. Up until April 2021, the government has not approved the mining license.¹²⁴ The mines lost all the court cases and had to pay considerable compensation. With all of these setbacks, the mining companies have fled the area.¹²⁵

In the following section, I introduce an environmental case that does not evolve from existing pollution or environmental problems, but comes from the community's concerns about proposed pipeline and industrial projects. This case is about the community's

¹¹⁵ The Songkhla Provincial Court Judgment No. Red 854/2556 *ibid* at 26-28; The Appeal Court Region 9 Judgment No. Red 516/2555, Renu Saengsuwan and 5 plaintiffs v Peerapol Mining Company Ltd. defendant, at 18-19.

¹¹⁶ PKH4, interviewed on April 30, 2021, at 4.

¹¹⁷ The Appeal Court Region 9 Judgment No. Red 516/2555, *supra* note 115 at 23.

¹¹⁸ The Songkhla Provincial Court Judgment No. Red 854/2556, *supra* note 114 at 31.

¹¹⁹ The Songkhla Provincial Court, Complaint, No. Black 1349/2555 (2012), Eakachai Issarata and 8 plaintiffs vs Peerapol Mining Company Ltd. and 1 defendant.

¹²⁰ The Songkhla Provincial Court, Complaint, No. Black 664/2554, *supra* note 111.; Fortifyrights, "Thailand: Stop Judicial Harassment of Human Rights Defenders", (9 May 2016), online: *Fortify Rights* <<https://www.fortifyrights.org/tha-inv-2016-05-09/>>.

¹²¹ The Songkhla Provincial Court, Complaint, No. Black 664/2554, *ibid* at 1-18.

¹²² The Songkhla Provincial Court Judgment No. Red 922/2556 (2013), Eakachai Issarata and 8 plaintiffs vs Peerapol Mining Company Ltd. and 1 defendant, at t 22.

¹²³ Issarata & et al., *supra* note 93 at 29-37.

¹²⁴ PKH4, *supra* note 116 at 8.

¹²⁵ *Ibid* at 10

attempts to participate in the government decision-making that would impact their communities: the Chana Pipeline and Industrial Complex Case.

5. Chana Pipeline and Industrial Complex Case

In 1979, the Thai and Malaysian governments signed a memorandum of understanding to co-develop the offshore overlapped area of 7,250 km²—the Joint Development Area (JDA).¹²⁶ Then, in 2000, these two countries started the Trans Thai-Malaysian Pipeline and Gas Separation Plant (TTM) as a partnership project.¹²⁷ This project aimed to transport and process natural gas from the offshore gas reserved in the JDA to the Chana district in Songkla Province in the south.¹²⁸ The developer built 428 kilometers of pipeline to transport gas from the ocean to process at the gas separation plant on the coast at Chana and then send it to Malaysia. The reserved gas would last between 14-22 years.¹²⁹

This project faced fierce resistance from local communities in the Chana district, Songkhla province, Thailand, where the developer proposed to build pipeline and gas separation plants.¹³⁰ Residents raised various concerns about the project and complained about the transparency of the decision-making process.¹³¹

First, local communities complained about the lack of public participation.¹³² For example, the Thai and Malaysian government-owned companies had already signed a key contract for this project in 1998, and the Thai cabinet gave the green light to build the project in 1999 before arranging a public consultation in 2000.¹³³ Furthermore, the environmental impact assessment consultant had already decided on the location of the gas separation plant before arranging public consultation.¹³⁴ Also, the public consultation organizer did not allow people who disagreed with the project to attend the meeting and allowed only

¹²⁶ Suppawan Chanasongram, *People's Participation in the State's Development Projects: A Case Study of the Thai-Malaysia Natural Gas Pipeline and Gas Separation Plant Projects*, (Thesis of Master of Science in Environmental Management, Prince of Songkla University, 2006), at 2.; Wayne Arnold, "A Gas Pipeline to World Outside; Talk of Modernization and Jobs Unsettles Thai Villagers" *NY Times* (26 October 2001), online: <<https://www.nytimes.com/2001/10/26/business/gas-pipeline-world-outside-talk-modernization-jobs-unsettles-thai-villagers.html>>.

¹²⁷ Chanasongram, *ibid* at 57-59.

¹²⁸ Hydrocarbons Technology, "Thai-Malaysian Pipeline and Gas Separation Plant - Hydrocarbons Technology", online: <<https://www.hydrocarbons-technology.com/projects/thaimalaysia/>>.

¹²⁹ *Ibid*.

¹³⁰ Larry Lohmann, "Gas, waqf and Barclays Capital: a decade of resistance in southern Thailand" (2008) 50:2 *Race Cl* 89-100, at 90.

¹³¹ *The Economist*, "Thailand", online: *The Economist* <<https://www.economist.com/taxonomy/term/%25?page=25>>.

¹³² Chanasongram, *supra* note 126 at 121-156.

¹³³ *Ibid* at 59.

¹³⁴ *Ibid* at 51-52.

supporters to join.¹³⁵ As a result, villagers who would have been affected the most did not participate in the decision-making process.¹³⁶

Second, villagers and academics were concerned about industrial projects that would accompany the TTM project.¹³⁷ They were worried about the petrochemical and other polluting industries the government planned to build following the TTM project.¹³⁸ This concern was sound because Thai authorities envisioned the development of more industries in this region that would utilize gas from this project to boost local economies.¹³⁹ For example, the Electricity Generating Authority of Thailand (EGAT) planned to build a 700 MW gas power plant near the gas separation plant.¹⁴⁰ As such, local communities projected heavy pollution from this project.¹⁴¹

Third, villagers were concerned about their livelihood.¹⁴² Most villagers in the project area are farmers, small-scale fishermen, and songbird breeders. They feared the TTM and following projects would pollute the environment, destroy local fisheries, and affect their health.¹⁴³ Some villagers talked about Mab Ta Phut communities that were dramatically changed after industries came to those areas.¹⁴⁴ Some were worried about the impact of TTM and industrial projects on the local zebra dove breeding business.¹⁴⁵ A third of the villagers in the Chana district participated in this business and generated about 90 million baht (approximately 3,460,000 CAD) annually for these communities.¹⁴⁶

Fourth, villagers were worried about the effect on their religion.¹⁴⁷ The Chana population is composed of mostly Muslims.¹⁴⁸ Religious leaders were concerned that this project would change the Muslim culture and practice like Mab Ta Phut when the industrial

¹³⁵ *Ibid* at 59-62.

¹³⁶ *Ibid* at 175.

¹³⁷ *Ibid* at 53-54; Lohmann, "Gas, waqf and Barclays Capital", *supra* note 130 at 6.

¹³⁸ Supara Janchitfah, *The Nets of Resistance*, (Campaign for Alternative Industry Network: 2004), at 59-62; Chanasongkram, *supra* note 126 at 76.

¹³⁹ Arnold, *supra* note 126.

¹⁴⁰ Adam Simpson, "Democracy and environmental governance in Thailand", in Sacchidananda Mukherjee & Debashis Chakraborty, eds, "Environmental Challenges and Governance: Diverse perspectives from Asia", (Routledge: 2015) at 189.

¹⁴¹ Adam Simpson, "Green NGOs and Authoritarian Regimes: The Perils of Environmental Activism in Thaksin's Thailand" (2005) 1 Griffith J Environ 1-34, at 20-21.

¹⁴² *Ibid* Chanasongkram, *supra* note 126 at 77; Janchitfah, *supra* note 138 at 121-122.

¹⁴³ Larry Lohmann, *supra* note 119 at 90-91.

¹⁴⁴ *Ibid* Janchitfah, *supra* note 138 at 37-46.

¹⁴⁵ Chanasongkram, *supra* note 126 at 77-78.

¹⁴⁶ Mawaan Macan-Markar, "Songkhla's 'birds of fortune' sing a rich tune", (4 February, 2016), online: *Nikkei Asia* <<https://asia.nikkei.com/NAR/Articles/Songkhla-s-birds-of-fortune-sing-a-rich-tune2>>.

¹⁴⁷ Arnold, *supra* note 126.

¹⁴⁸ Lohmann, *supra* note 119 at 91.

complex operated.¹⁴⁹ Some of these concerns became a reality at the beginning of the construction. For example, when the construction of the gas separation plant started, non-Muslim construction workers migrated to the area to work on the project and did not respect religious norms.¹⁵⁰ Villagers and local municipalities also complained that the project developer illegally took religious land for its use.¹⁵¹ Villagers condemned the TTM for taking sacred land that a community member donated for public use, known as Wagaf Land. The villagers campaigning to bring this land back led to an investigation by the National Human Rights Commission that confirmed the villagers' point that this land belonged to the community.¹⁵²

Chana communities employed various approaches to oppose this project. They sent petitions to numerous local and central government agencies.¹⁵³ They set up a camp near the pipeline construction site and used this camp as their campaign and educational center.¹⁵⁴ Communities arranged several public meetings discussing the project.¹⁵⁵ They tried to express their viewpoints whenever the government arranged public consultation.¹⁵⁶ Villagers launched several public demonstrations against the projects.¹⁵⁷ On December 20, 2002, Chana communities launched a long-distance public demonstration from the Chana district to the Hat Yai district to submit a letter to the Prime Minister, who had a meeting in the city.¹⁵⁸ The police responded to this demonstration by violently dispersing demonstrators and arrested many villagers' leaders and supporters.¹⁵⁹ This event forced the Chana communities to become involved in legal battles and employ legal strategies to support their movement.

Following the dispersion of the public demonstration and arrests, a group of PIELs offered assistance to the Chana communities to use legal strategies to not only defend themselves from criminal charges, but also to make the police accountable for what they did to villagers who peacefully exercised their rights.¹⁶⁰ They rejected all criminal charges against them

¹⁴⁹ Chanasonkram, *supra* note 126 at 78.

¹⁵⁰ *Ibid* at 160-163.

¹⁵¹ *Ibid* at 139.

¹⁵² Lohmann, *supra* note 119, at 91-92.

¹⁵³ Chanasonkram, *supra* note 126 at 87-88.

¹⁵⁴ The People, "Chana residents: Wounded History of People who Protect Communities from the State", (9 December 2021), online: *thepeople* <<https://www.thepeople.co/read/social/39714>>.

¹⁵⁵ Chanasonkram, *supra* note 126 86-88.

¹⁵⁶ Janchitfah, *supra* note 138 at 230.

¹⁵⁷ Chanasonkram, *supra* note 126 at 88-89.

¹⁵⁸ The National Human Rights Commission, Report on the Investigation of Human Rights Violation: The Case of Violence Related to the Thai-Malaysia Gas Pipeline Projects, Hat Yai district, Songkhal province, (Office of National Human Rights Commission: 2003), at 21-23.

¹⁵⁹ Janchitfah, *supra* note 138 at 150-152; Chakrit Pochareung, Chana in the Offshore Wind Season, (Four-Regions Scholar Working Group: 2003), at 15-23.

¹⁶⁰ NCN, interviewed on September 22, 2021, at 6; CCN2, interviewed on January 21, 2022, at 6.

and defended themselves through the Supreme Court process.¹⁶¹ In addition, to defend themselves from the criminal charges, villagers filed an administrative lawsuit against the police asking the court to affirm their rights to peaceful assembly and order the police to compensate demonstrators.¹⁶² Chana villagers also filed a criminal case against the police chief and commander they claimed were in charge of the dispersion of the peaceful demonstration in 2002.¹⁶³

After many years of legal battles, Chana villagers won most of their cases.¹⁶⁴ In a criminal case that the public prosecutor filed against 20 demonstrators, the Supreme Courts decided in favor of the Chana villagers insisting that all defendants were not guilty of all charges. Among other reasons, the Court stated that the defendants assembled peacefully without weapons, and their actions were protected by the 1997 Constitution section 44.¹⁶⁵ Parallel to the criminal case, in the administrative case, the Supreme Administrative Court also decided in favor of the Chana villagers. The Court affirmed that villagers exercised their rights of public assembly aligning with the 1997 Constitution section 44 and that the police illegally violated their rights by dispersing their public demonstration.¹⁶⁶ The Supreme Administrative Court ordered the Thai Royal Police to pay 100,000 baht (approximately 3,300 CAD).¹⁶⁷ In the criminal case, villagers filed against the police chief and commander; the Supreme Court decided to favor the defendants. The Court found them not guilty, reasoning that the police chief and commander did not intentionally try to prevent villagers from exercising their rights and assaulting them but reasonably used their discretion for the public interest.¹⁶⁸

Despite strong local resistance and numerous successful court cases, the TTM proceeded. The developers completed the pipeline around 2006-2007, and the gas separation plant began operation in 2007.¹⁶⁹ However, as of January 2022, the government has not yet established an industrial complex as many feared.

¹⁶¹ The Supreme Court Judgment No. 12653-12661/2556 (2003), Songkla Provincial Public Prosecution plaintiff vs Ratchada/Ratchata Wattanasak and 19 defendants.

¹⁶² The Songkhla Administrative Court Complaint No. Black 545/2546 (2003), Chaden Auntaboripong and 29 plaintiffs V The Royal Thai Police and 2 defendants.

¹⁶³ The Songkhla Provincial Court Complaint No. 1818/2546 (2003), Sakariya Mhawangied and 24 plaintiffs v Police General San Sarutanon and 37 defendants.

¹⁶⁴ MGRonline, “17 years after the Dispersion of Thai-Malaysian Pipeline Demonstration, Closing All Cases, Opening Struggling Path to People's Victory”, (20 December, 2019), online: <<https://mgronline.com/south/detail/9620000121498>>.

¹⁶⁵ The Supreme Court Judgment No. 12653-12661/2556 (2003), *supra* note 161 at 49-52.

¹⁶⁶ The Supreme Administrative Court Judgment No. Red A. 711/2555 (2012), Chaden Auntaboripong and 29 plaintiffs V The Royal Thai Police and 2 defendants, at 43-49.

¹⁶⁷ *Ibid* at 49-50.

¹⁶⁸ The Supreme Court Judgment No. 4494/2562 (2019), Sakriya/Sakariya Mhawangied and 24 plaintiffs v Police General San Sarutanon and 37 defendants, at 52-54.

¹⁶⁹ HydrocarbonsTechnology, *supra* note 128.

The following section introduces Non Mak Keng Waste Pollution Case. This case concerns environmental problems from waste management. This case reminds us that even a waste management company can become a source of communities' environmental and health problems.

6. Non Mak Keng Waste Pollution Case

A waste management company started its operation in Non Mak Keng communities in the Wattananakorn district, Sakaeo province, eastern Thailand, in 2003.¹⁷⁰ The company provided a full treatment of both hazardous and non-hazardous industrial waste. The firm would receive industrial waste and bring it for treatment to a Non Mak Keng sub-district facility.¹⁷¹ Not long into its operation, however, this company became the source of environmental problems for local people.¹⁷²

Villagers who lived around the waste facility began to complain about the smell from the waste facility in 2005.¹⁷³ Community leaders and residents directly complained to the company manager about the stench and asked the company to address the problems.¹⁷⁴ They also complained to the local government and government agencies. Several agencies concluded that villagers suffered from waste and chemicals released in the air and wastewater discharged in nearby paddy fields from the waste facility.¹⁷⁵ The provincial industrial agency ordered the company to address the problem within a given timeframe. When the company could not address the issue within the deadline, the agency ordered the firm to pause and propose a remedial plan, but the company asked for an extension many times.¹⁷⁶ However, the malodorousness continued to disrupt villagers' livelihood to the point that villagers could not tolerate it. At this point, communities took to the street to protest against the company. They blocked the facility's entrance, asking the company to resolve the environmental problems, but it did not respond to the community's demands.¹⁷⁷

During this public protest, a local lawyer introduced villagers to PIELs who work for the Lawyers Council of Thailand.¹⁷⁸ PIELs met with the villagers, and in May 2006, villagers

¹⁷⁰ EARTH Foundation, "Stink from Professional Waste Landfield, Sakaeo province, online: <<https://www.earththailand.org/th/pollution/38>>.

¹⁷¹ Khueakhan, "Do not discriminate", (17 May 2016), online: *dailynews* <<https://www.dailynews.co.th/article/397920>>.

¹⁷² Methina Isariyanon, Review and Development Strategy Adjustment of Eastern Seaboard Development Program Toward ASEAN Country in Chachoengsao Province: The Case of Solid Waste and Industrial Hazardous Waste Management, in *Burapha Journal of Political Economy* Vol. 7 No. 2 (2019), at 12.

¹⁷³ Isariyanon, *supra* note 163 at 12.

¹⁷⁴ CDK2, interviewed on December 17, 2021, at 3-4.

¹⁷⁵ EARTH Foundation, *supra* note 170.

¹⁷⁶ *Ibid.*

¹⁷⁷ MRGonline, "Profess File a Lawsuit against 30 Waste Protest Leaders asking for 531 million baht compensation", (12 June, 2006), online: <<https://mgonline.com/local/detail/9490000076489>>; CDK1, interviewed on December 12, 2021, at 1-2.; CDK2, *supra* note 174 at 3.

¹⁷⁸ CDK1, *ibid* at 2.

filed a lawsuit against the company asking the court to order the company to stop its waste treatment operation that released chemicals, causing a nuisance to the plaintiffs and surrounding communities.¹⁷⁹ Simultaneously, the plaintiffs asked the court to grant an injunction to temporarily stop the waste facility operation during the trial, arguing that the operation would severely impact their health and could not be fully remedied.¹⁸⁰

In May 2006, a few days after villagers launched a lawsuit, the court granted an injunction prohibiting the waste company from continuing its operation during the trial.¹⁸¹ After obtaining the injunction, PIELs petitioned the trial judge to visit the waste management site, and the judge agreed. The judge observed that the defendant's facility still had smell problems and that the waste ponds were not in good condition.¹⁸² On the same day as the visit, the defendant proposed a plan to address environmental issues raised by the plaintiffs.¹⁸³ However, the same day, the company filed a tort lawsuit against 30 community leaders, asking for 531 million baht (approximately 15,241,000 CAD) compensation.¹⁸⁴

The villagers and the company negotiated and reached an agreement in November 2006.¹⁸⁵ This agreement is in favor of the plaintiffs and communities. For example, the company agreed to address all environmental problems, especially those that caused the odour, within six months under the supervision of responsible agencies and allowed villagers to monitor the site.¹⁸⁶ In addition to resolving the environmental problems, the company conceded to compensate villagers in two categories: individuals and collective. The company agreed to pay 2,300,00 baht (approximately 70,444 CAD) to 58 villagers whose farmlands were damaged by the pollution, contribute 400,000 baths (approximately 12,251 CAD) to the newly established community fund, and continue to pay this fund 10 baht (approximately 0.30 CAD) for each ton of waste the company would bring in the future.¹⁸⁷ Moreover, the company agreed that whenever it causes a malodor that disturbs residents, it would stop its operation and immediately solve the problem.¹⁸⁸ It also agreed to withdraw

¹⁷⁹ The Sakaao Provincial Court, A Request for an Injunction, No. Black 419/2549 (2006), Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company, at 1.

¹⁸⁰ *Ibid* at 1-4.

¹⁸¹ The Sakaao Provincial Court, Court Proceeding Report, May 22, 2006, No. Black 419/2549 (2006), Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company.

¹⁸² The Sakaao Provincial Court, Court Proceeding Report on June 12, 2006, No. Black 419/2549 (2006), Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company, at 1-2.

¹⁸³ *Ibid* at 2.

¹⁸⁴ note 176.

¹⁸⁵ The Sakeaw Consent Judgment, No. Red 1325/2549 (2006), Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company.

¹⁸⁶ *Ibid* at 1-2.

¹⁸⁷ The Sakeaw Consent Judgment, No. Red 1325/2549, *supra* note 185 at 4-6.

¹⁸⁸ *Ibid* at 6.

the tort lawsuit it launched against community leaders in June 2006.¹⁸⁹ In exchange, the plaintiffs agreed to ask the court to revoke the injunction and allow the company to continue its operation under the condition that it must complete the environmental measures promised in the agreement.¹⁹⁰

This case started with a spontaneous protest against the waste management company because of unbearable environmental conditions. The situation led to a legal battle between communities and the company. Then, the parties agreed to address the current environmental problems, compensate for damages in the past, and promise to share benefits in the future. Regarding a legal battle, this case is the shortest among the six cases that are the subject of this thesis because the parties reached an agreement within six months of the lawsuit.

The following section moves from pollution and the impacts of development projects to the land rights issue, one of the most significant agendas among environmental movements in Thailand. It is particularly important for indigenous groups who live and depend on natural resources in the forest. The following case introduces a case from one of these communities, the Mae Omki village, and how they employ legal strategies to support their movements.

7. Mae Omki Land Rights Case

Thailand has many indigenous groups with their own culture that differs from the rest of the Thai population.¹⁹¹ The Thai government formally recognizes at least ten ethnic groups living in Thailand.¹⁹² Hilltribe groups are the largest ethnic groups; most live in highland areas in the north and northwest. According to the Thai government, in 2002, there were 925,825 hill tribe people.¹⁹³ For many years, these people faced unfair discrimination, especially when the government enacted laws and policies relating to forest and land management.¹⁹⁴ These laws and policies have threatened these ethnic groups by criminalizing them because they live and farm in the forest.¹⁹⁵ The latest survey found

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid* at 2.

¹⁹¹ Thailand Science Research and Innovation, *Ethnic Groups in Thailand-Research and Challenges*, (Thailand Science Research and Innovation: Bangkok, 2021) at 1.

¹⁹² Prasert Trakansuphakon, Securing rights through legal pluralism: communal land management among the Karen people in Thailand, in Marcus Colchester & Sophie Chao, eds, *Divers Paths To Justice: Legal pluralism and the rights of indigenous peoples in Southeast Asia*, (S.T.Film&Plate: Chiang Mai, 2011), at 133.

¹⁹³ Nuthamon Kongcharoen, *Community forest management in Northern Thailand: perspectives on Thai legal culture*, (Doctor of Philosophy Dissertation, Faculty of Law, University of Victoria: 2012) at 14.

¹⁹⁴ Thailand Science Research and Innovation, *supra* note 190 at 31.

¹⁹⁵ Songkrant Pongboonjun, Rule by Law: The NCPO's Reclaiming Forest Policy in Action, in *Juristocracy, Judges, and Coup*, Somchai Preechasinlapakun, ed., (Thai Lawyer For Human Rights: Bangkok, 2018), at chapter 5.

about 4,192 villages located in reserved forests nationwide.¹⁹⁶ Karen is the largest among these hill tribe groups, with approximately 411,670.¹⁹⁷ Many of them live in or close to forests. They have faced many legal and policy challenges that endure to the present.¹⁹⁸

Mae Omki is a Karen community in Tak province in the West of Thailand with about 87 households and 457 people. Most are subsistence farmers who embrace rotational farming as their traditional practice.¹⁹⁹ This rotational farming integrates cultural and physical aspects of forest and agriculture. In other words, “it is a type of agro-forestry which stresses the connection between the agriculture system and ecosystem.”²⁰⁰ According to this tradition, Karen people would grow rice and vegetables on a plot of land for one year and move to another plot the following year, leaving the land to recover for several years before returning to the farm.²⁰¹ Thus, some trees will grow in their farmland during these no-farming years, but not big trees because the farmers would cut them off again when they return to grow their crops again.²⁰² The Karen at Mae Omki established a community in this area long ago.²⁰³

The legal issue started in 1983 when the Thai government designated the National Reserve Forest in Ta Song Yang sub-district, Ta Song Yang district, Tak province, that covered the Mae Omki community.²⁰⁴ Consequently, Mae Omki village is illegally located in the new National Reserve Forest. However, villagers continued their lives with little interruption from the government for decades.²⁰⁵ Then, on April 10, 2008, forestry officials went to Mae Omki village and observed several villagers cutting trees and burning branches in the National Reserve Forest. They tried to arrest these people, but most escaped except two people, Ms. Naw Haymui and Mr. Di Paepho.²⁰⁶

Ms. Naw Haymui was arrested while carrying one of her babies on her back, preparing the soil for growing rice. She was 35 years old and had five children. She had no formal

¹⁹⁶ Seub Nakhasathien Foundation, “State of Thailand Forest Report 2019-2020”, (27 August 2020), online: <<https://www.seub.or.th/document/สถานการณ์ป่าไม้ไทย/รายงานสถานการณ์ป่าไม้-6/>>.

¹⁹⁷ Trakansuphakon, *supra* note 192 at 134.

¹⁹⁸ Thailand Science Research and Innovation, *supra* note 190 at 31.

¹⁹⁹ Laofang Bunditdersakul, ed., *Mae Omki: The Life of the Forest and the Ideals of the Justice Process*, (Human Rights Association: Bangkok, 2015), at 21.

²⁰⁰ Trakansuphakon, *supra* note 192 at 143

²⁰¹ *Ibid.*

²⁰² Thailand Science Research and Innovation, *supra* note 190 at 53.

²⁰³ Paisit Panichkul, et al, Karen’s Rights and the Establishment of Rotational Farming Special Cultural Area in Strategic Area for Resolving Land Disputes of Northern Karen, (Office of the National Human Rights Commission, 2017), at 57-59; Bunditdersakul, *supra* note 199 at 48.

²⁰⁴ Mae Sod Provincial Court Judgment Red No. 1737/2551 (2008), Mae Sod Public Prosecutor vs Ms. Naw Haymui, at 3.; Ministry Decree No. 1,019 (B.E. 2526), according to the Forestry Act B.E. 2506, Government Gazette, book 100, section 190, dated December 6, 1983.

²⁰⁵ CMK1, interviewed on December 10, 2021, at 3.

²⁰⁶ Bunditdersakul, ed., *supra* note 199 at 18.

education, spoke only the Karen language and could not understand Thai.²⁰⁷ Like the other villagers, her only earnings came from subsistence farming by practicing rotational farming. She had three plots of land in Mae Omki village passed onto her by her parents, where she grew rice and vegetables to support her family.²⁰⁸ Later, the forest official charged her with violating the National Reserve Forest Act B.E. 2507 and the Forest Act B.E. 2484.²⁰⁹

Mr. Di Peapho was 80 years old when the forest officials arrested him. Like Ms. Naw Haymui, he did not have a formal education. He spoke only the Karen language and could not understand Thai. He lived with his wife, and his only career was farming, where he grew rice and vegetables. He farmed in the land that he inherited from his parents. Since his children had their own families and lived far away, he was responsible for growing rice to support his wife and himself.²¹⁰ Like Ms. Naw Haymui, Mr. Di Peapho was arrested and charged with violating the National Reserve Forest Act B.E. 2507 and the Forest Act B.E. 2484.²¹¹

The arrest of Ms. Naw Haymui and Mr. Di Peapho posed difficulties and challenges to these two people, community members, and nearby ethnic communities. First, these two people depended solely on growing rice and vegetables to support their families. Without having access to these pieces of land, they had no income and needed to depend on their neighbors for survival.²¹² Second, they did not understand Thai; thus, they could not properly understand the law and legal procedure.²¹³ Third, they had no savings for legal procedures and accompanying expenses and needed to depend on their family members, non-governmental organizations and PIELs.²¹⁴ Fourth, most Mae Omki villagers were in the same situation as Ms. Naw Haymui and Mr. Di Peapho, and they were concerned that they would face the same legal problems.²¹⁵ In addition, the nearby communities were also concerned that they might face the same legal issue since they adopted the same practice as Mae Omki villagers.²¹⁶

²⁰⁷ *Ibid* at 17, 109-110.

²⁰⁸ *Ibid* at 17.

²⁰⁹ Mae Sod Provincial Court Judgment Red No. 1737/2551 (2008), *supra* note 204 at 1-2.

²¹⁰ Bundidterdsakul, *supra* note 199 at 17, 109-110.

²¹¹ Mae Sod Provincial Court Judgment Red No. 1738/2551 (2008), dated May 6, 2010, Mae Sod Public Prosecutor vs Mr. De Peapho, at 1-2.

²¹² Bundidterdsakul, *supra* note 199 at 98.

²¹³ *Ibid* at 82-84.

²¹⁴ *Ibid* at 26.

²¹⁵ *Ibid* at 22.

²¹⁶ Laofang Bundidterdsakul, “Local Context, National Law: The Rights of Karen People on the Salween River in Thailand” in Carl Middleton & Vanessa Lamb, eds, *Knowing Salween River Resour Polit Contested Transbound River, The Anthropocene: Politik—Economics—Society—Science* (Cham: Springer International Publishing, 2019) at 141.

The Mae Omki community responded to this serious situation in various ways. They had no choice but to engage in the legal procedure to defend their members and their community. Their leaders contacted a non-governmental organization that helped them connect with public interest environmental lawyers.²¹⁷ The villagers did not think the government could help them with this legal issue; hence, they turned to law and lawyers for help.²¹⁸ In addition to legal fights, villagers and networks organized a public seminar about community rights and rotational farming.²¹⁹ They visited nearby villages to raise funds to support the two defendants and raise awareness about community rights.²²⁰ This community participated in the national campaign for recognizing community rights over their lands.²²¹

In the legal cases, defendants, community leaders, non-governmental organizations, and PIELs worked together to design legal strategies to address what they framed as community rights.²²² They decided to not only defend the two defendants, but also use the cases to convince the court to affirm the defendants' right over their traditional lands they believed section 66 of the 2007 Constitution recognized. They planned to use these cases as test cases for implementing community rights.²²³

The government officials' responses to the Mae Omki community activities were ambiguous. On the one hand, the Forest Department and public prosecutor stood firm to push forward criminal charges against the defendants.²²⁴ On the other hand, the district mayor, a chief investigator responsible for these cases, agreed with villagers and recommended that the public prosecutor drop the case.²²⁵ When the public prosecutors insisted on charging defendants in court, the mayor testified to support the defendants.²²⁶ In addition, a forestry expert also testified to support the defendants insisting that the disputed lands were long-cultivated land, not new encroachments.²²⁷ Furthermore, a committee appointed by the government selected the Mae Omki community as one of the

²¹⁷ Bundidterdsakul, *supra* note 199 at 10-14.

²¹⁸ *Ibid* at 3-4.

²¹⁹ Sasiroj, *supra* note 1.

²²⁰ CMK1, *supra* note 205 at 5.

²²¹ *Ibid* at 12.

²²² *Ibid* at 73-74.

²²³ *Ibid* at 76-81.

²²⁴ The Mae Sod Provincial Court,Plaint, Black No. 1770/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant; The Mae Sod Provincial Court, Plaint, Black No. 1771/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

²²⁵ The Thai Royal Police, Investigation Report, June 10, 2008, Thanundorn Sornsa accuser vs Naw Haymui Wiangwicha accused, at 4.

²²⁶ The Mae Sod Provincial Court,Plaint, Witness Testimony (Songtham Wannasit), Red No. 1737/2551 (2008), February 19, 2008, Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant.

²²⁷ The Mae Sod Provincial Court,Plaint, Witness Testimony (Wiriya Chauybumroong), Red No. 1737/2551 (2008), February 19, 2008, Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant.

communities that would receive a communal land title to recognize their community rights over their land, which, at the time of writing, the Mae Omki community has not yet received.²²⁸

Before the PIELs became involved, the provincial courts conducted a short trial intended to rely on the defendants' confessions.²²⁹ On the trial day, the courts found the two defendants guilty and punished them by imprisoning Naw Haymui for one year²³⁰ and Di Peapho for one year and three months.²³¹ However, when the PIELs became involved, the situation changed. The two defendants appealed the provincial court judgements claiming, among other things, that the lower courts did not provide them with a qualified translator.²³² The Appellate Court agreed with the defendants and ordered new trials in both cases.²³³

In the new trial, PIELs represented the defendants. They brought witnesses to testify to prove the defendants were innocent and demonstrate that they had community rights over their lands.²³⁴ With new evidence presented, the court from the lower court to the Supreme Court found that the defendants were not guilty on the ground that they did not intend to violate the law.²³⁵ However, the Supreme Court did not rule that the defendants had community rights over their lands.²³⁶ The courts held that the lands belonged to the state; thus, judges prohibited the defendants and their relatives from using them.²³⁷ In other words, the defendants are free from criminal punishment, but the courts no longer allow them to use their land to support their living.

The Mae Omki Land Rights Case differs from all previous cases in one key aspect. Villagers, in this case, challenged the state's power over natural resources and lands. The previous five cases base their arguments on existing laws or rights aiming to make

²²⁸ PMK7, interviewed on September 6, 2021, at 7-8; CMK2, interviewed on December 10, 2021, at 12.

²²⁹ The Mae Sod Provincial Court, Defendant's Plea, Black No. 1770/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant; The Mae Sod Provincial Court, Defendant's Plea, Black No. 1771/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

²³⁰ The Mae Sod Provincial Court Judgment Red No. 1737/2551 *supra* note 204.

²³¹ The Mae Sod Provincial Court Judgment Red No. 1738/2551 *supra* note 211.

²³² The Mae Sod Provincial Court, Defendant's Appeal, Red No. 1737/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant; The Mae Sod Provincial Court, Defendant's Appeal, Red No. 1737/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

²³³ The Appeal Court Region 6 Judgment Red No. 440/2552 (2009), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant; The Appeal Court Region 6 Judgment Red No. 439/2552 (2009), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

²³⁴ Bunditdersakul, ed., *supra* note 199 at 45-55.

²³⁵ The Supreme Court of Justice Judgment, No. Red 9962/2559 (2016), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant, at 3-4; The Supreme Court of Justice Judgment, No. Red 10578/2559 (2016), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant, at 8.

²³⁶ The Supreme Court of Justice Judgment, No. Red 9962/2559, *ibid* at 4; The Supreme Court of Justice Judgment, No. Red 10578/2559, *ibid* at 8.

²³⁷ The Supreme Court of Justice Judgment, No. Red 9962/2559, *ibid* at 4-5; The Supreme Court of Justice Judgment, No. Red 10578/2559, *ibid* at 9.

responsible parties accountable to aggrieved communities and expand the interpretation of rights. They use legal tools to force government agencies or businesses to fulfil their legal duties, but they do not question state's power over natural resources and land. In contrast, the Mae Omki Land Right Case challenges the state's authority over the lands by asking the courts to affirm their rights over the land, even though the legislation stated otherwise.

8. Conclusion

This chapter presents the six public interest environmental cases chosen as the case studies in this research. I provide background information about these cases focusing on the nature of the environmental problems of each case. Most of these cases are about pollution from industries or concerns about the impacts of the proposed industries. The exception is the Mae Omki Land Rights Case which is not about pollution, but about community land rights. This issue is one of the important environmental agendas in the Thai context because it connects the livelihood of indigenous communities to how laws and policies aiming to protect the forest violate local people's rights. In each case, I describe how local communities and networks address their situations and how other parties respond. The chapter highlights the fact that villagers, in all cases, employed various tools to address their problems before turning to legal strategies. Then, I briefly explain how villagers and PIELs employ legal tools to support their movements and its results. This chapter aims to familiarize readers with the nature of the cases that lay the ground for the following chapters.

In the next chapter, I present findings from my fieldwork in Thailand where I explore how legal strategies create change on the ground. I provide evidence to demonstrate the impact of legal strategies in three categories: legal recognition, tangible benefits, and community empowerment. Thus, the next chapter provides more information about the impacts of legal strategies.

Chapter 5: Impacts of Legal Strategies

1. Introduction

Scholars contend that Thai people do not prefer to use the law or courts to solve disputes.¹ These academics point to religion,² disconnected from custom, and the legal system's inaccessibility as reasons Thais avoid legal channels to address their problems, but turn to other means they are familiar with, such as negotiation³ or demonstration.⁴ The results of this study align with this argument. All case studies in this research demonstrate communities' reluctance to turn to formal legal tools for solving their environmental problems in the earlier stages. Communities would rather try other means, such as adapting their livelihood, asking suspected polluters to stop, or asking local leaders to address the problems. On rare occasions, some communities launched public protests against suspected companies or responsible government agencies. Communities usually try these methods until they discover that these tools alone are insufficient to solve their problems; then, with assistance from PIELs, communities employ legal strategies in their endeavors. Many ecological issues are too complicated to address with simple, familiar methods available at local levels.

This research recognizes that Thai communities do not see state law and legal strategies as a familiar channel they can comfortably rely on whenever they face environmental problems. In contrast, communities turn to law only when other tools cannot effectively help them address their concerns. The central question of this chapter is what happens when they turn to legal means to address environmental problems. Do laws and legal strategies help them to achieve their goals?

This chapter presents findings from six environmental movements in which communities, despite their reluctance to legal means, chose to employ legal strategies to support their campaigns. These six case studies suggest that legal strategy is crucial in fostering environmental movements in at least three ways.

First, communities' legal strategies, especially litigation, lead to the court's affirmation and expansion of environmental rights that are more beneficial to ecological movements. Lawsuits bring about several new court judgements that ratify written environmental laws

¹ Khettai Langkarpint, *Sustainable Development: Law, the Environment and Water Resources in Modern Thailand*, PhD. Dissertation (University of Warwick, 2000), at XI.; Frank Munger, "Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand" (2007) 40:2 Cornell Int Law J 455–476, at 470.; Andrew Harding & Peter Leyland, *The constitutional system of Thailand: a contextual analysis*, Constitutional systems of the world (Oxford: Hart Publishing, 2011), at 220.; David M Engel, *Tort, custom, and karma: globalization and legal consciousness in Thailand* (Stanford Law Books), at 153.

² Munger, "Constitutional Reform," *ibid* at 470.

³ Engel, *supra* note 1 at 153.

⁴ Munger, "Constitutional Reform," *supra* note 1 at 471.

and rights. Some cases lead to the court's expansive interpretation of laws that expand the scope of rights and the government's responsibilities on ecological issues.

Second, communities gain tangible benefits from legal strategies to improve their environment, health, and livelihood. Litigation can also bring substantial monetary benefits to aggrieved communities. Legal tools lead to the improvement of ecological conditions in communities and better environmental management.

Third, communities strengthen their movements by employing legal strategies. Legal strategies help communities raise awareness about their issue in their communities and the general public. Furthermore, villagers can use legal tools to support their ongoing movements by clearing legal obstructions imposed on them or increasing their bargaining power. In addition, legal tools help establish a ground for their future campaigns by establishing useful facts, spreading encouraging stories, and inspiring new forms of organizations. Finally, villagers and PIELs changed their legal consciousness to be much more sophisticated and realistic after their long engagement with legal processes in environmental movements.

Drawing on the literature review chapter, I divide this chapter into five parts. Following this introduction, part two introduces findings on how legal strategies contribute to legal recognition. This part emphasizes court cases and how communities, NGOs, and PIELs reflect on courts' interpretations of laws. Part three moves from legal recognition to evidence of tangible benefits communities receive from legal strategies. This section highlights two benefits: financial gain and improvement in environmental quality. Part four moves from concrete benefits to communities' empowerment. In this section, I present evidence to demonstrate how legal strategies strengthen environmental movements: raise public awareness, support the ongoing campaign, establish a ground for future movements, and instill nuanced legal consciousness. Finally, I conclude this chapter in part five by highlighting key findings and connecting them to the following chapter.

2. Obtaining Legal Recognition

Scholars indicate that one way to recognize whether legal strategies work for aggrieved communities is to look into the legal outcome of legal tools. In other words, one should explore how communities win cases and receive legal recognition from legal procedures. I present data that supports this view.

The case studies suggest that legal strategies contribute to legal recognition that favors environmental movements in two ways: obtaining the court's affirmation of environmental rights and leading to the general court's interpretation of law and rights. Aggrieved communities and PIELs see this legal recognition as important in supporting their environmental movements. Data indicates that legal strategies, especially litigation, bring environmental law or rights that have never been applied or challenged into judicial jurisdiction and lead to the court's affirmation that favors environmental campaigns. In addition, legal strategies also lead to the broader interpretation of law or rights that better serve aggrieved communities. These legal recognitions move stalled parties to take action

addressing environmental issues. I divide this section into two parts. The first part presents the finding of the court's affirmation of law and rights, and the second part introduces evidence of the court's broadening interpretation of the law and rights.

2.1 The Affirmation of Rights

Communities have tried to address environmental problems through various methods, such as adapting to a polluted environment, negotiating with the polluters, or asking local leaders to resolve the issues. If these methods fail, they may turn to legal tools with an expectation that these tools may help them overcome the problems. This research finds that legal strategies can verify new rights or laws favoring aggrieved communities. When villagers bring their issues to courts, and the courts affirm their rights, it pressures the responsible parties to no longer ignore the community's problems. These parties cannot point to the law and say they interpret it differently from communities because, after the court's affirming rights or law, this would mean they defy the power of the court. The court's recognition makes it possible to move inert parties to take action that otherwise would have been prolonged indefinitely.⁵

The Klity Creek Lead Pollution Case illustrates this point well. The Thai constitution first embedded the right to live in a healthy environment in the 1997 Constitution.⁶ However, the government and the mining company had avoided their responsibilities to acknowledge this right for years. They began recognizing their responsibilities and started compensating and cleaning up the polluted creek only after the villagers won cases in the Supreme Court in 2012,⁷ 2015,⁸ and 2017.⁹ These responsive actions happened almost 40 years after villagers observed the pollution in Klity Creek and tried to engage with the mining

⁵ For the Chana Gas Pipeline and Industrial Complex Case, see, The Supreme Administrative Court Judgment No. Red A. 711/2555 (2012), Chaden Auntaboripong and 29 plaintiffs V The Royal Thai Police and 2 defendants, at 44-50; for the Klity Creek Lead Pollution case, see, The Supreme Court Judgment No. 15219/2558 (2015), Kamtorn Seesuwannamala and 7 plaintiffs V Lead Concentrate (Thailand) Ltd. and 1 defendant, at 26-27, 36-38, 42-43; The Supreme Administrative Court Judgment No. Red No. A 753/2555 (2012), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department, at 72, 77, and 84; for the Khuha Mountain Quarry case, see, The Supreme Court of Judgment No. 12668/2557 (2014), Renoo Saengsuwan and 5 plaintiffs V Peerapol Mining Ltd. defendant, at 6-9; for the Mab Ta Phut Industrial Pollution case, see, The Rayong Administrative Court Judgment Red No. A 32/2552 (2009), Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 68-71; for, the Sa Kaeo Waste Pollution case, see, The Sakeaw Consent Judgment No. Red 1325/2549 (2006), Boonliang Kongsatorn and 199 plaintiffs V Profession Waste Technology (1999) Public Co, Ltd., at 1-6.

⁶ The Constitution of the Kingdom of Thailand B.E. 2540 (1997), in Royal Gazette, Book 114/Chapter 5 Kor/p.1/ October 11, 1997; The Constitution of the Kingdom of Thailand B.E. 2550 (2007), in Royal Gazette, Book 124/Chapter 47 Kor/p.1/ August 24, 2007. For the Office of the Council of State's English translation, online: <<https://www.krisdika.go.th/documents/67673/181643/C04.pdf/929d6735-87ac-89b6-74e3-d90cd503304f>>.

⁷ The Supreme Administrative Court Judgment Red No. A 753/2555 (2012), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department.

⁸ The Supreme Court Judgement No. 15219/2558 (2015), Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant.

⁹ The Supreme Court Judgement No. 10797/2559 (2016), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants.

company and various government agencies.¹⁰ These changes in behavior are possible because of legal strategies launched against a mining company and a responsible agency, the Pollution Control Department (PCD). Judges in these three cases agree with the plaintiffs that Klity Creek villagers have the right to live in a healthy environment and benefit from natural resources enshrined in the Constitution. The Pollution Control Department and the mining company are responsible for cleaning up the polluted creek.¹¹

Villagers, NGOs, and PIELs involved in this case emphasize how court legal recognitions are important to their movements in various ways. For example, one community leader points to the judgment as an authoritative order that the company and government agencies must follow.¹² This implies that the court holds more power than government agencies and the company. As the leader says, “judges already delivered their judgment for cleaning up the Creek, [responsible parties] must clean up the Creek.”¹³ This statement illustrates how villagers think and use court judgments to support their causes. They use the court’s legal recognition to pressure the responsible parties.

Villagers believe behavioral changes in government agencies and the mining company happen because of the court judgment. In other words, their relationship changed in favour of the villagers only after villagers filed lawsuits against responsible parties. As another community leader puts it, “they [responsible parties] thought villagers knew nothing and these villagers would not cause any troubles. They, both the mining company and the government agencies, believed that villagers had no capability to complain or file a lawsuit against them.”¹⁴ This statement explains why responsible parties did not concede to community demands for decades.

However, after losing court cases, villagers observe changes in the government and industry responses. As the same community leader explains, “[t]hey changed their responses to our communities because, before lawsuits, it was like we had no power, no voice, no influence. Government agencies and the mining company did not care about the effect on villagers.”¹⁵ In this sense, villagers believe that legal recognition helps move stalled parties to take action and to address problems that villagers could not achieve by other means.

This view resonates with NGO’s opinion. One NGO member, who has engaged with this case since 1998, posits that court judgment help affirms community rights recognized in the 1997 Constitution and verifies legal principles setting a clear precedent for Thai

¹⁰ Jeerawan Bantowtook, *Coping with Environmental Change Affecting Health from a Gender Perspective: A Case Study of Karen Village at Lower Klity, Kanchanaburi Province*, (Master Degree Thesis, Sociology and Anthropology Department, Chulalongkorn University: 2004), at 49-52.

¹¹ The Supreme Court Judgement No. 15219/2558 (2015), *supra* note 8 at 37-38.

¹² CKT2, interviewed on December 28, 2021, at 4.

¹³ *Ibid* at 4.

¹⁴ CKT1, interviewed on December 26, 2021, at 7.

¹⁵ *Ibid*.

society.¹⁶ As this NGO member puts it, “[w]e have to thank courts. They accepted all points we argued. In addition, judges helped elaborate principles, making them clearer to be precedent in our society.”¹⁷ In other words, legal recognition reinforces community arguments and makes it a precedent for future cases.

Furthermore, this NGO member also agrees with community leaders that the court has legal authority over government agencies and the mining company that the community and networks do not have. As he puts it succinctly, “I think the movements outside [courts] do not affect much in terms of the enforcement. They might propose some recommendations that help greatly, but court judgments have enforceable legal authority that can impose on responsible parties.”¹⁸ To put it another way, legal recognition by courts help the community in forcing government agencies and the company to take action that otherwise they would not accept.

Public interest environmental lawyers, in this case, assert that court judgments in Klity Creek cases play a crucial role in setting a positive legal precedent for ecological issues, especially community rights and the right to a healthy environment. PIELs see the Klity Creek judgments as good examples of how community and lawyers can use the law to bring good legal precedent by pointing to several legal principles brought about by court judgements.¹⁹

First, PIELs assert that judges set a precedent by applying environmental rights long recognized in the Thai constitutions but never applied them.²⁰ The courts made a written constitutional rights reality and paved the way for future environmental cases. As one PIEL put it, “the Supreme Court set a precedent in the judgment that community rights recognized in the constitutions are continuing to be protected. Thus, communities can file a lawsuit asking for compensation and restoration. Later, in the Court of Justice, several cases followed this precedent.”²¹ In other words, the Supreme Court judgments in the Klity Creek cases verify and demonstrate how to apply constitutional environmental rights, setting a precedent for the following cases.

Second, PIELs celebrate that judges in the Klity Creek cases set a good environmental legal precedent aligning with the pollution pay principle.²² PIELs point to how judges applied the pollution pay principle in this case by ordering the mining company to clean up the polluted creek with its own expenses and expanding its liability to its executives.²³ They are satisfied with the judgements because they have never seen this happen in Thai

¹⁶ NKT, interviewed on September 12, 2021, at 10.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ PKT&DK2, interviewed on May 25, 2021, at 4; PKT&MP1, interviewed on April 8, 2021, at 12.

²⁰ PKT&DK2, *ibid.*

²¹ PKT&MP1, *supra* note 19 at 12.

²² PKT&MP1, *ibid* at 11-12; PKT&DK2, *supra* note 19 at 4.

²³ PKT&MP1, *ibid* at 11; PKT&DK2, *supra* note 19 at 4-5.

jurisprudence, which will pave the way for future cases. As one PIEL put it, “[j]udges decided that people had the right to file a lawsuit as a community, and they had the right to sue all defendants and force them to clean up the creek with their own means collaboratively. This [interpretation] aligned with the pollution pay principle; it is a good trend because it is compatible with legal principle.”²⁴ In other words, PIELs welcome courts applying the pollution pay principle as a good trend for environmental movements.

Third, PIELs emphasize that the Supreme Court verifies procedural provisions benefitting environmental movements.²⁵ Besides affirming environmental rights and legal principles, judges also set procedural rules that make it easier for aggrieved communities to hold polluters accountable for their actions. For example, the Supreme Court set a precedent that in an environmental lawsuit, the limitation is not one year as in typical tort cases, but ten years.²⁶ This precedent allows aggrieved communities more time to file a lawsuit against polluters. In addition, another PIEL points to the judgment that expanded responsible polluters to include all executive committees of a company rather than limiting to the company as a legal entity and excluding all executive committees from liability as was usual in the past.²⁷ This precedent increases the community’s possibility of getting compensation and clean-up measures because both company and executives as an individual are liable for environmental lawsuits.

Finally, PIELs resonate with community leaders’ and NGO staff’s opinions that court judgments are key in forcing government agencies and the company to take action. Court legal recognition, for PIELs, does not limit to precedent-setting but has the authority to push the responsible parties to take action.²⁸ For example, the Pollution Control Department (PCD), which had long denied its responsibility to clean up the creek, spent a large portion of its annual budget cleaning up Klity Creek after losing a court case.²⁹ As one PIEL puts it succinctly, “legal mechanisms are the main tools that make it possible for villagers to have their rights affirmed through the legal system. These [legal mechanisms] led to court judgments with clear, enforceable orders.”³⁰ In this sense, court legal recognition imposes responsible parties to take action.

Another case demonstrating the role of legal strategies in contributing to legal recognition that benefits environmental movements is the Mab Ta Phut Industrial Pollution Case. In this case, Mab Ta Phut communities who had suffered a long time from industrial pollution invoke the right to a healthy environment.³¹ They requested the National Environmental

²⁴ PKT&DK2, *ibid* at 4.

²⁵ PKT&MP1, *supra* note 19 at 11; PKT&DK2, *ibid* at 4-5.

²⁶ PKT&MP1, *ibid* at 11; PKT&DK2, *ibid* at 5.

²⁷ PKT&MP1, *ibid*; PKT&DK2, *ibid* at 4-5.

²⁸ PKT&DK2, *supra* note 19 at 5-6.

²⁹ PKT&MP1, *supra* note 19 at 19; GKT, interviewed on November 11, 2021, at 12.

³⁰ PKT&MP1, *ibid* at 23.

³¹ The military coup leaders revoked 1997 Thai Constitution in the 2006 Coup and the new Parliament passed the new Constitution that got a majority vote in the national referendum in 2007.

Board (NEB) to designate the Mab Ta Phut area pollution control zone to address environmental problems in an administrative court.³² The Rayong Administrative Court, for the first time, agreed with Mab Ta Phut communities and ordered the NEB to designate the Mab Ta Phut and nearby areas pollution control areas and to start solving environmental problems.³³

The PIEL, represented in this case, acknowledges that court legal recognition helps verify an ambiguous environmental provision and makes it possible to move responsible parties to take action. For example, the PIEL asserts that the court judgment makes it clear to all parties that Mab Ta Phut and nearby areas have serious environmental and health problems and that the government must use legal measures to address them.³⁴ As the PIEL explains, “I think in legal terms, it is accepted that these areas must be addressed by legal measures.”³⁵ In other words, court legal recognition affirms that Mab Ta Phut and nearby areas fall under the definition of a pollution control area, and the government must act upon this judgment. Judges dismissed the government’s standpoint of not using legal measures and ordered the NEB to take legal action.³⁶

Cha Na Pipeline and Industrial Complex Case also brought about court legal recognition, this time, the right to public assembly. Communities in the South opposed the Cha Na Pipeline and Industrial Complex because they were concerned about environmental and cultural impacts.³⁷ These communities raised the right to live in a healthy environment and benefit from natural resources recognized in sections 46 and 56 of the 1997 Constitution to back up their movements.³⁸ When the police violently dispersed their public demonstration on December 20, 2002,³⁹ villagers launched an administrative lawsuit against the police. In this lawsuit, Cha Na villagers argued that the police violated their

³² The Rayong Administrative Court Plaintiff, No.192/2550 (2007), Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 35.

³³ *Ibid* at 71.

³⁴ PKT&MP1, *supra* note 19 at 36.

³⁵ PKT&MP1, *ibid*.

³⁶ The Rayong Administrative Court Judgment Red No. A 32/2552 (2009), *supra* note 5 at 68-71.

³⁷ CCN1, interviewed on January 6, 2022, at 3-4.; CCN2, interviewed on January 21, 2022, at 2-3.

³⁸ The Supreme Administrative Court Judgment No. Red A.711/2555 (2012), Jaeden Anantaboripong and 29 plaintiff vs Thai Royal Police and 2 defendants, at 3.

³⁹ Larry Lohmann, “The Struggle of Villagers in Chana District, Southern Thailand in Defence of Community Land and Religion against the Trans Thai-Malaysian Pipeline and Industrial Project (TTM) 2002-2008”, (Dorset: 2008), online: <https://www.academia.edu/3876046/The_Struggle_of_Villagers_in_Chana_District_Southern_Thailand_in_Defence_of_Community_Land_and_Religion_against_the_Trans_Thai_Malaysian_Pipeline_and_Industrial_Project_TTM_2002_2008>, at 25-26.

public assembly rights and must compensate for the violation.⁴⁰ Judges agreed with the villagers and ordered the police to pay the villagers compensation.⁴¹

Villagers, NGOs, and PIELs celebrate the judgment as a good precedent for environmental movements. Villagers emphasize the fact that communities welcome court judgment. They viewed court legal recognition as a confirmation that they had the right to organize a public demonstration, and the constitution protected it. In contrast, what the police did to them was wrong and illegal.⁴² They also see the judgment as a good precedent for other movements. As one villager observes:

We are overjoyed. Not because we got compensation but because it affirms that what communities did was right. Villagers demonstrated legally aligning with the constitution. It shows outsiders that we have the right to organize a peaceful demonstration. Other groups should not be afraid to do so. There is justice if we exercise our rights correctly. I am happy that we show others a precedent.⁴³

Similarly, in this case, one NGOs member views the court's legal recognition as a positive force for community movements. The court judgment sends a compelling message to outsiders that communities did the right thing.⁴⁴ As the NGOs member put it,

We do not care much about money. What we want from the court is to confirm who was right and who was wrong. I think this is good for us. And we received compensation. The payment affected villages who did not participate in the movements or left the campaign because these people knew that the court ordered the Royal Police to pay, and the police delivered compensation to the villagers.⁴⁵

In this sense, the court judgment legitimizes the movement and influences other villagers who had not been part of the movement. It shows to this group that the court approved what the Chana villagers did.

The PIEL, who represented villagers in criminal cases, emphasizes that court judgments set a good precedent for constitutional rights and how the police should interact with

⁴⁰ The Songkhla Administrative Court, Complaint, No. Black 454/2546 (2003), Jaeden Anantaboripong and 29 plaintiff vs Thai Royal Police and 2 defendants.

⁴¹ The Supreme Administrative Court Judgment No. Red A.711/2555 (November 2012), Jaeden Anantaboripong and 29 plaintiff vs Thai Royal Police and 2 defendants, at 47-50.

⁴² CCN1, *supra* note 37 at 8; CCN2, *supra* note 37 at 10.

⁴³ CCN2, *ibid* at 10.

⁴⁴ NCN, interviewed on September 22, 2021, at 10.

⁴⁵ NCN, *supra* note 44 at 10.

demonstrators.⁴⁶ He argues that several movements used the Cha Na Pipeline and Industrial Complex court judgments to back up their campaigns in various situations.⁴⁷ In other words, legal recognition from the court legitimizes the community's causes and provides a model for other movements.

This section asserts that legal strategies contribute to rights affirmation that favours environmental movements. Communities brought challenging and significant legal matters to the courts and allowed judges to adjudicate and affirm new environmental laws and rights. In these cases, courts could elaborate on and decide critical legal problems, establish rights that benefit aggrieved communities, and set precedents for other cases. These examples indicate that legal strategies can help develop better legal precedents and help communities overcome stalled situations.

2.2 The Expansion of Rights

With assistance from PIELs, some communities employ legal strategies to expand the scope of law or rights. They use legal processes to encourage courts to go beyond existing constrained interpretations to an innovative general interpretation of laws that includes more groups of people or provides more benefits to aggrieved communities. The case studies suggest that litigations can contribute to enlarging the scope of rights into uncharted areas.

Considering the Klity Creek Lead Pollution Case, communities did not solely ask the courts to affirm their rights, but they successfully convinced the courts to expand the scope of rights in at least three domains. First, communities successfully asked the courts to order a government agency to compensate them for violating their right to benefit from natural resources, even though these natural resources belonged to the public.⁴⁸ One PIEL called this award compensation for losing opportunities to enjoy constitutional rights.⁴⁹ This judgment is the first time a Thai court awarded compensation to villagers who could not benefit from common natural resources because of the government agency's inaction.

Second, communities and PIELs successfully convinced courts to adopt a preferable interpretation of what should be considered an injury that entitles plaintiffs to compensation. Before the Klity Creek Lead Pollution Case, a conventional way to prove the injury was to refer to a medical record demonstrating that a plaintiff was sick because of specific pollution, as PIELs did in the first civil case.⁵⁰ However, the second civil case set a new precedent by making it easier for a plaintiff to prove their case. For the first time, the courts recognized that having lead in plaintiffs' bodies higher than the general public,

⁴⁶ PCN5, interviewed on April 22, 2021, at 5.

⁴⁷ *Ibid* at 5-6.

⁴⁸ The Supreme Administrative Court No. Red No. A 753/2555, *supra* note 5 at 80-84.

⁴⁹ PKT&MP1, *supra* note 19 at 17.

⁵⁰ The Kanchanaburi Provincial Court Judgment, No. Red 1565/2549 (2006), Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, at 30-33.

accompanied by some symptoms of illness related to lead pollution, was adequate to prove that lead toxin injured the plaintiffs.⁵¹ In short, the plaintiffs were entitled to compensation even if they did not have a medical record to back up their claim. This innovative interpretation made it possible for 151 more villagers to receive compensation from the mining company in the second civil case.⁵²

Third, another innovative legal interpretation in the Klity Creek Lead Pollution Case is about the Pollution Control Department's role in cleaning up pollution in Klity Creek. The Thai government had never cleaned up any polluted river before the Klity Creek Lead Pollution Case.⁵³ Thus, the court judgment that ordered the PCD to clean up the creek expands the state's responsibility to clean up the polluted river in the Klity Creek Lead Pollution Case and future cases.⁵⁴ From citizens' viewpoints, this case enlarges people's benefits by allowing them to ask and force a government agency to restore polluted rivers.⁵⁵ As one PIEL in this case puts it, "[t]he judgement confirmed that the PCD had a duty to create clean-up plan and clean up the Creek. This judgment is interesting because it is the first time in Thailand."⁵⁶ In other words, this judgement set a new, better precedent in environmental management in Thailand.⁵⁷

Another case that leads to the expansion of citizens' rights and government responsibility in environmental management is the Mab Ta Phut Industrial Pollution Case. In this case, the aggrieved communities successfully convinced the Supreme Administrative Court to embrace the international environmental legal doctrine of the precautionary principle in its order. This legal innovation creates a better ground for ecological movements.

In the administrative lawsuit in 2007, Map Ta Phut communities brought an international environmental legal principle to back up their claims. They argued in their complaint that the NEB should adopt a precaution principle to address problems in the Mab Ta Phut area and designate the area as a pollution control zone rather than delay the process.⁵⁸ They successfully convinced the Supreme Administrative Court to accept this interpretation in its order.⁵⁹ The Supreme Administrative judges cited this precautionary principle and the

⁵¹ The Kanchanaburi Provincial Court Judgment No. Red 1290/2553 (2010), (2010), Yasoe Nasuansuan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 24-26.

⁵² The Supreme Court Judgement No. 10797/2559 (2016), *supra* note 9.

⁵³ GKT, *supra* note 29 at 7.

⁵⁴ Kate Hodal, "Thai government censured for failure to tackle lead pollution", *The Guardian* (19 December 2014), online: <<https://www.theguardian.com/global-development/2014/dec/19/thai-government-censured-for-failure-to-tackle-lead-pollution>>.

⁵⁵ CKT2, *supra* note 12 at 5; CKT1, *supra* note 14 at 5.

⁵⁶ PKT&MP1, *supra* note 19 at 11.

⁵⁷ Frank W Munger, "An Alternative Path to Rule of Law: Thailand's Twenty-First Century Administrative Courts" (2019) 26:1 *Indiana J Glob Leg Stud* 133-172, at 166.

⁵⁸ The Rayong Administrative Court Complaint No. 192/2550 (2007), Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 25-26.

⁵⁹ PKT&MP1, *supra* note 19 at 7; The Supreme Administrative Court uses four reasons to support its conclusion that the NEB should have designed the Mab Ta Phut and nearby areas pollution control zone. First, the NEB

Rio Declaration of Environment and Development 1992 to support the idea that the NEB should designate the Mab Ta Phut area a pollution control zone rather than delaying the process.⁶⁰

This reference demonstrates how Thai judges can innovatively use international law or legal principles to help them adjudicate. With this precedent, Thai citizens can bring more advanced international law or legal principles to support their issues rather than be limited solely to the Thai jurisprudence that might be inadequate to foster their movements.⁶¹ One PIEL asserts, “[i]n the Mab Ta Phut Pollution Control Area case, although the court dismissed the case, they applied the Rio Declaration and the Precautionary principle. This [legal application] is a good sign.” In this sense, the PIEL celebrates that the court accepted their interpretation and put in its order that government officials should consider this international environmental principle when applying the law.

The Ku Ha Mountain Quarry Case also demonstrates how legal strategies can expand the scope of rights to an area that has never been recognized. In this case, the plaintiffs, who lived near the mining operation, asked the court to order the mining company to pay them, among other things, compensation for their concerns about safety from the mining operation.⁶² The Appeal Court Region 9, as upheld by the Supreme Court, agreed with the plaintiffs and awarded them compensation.⁶³ This award is new in Thailand, where several Supreme Court judgments have denied compensation for mental concerns unrelated to physical injury.⁶⁴

The Ku Ha Mountain Quarry Case changes this long-held legal precedent and allows Khao Ku Ha villagers to receive compensation that others could not have gotten in the past.⁶⁵ It was the first time the courts granted victims of environmentally harmful activities

should interpret the Environmental Act section 59 by take into considering a precautionary principle in the Rio Declaration on Environment and Development that the Thai government representative participated in 1992. Second, in the past, the NEB designated 17 areas pollution control zone by considering mainly on their environmental problems, in which Mab Ta Phut area is worse. Third, the NEB attempted to address environmental problems in Mab Ta Phut area without designating a pollution control zone, but the situation in the area was not improved. Four, if the situation continues longer, it would cause wider impact and difficult to address. The first and fourth reason directly come from the precautionary principle.; see, The Supreme Administrative Court Order, No. A. 921/2560 (2017), Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 89-90.

⁶⁰ The Supreme Administrative Court Order, No. A. 921/2560, *ibid* at 89-90.

⁶¹ PKT&MP1, *supra* note 19 at 7.

⁶² The Appeal Court Judgment Region 9, No. Red 516/2555 (2012), Renu Saengsuwan and 3 plaintiffs vs Peerapol Mining Ltd. defendant, at 18-19.

⁶³ *Ibid* at 19; The Supreme Court Judgment No. 12668/2557 (2014), *supra* note 5.

⁶⁴ Tanapan Sangphongsanont, *Determination of Mental Damages in Environmental Cases*, (Thammasat University, Faculty of Law, Master Degree Thesis; Bangkok, 2014), at 136.

⁶⁵ Later in another tort case, the Supreme Court of Justice follow the same line of reasoning of the appeal court in this case, granted a plaintiff mental compensation that did not directly link to physical injury. See, the Supreme Court of Justice Judgment, No. 4571/2556 (2013), online: *DEKA.in.th* <<https://deka.in.th/view-544466.html>>.

compensation for mental concerns about their safety and livelihood.⁶⁶ As one of PIELs who acted in this case, emphasizes, “[t]he Court of the First Instance awarded plaintiffs compensation for mental distress. Then, the defendants appealed to the Appeal and Supreme Courts, and the case ended with the courts deciding to favour the plaintiffs. This judgment set a precedent about compensation for psychological damage and mental distress.” As a result, the Khu Ha Mountain Quarry Case stretches the scope of compensation that victims of environmental impacts are entitled to.

The case studies presented in this section demonstrate one more contribution of legal strategies to environmental movements; they expand the scope of rights and benefits for victims of ecological harm. This development in the legal realm is important for environmental campaigns that can utilize this broad legal recognition to support their causes.

However, legal strategies do not guarantee positive responses from courts; in some cases, they can generate an unpreferable legal precedent for environmental groups. The next section presents one case study to demonstrate legal strategies’ unexpected negative legal precedent.

2.3 Litigation and Negative Legal Precedent

One important caveat about employing litigation for legal recognition is that litigation can lead to unpreferable legal precedent for environmental movements. In other words, while communities and PIELs are looking for supportive legal precedent, courts can deliver the opposite that thwarts the campaign.

The Mae Om Ki Land Right Case illustrates this point well. In this case, communities and PIELs use legal strategies as a test case asking courts to recognize communities’ rights over traditional land.⁶⁷ But legal strategies did not lead to legal recognition as they expected. In contrast, a PIEL representing this case believes that the Supreme Court set a bad precedent for both plaintiffs and future movements.⁶⁸

In 2008, two villagers from Mae Om Ki village, a Karen ethnic community in Tak Province were arrested and charged with criminal offences related to violating the Forest Preservation Act B.E. 2504.⁶⁹ Community leaders sought help from NGOs and PIELs.⁷⁰

⁶⁶ Sangphongsanont, *supra* note 64 at 89-90.; Weerayut Boonyabut, *Legal Development in the Imposition of Mental Injury Damages: A Comparative Study Between Interesting Foreign Law and Thai Law*, in “Dhulpaha Journal Issue 3rd, Year 67th September-December 2020”, online: <<https://jla.coj.go.th/th/content/category/detail/id/8/cid/1605/iid/226027>> at 138-141.

⁶⁷ Mae Sod Provincial Court Defendant’s Affidavit, No. Red 1737/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant.

⁶⁸ PMK3, interviewed on April 15, 2021, at 59.

⁶⁹ Mae Sod Provincial Court Plaintiff, No. Black 1770/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant.

⁷⁰ Laofang Bunditdersakul, ed., *Mae Omki: The Life of the Forest and Ideals of the Justice Process*, (Human Rights Association: Bangkok, 2015), at 13-14.

The two accused insisted that the disputed lands were traditional lands they received from their parents.⁷¹ They pled not guilty.⁷² After consultation, the defendants, community leaders, NGOs, and PIELs agreed to use criminal cases to defend the defendants and ask the court to recognize their rights over their lands.⁷³ They invoked community rights recognized in the 2007 Constitution section 66 to defend themselves and to support their claims over their lands.⁷⁴

After almost a decade of legal battles from a lower court to the Supreme Court, in 2016, the Supreme Court provided a final judgment. The Supreme Court decided that the two defendants were not guilty. However, the Court did not recognize that the defendants' have rights over their traditional land.⁷⁵ The Courts held that the land belongs to the state. Therefore, despite deciding the defendants were not guilty, the courts ordered them to leave the lands and prohibited them and their relatives from occupying or utilizing them again.⁷⁶

These Supreme Court judgements create a bad legal precedent. In the past, the court would not order the defendant to leave the land if judges found the defendant not guilty.⁷⁷ But in this case, the Supreme court changed its precedent. In this sense, the Mae Om Ki Land Rights Case led to an unpreferable legal interpretation for land rights campaigns.⁷⁸ The PIELs, in these cases, complain that since these decisions, it has been difficult for them to use legal strategies to push forward community rights because judges would follow the Mae Om Ki Supreme Court decisions.⁷⁹ As one PIEL put it succinctly, “[t]his case is a failure, and it created an aftershock to other cases. While we wanted to create a good precedent for the movements, we got a bad one. This is why I think it is a failure.”⁸⁰ In other words, while communities and PIELs expected to set a good legal precedent, they received a bad precedent instead.

⁷¹ Bundidtersakul, *supra* note 70 at 23.

⁷² Mae Sod Provincial Court Defendant's Affidavit, No. Red 1737/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant; Mae Sod Provincial Court Defendant's Affidavit, No. Red, 1738/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

⁷³ Bundidtersakul, *supra* note 70 at 73-81.

⁷⁴ Mae Sod Provincial Court Defendant's Affidavit, No. Red 1737/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant, at 2; Mae Sod Provincial Court Defendant's Affidavit, No. Red, 1738/2551 (2008), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant, at 2.

⁷⁵ The Supreme Court Judgment, No. 9962/2559 (2016), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant at 4; The Supreme Court Judgment, No. Red 10578/2559 (2016), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

⁷⁶ The Supreme Court Judgment, No. 9962/2559 (2016), *ibid* at 5.; The Supreme Court Judgment, No. 10578/2559, *ibid* at 8.

⁷⁷ PMK3, *supra* note 68 at 63.

⁷⁸ *Ibid*, 58-59.

⁷⁹ *Ibid* at 60.

⁸⁰ *Ibid* at 59.

In sum, the Mae Om Ki Land Rights Case demonstrates the other side of the coin that communities and PIELs may face when employing legal strategies. Legal strategies can lead to better legal interpretation for current and future movements, but there is a risk that legal tools can generate unpreferable precedents that hinder the campaigns.

However, this drawback of legal strategies does not rule out other benefits that communities may gain, even in the shadow of unfavourable legal precedents. The following section presents another type of impact legal strategies can create for communities. These impacts are more concrete than legal recognition, and this research refers to them as tangible benefits.

3. Getting Tangible Benefits

This part moves from legal recognition focusing on positive legal interpretation to tangible benefits. Tangible benefits mean things people can experience or utilize directly, such as monetary rewards or better air quality. In this sense, this part moves from a lawyer's focus to a more community-focused perspective that focuses on concrete gains. I present findings from the case studies highlighting monetary reward and environmental improvement brought about by legal strategies.

3.1 Monetary Reward

Environmental problems simultaneously impact the environment, health, and people's livelihood. Aggrieved communities from ecological harm projects seek remedies for their injuries, livelihood, and restore the ecology. This section presents evidence of monetary compensation aggrieved communities gain from responsible parties through legal strategies. Data suggests that legal tools bring about substantial financial benefits to aggrieved communities.

Of the six case studies in this research, the Klity Creek Lead Pollution Case is the most interesting regarding the amount of money the community gained from litigations. One important factor to remember is that Klity villagers filed three separate cases and won all of them.⁸¹ The courts, in these cases, besides other orders, awarded compensation to villagers altogether 119,206,498 Baht (approximately 4,768,259 CAD) to plaintiffs.⁸² In this part, I present evidence to show that when it comes to real gain, the community did not receive all of what the courts awarded them; still, what they got was considerable.

The first case is an administrative case, in which Klity Lang villagers asked the court to order the Pollution Control Department (PCD) to compensate them because the PCD failed

⁸¹ The Supreme Court Judgment No. 10797/2558 (2015), Kamtorn Seesuwannamala and 7 plaintiffs V Lead Concentrate (Thailand) Ltd. and 1 defendant; The Supreme Administrative Court Judgment No. Red No. A 753/2555 *supra* note 5.; The Supreme Court Judgement No. 10797/2559 (2016), *supra* note 9.

⁸² I convert Thai Bath to Canadian Dollar using the days the court delivered their judgments at the point of reference to demonstrate the magnitude of compensation at that time. See how I calculate the compensation below in this part.

or had an unreasonable delay in restoring the polluted creek.⁸³ In 2012, the Supreme Administrative Court ordered the PCD to pay the 22 plaintiffs 3,898,390.10 Baht (approximately 128,068 CAD) or 177,199.55 Baht per person (approximately 5,821 CAD) within 90 days.⁸⁴ On February 20, 2013, the PCD reported to the administrative court that the agency paid all 3,898,390.10 Baht to the plaintiffs.⁸⁵ In this case, villagers got a full payment from the PCD.

The second case is a civil case where eight villagers filed a tort lawsuits against the mining company asking for compensation and the restoration of the creek. In 2015, the Supreme Court of Justice ordered the defendants, among other things, to compensate each plaintiff ranging from 2,150,000 to 3,150,000 Baht (approximately 83,301 to 122,045 CAD) and 7.5% interest of this amount calculated from January 30, 2003, until the completed payment.⁸⁶ Thus, the principal award is 20,200,000 Baht, and the interest is about 20,694,900 Baht. The total award is 40,894,900 Baht (approximately 1,584,459 CAD). Nine months later, the villagers reached an agreement with the mining company to accept a principal compensation of 20,200,000 Baht (approximately 782,642 CAD) and discard the rest.⁸⁷

The third case is another civil case in which 151 villagers, who had no medical evidence affirming that they were sick, filed a lawsuit asking for health compensation.⁸⁸ As presented in the previous part that villagers successfully used this case to expand the scope of the right to get compensation to cover villagers who did not have medical evidence. In 2017, the Supreme Court ordered the mining company to pay compensation to 151 plaintiffs ranging from 150,000 to 300,000 Baht (depending on how high the lead levels they had), and 7.5% interest of this amount calculated from October 19, 2007, until the completed payment.⁸⁹ Thus, the principal award is 36,050,000 baht, and the interest is about 38,363,208 Baht. The total award is approximately 74,413,208 Baht (approximately

⁸³ The Central Administrative Court, A Request to Revise a Complaint, No. Black 214/2547 (2004), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department, at 4-5.

⁸⁴ The Supreme Administrative Court No. Red No. A 753/2555 (2012), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department, at 84.

⁸⁵ Akkapong Intachan, The Report of the Implementation of the Supreme Administrative Court Judgment (No. Red A.743/2555), (Department of Administrative Case Enforcement: 2014), at 1.

⁸⁶ The Supreme Court Judgment No. 15219/2558 (2015), *supra* note 5 at 42-43; The Appeal Court Region 7 Judgment No. Red 3426/2550, Kamtorn Seesuwannala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, at 30.

⁸⁷ The Kanchanaburi Provincial Court, A Petition to Discard to Enforce Court judgment, No. Red 1565/2549, Kamtorn Seesuwannala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant, at 3.

⁸⁸ The Kanchanaburi Provincial Court Judgment No. Red 1290/2553, (2010), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 24-25.

⁸⁹ The Supreme Court Judgment No. 10797/2559, Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 44-45; The Appeal Court Region 7 Judgment No. 2604/2554, Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 56; The Kanchanaburi Provincial Court Judgment No. Red 1290/2553, (2010), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 27-28.

2,964,669 CAD). But, until present (May 2022), plaintiffs received only 9,936,723 baht (approximately 395,885 CAD), only a fraction of the award.⁹⁰

To sum up, although villagers have not received all of the compensation according to court judgements, legal strategies in the Klity Creek Lead Pollution Case generated a considerable monetary gain for them. The total amount of money villagers received from the three litigations is about 34 million baht (approximately 1.35 million CAD). This compensation may be the largest amount of money that the small village of 64 households ever received. To make sense of the magnitude of the money for this village, consider influential Thailand's Million Baht Village Fund Program, which the Thai government launched in 2001. This program only gave each of the 77,000 Thai villages 1,000,000 baht (approximately 34,916 CAD).⁹¹ The received money is thirty-four times the Government Fund. Or compared to the household costs of protein food villagers paid in 2004, which was 700 Baht per month (approximately 28 CAD),⁹² it is clear that the money these villagers received is substantial.

Another case that generates substantial monetary awarded for aggrieved communities is the Non Mak Kheng Waste Pollution Case. In this case, communities, with an assistance from PIELs, launched a civil case asking the court to stop the waste management company's operation because it released pollution to nearby neighbourhoods and caused the plaintiffs health problems.⁹³ In this lawsuit, villagers focused on stopping air pollution that disturbed their livelihood and did not seek compensation.⁹⁴ However, after filing a lawsuit and getting a court injunction, communities and PIELs successfully negotiated for substantial compensation for individuals and communities.⁹⁵

Communities and the waste management company agreed that in addition to resolving environmental problems, the company would compensate villagers in two categories: individuals and the collective. For individuals, the company agreed to pay 2,300,00 Baht (approximately 70,444 CAD) to 58 villagers whose farmlands were damaged by the pollution.⁹⁶ Moreover, the company agreed to contribute 400,000 Baht (approximately 12,251 CAD) to the newly established community fund and continue to contribute 10 Baht (approximately 0.30 CAD) for each ton of waste the company brings into the facility in the future.⁹⁷

⁹⁰ PKT&DK2, *supra* note 19 at 7; PKT&DK2, communicated on October 7, 2022.

⁹¹ Joseph P Kaboski & Robert M Townsend, "The Impact of Credit on Village Economies" (2012) 4:2 Am Econ J Appl Econ 98–133, at 98-99.

⁹² The Central Administrative Court, A Request to Revise a Complaint, No. Black 214/2547, Yasoe Nasuanuwan and 21 claimant vs Pollution Control Department, 113, at 7.

⁹³ The Sakaeo Provincial Court, A Petition for an Injunction, No. Black 419/2549 (2006), Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company.

⁹⁴ *Ibid* at 1.

⁹⁵ The Sakeaw Consent Judgment No. Red 1325/2549 (2006), *supra* note 5.,

⁹⁶ The Sakeaw Consent Judgment No. Red 1325/2549 (2006), *supra* note 5 at 5-6.

⁹⁷ *Ibid* at 4.

After the courts approved the agreement in 2006, the company paid 2,300,000 Baht to 53 villagers and 400,000 Baht to the Community Fund.⁹⁸ Later, the court also allowed villagers to seize 7.5 million Baht (approximately 230,000 CAD) of the firm's guaranteed money because the company could not fulfil some promises of the agreement on time.⁹⁹ And at least from March 2015 to October 2021, the company contributed 9,496,729 baht of its revenue to the community fund.¹⁰⁰

The Non Mak Kheng Waste Pollution Case lawsuit brought substantial financial rewards to these communities, even though they did not seek it initially. In total, communities received about 20,000,000 baht (approximately 800,000 CAD) from the litigation. This money may not compensate for the health impacts and environmental damages these villagers endured for many years. However, it is a considerable amount for these communities, who received this money without expecting it in the beginning. It is clear that without the lawsuit, the company would not agree to pay this compensation at all.

Another case that demonstrates how legal strategies can bring monetary reward to aggrieved communities is the Chana Gas Pipeline and Industrial Complex Case. In this case, communities used legal tools to defend themselves from numerous criminal charges following their movements and successfully employed administrative litigation to get compensation from the government.

In 2003, thirty villagers who participated in a public demonstration in December 2002 filed an administrative case against the police asking for compensation from the Police's violation of their rights to public assembly.¹⁰¹ Villagers won cases from the lower court¹⁰² to the Supreme Administrative Court.¹⁰³ The Supreme Administrative Court recognized villagers' right to public assembly and found that the police illegally dissolved villagers' peaceful assembly.¹⁰⁴ The high court saw the right to public assembly as a collective right; therefore, the courts awarded 100,000 Baht in compensation (approximately 3,300 CAD)

⁹⁸ PKT&DM2, *supra* note 19 at 28.

⁹⁹ The Sakaeo Provincial Court, Court Proceeding Report, July 9, 2007, No. Red 1325/2549, Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company, at 2-3.; CDM1, interviewed on December 17, 2021, at 14.

¹⁰⁰ Bank for Agriculture and Agricultural Co-Operative, Bank Statement of the Fund for Non Mak Kheng Communities' Well-being and Environment, March 2015-October 2021; The data I obtained from participants was not completed because the bank statement started in 2015, nine years after the 2006 agreement. It is likely that communities received more money in this period, but I could not obtain other data to confirm this point.

¹⁰¹ The Songkhla Administrative Court, Complaint, No. Black 454/2546 (2003), *supra* note 40.

¹⁰² The Songkla Administrative Court Judgment, No. Red 51/2549 (2006), Jaeden Anantaboripong and 29 plaintiff vs Thai Royal Police and 2 defendants.

¹⁰³ The Supreme Administrative Court Judgment No. Red A.711/2555 (2012), *supra* note 5.

¹⁰⁴ The Supreme Administrative Court Judgment No. Red A.711/2555 (2012), *supra* note 38 at 47-49.

to the 30 plaintiffs.¹⁰⁵ A few months later, the Police Department complied with the court order by paying full compensation to the plaintiffs.¹⁰⁶

Although the compensation is not much money compared to the previous two cases, Chana villagers found this judgment and financial award meaningful for their movements. The compensation boosted their morale and affirmed to them and the public that they did the right thing. They used this money to support their campaign and back up their explanation to their fellow villagers about their legitimate causes.¹⁰⁷ As one plaintiff puts it:

The administrative courts state clearly, both the Lower and Supreme Administrative courts, that if the demonstrators exercise their public assembly right and the administrative courts do not protect them, it is useless to recognize this right in the constitution. I am very satisfied with this. Thus, the courts must protect their rights and award 100,000 Baht in compensation. The police paid this compensation. It impacts the outsiders who did not join us or who used to but left our movements. There was a word of mouth saying that the Administrative Court ordered the police to pay [villagers] 100,000 Baht per person. To be accurate, it was 100,000 Baht for 30 plaintiffs. I think it impacts the public, and it is good.¹⁰⁸

In this sense, even though it is a small amount, the compensation becomes evidence for communities to demonstrate that they did the right thing and that the police violated their rights. Without this lawsuit, it would be difficult for Chana communities to point out any tangible evidence that proves they are right and the police are wrong.

Although the three cases presented above support the argument that legal strategies bring substantial monetary benefit to communities, legal tools do not guarantee these gains. Villagers may have their rights recognized legally by a court order, but they still may not receive compensation from the responsible parties.

For example, in the Khuha Mountain Quarry Mine Case, villagers who suffered from the impacts of the Quarry mine filed three civil lawsuits against a mining company asking for compensation and won all cases.¹⁰⁹ However, the mining company did not comply with

¹⁰⁵ Ibid at 49-50.

¹⁰⁶ NCN, *supra* note 44 at 8; Thai PBS, “Thai Royal Police Prepares to Pay Compensation to Villagers who Protest Against Thai-Malaysian Pipeline”, (16 January 2013), online: *Thai PBS* <<https://news.thaipbs.or.th/content/140036>>.

¹⁰⁷ CCN1, *supra* note 37 at 8; CCN2, *supra* note 37 at 10.

¹⁰⁸ NCN, *supra* note 44 at 10.

¹⁰⁹ The Supreme Court Judgment No. 12668/2557 (2014), *supra* note 5; The Appeal Court Region 9 Judgment No. Red 407/2557 (2014), Nareumon Chantasuan and another plaintiff v Peerapol Mining Company Ltd.

the court orders and left the area with all its assets.¹¹⁰ PIELs and villagers have tried to collect their awarded compensation, but until the present (May 2022), they have not succeeded.¹¹¹ This case demonstrates the limitation of legal recognition and court power. In practice, it is difficult for villagers to enforce court orders.

Recognizing the risk of not being awarded compensation in some cases, data from the case studies demonstrates that legal strategies can deliver substantial money into the hands of aggrieved communities. Legal strategies in the three cases presented above delivered approximately 50,000,00 baht (about 2 million CAD) to the aggrieved communities. It is not a large sum of money, but it is significant.

The monetary benefit is not the only tangible benefit communities can get from legal strategies. The next section presents evidence demonstrating another concrete benefit communities gain from employing legal tools: a better environment.

3.2 Improving Environmental Quality

One important goal of environmental movements is to improve the quality of the environment. Communities want to have better air, clean water, and unpolluted soil. In other words, they want a healthy environment. Hence, one essential tangible benefit for communities is to improve their environment. This is a crucial goal because if the root of the environmental problem is not addressed, local communities will feel its negative effects indefinitely. This part presents findings from the case studies that demonstrate how legal strategies contribute to the improvement of the environment.

Data from case studies suggest that legal strategies play an important role in moving responsible parties to take the necessary action to address environmental issues. Legal tools contribute to the improvement of the environment in two ways. First, it leads to the end of development projects that create ecological and health problems. Second, legal actions force the responsible parties to take the necessary measures to solve environmental issues.

The first case in point is the Klity Creek Lead Pollution Case. In this case, legal means and other campaigns pressed the responsible agency to fine the mining company and suspended its mining license at the beginning of the movements.¹¹² Later on, the government refused to renew the mining license.¹¹³ The government responded after communities combined

and another defendant; The Songkhla Provincial Court, Complaint, No. Black 1349/2555 (2012), Eakachai Issarata and 8 plaintiffs vs Peerapol Mining Company Ltd. and 1 defendant.

¹¹⁰ PKH4, interviewed on April 30, 2021, at 9-11; NKH, interviewed on September 14, 2021, at 12; CKH2, interviewed on December 5, 2021, at 8.

¹¹¹ NKH, *ibid*; CKH2, *ibid*.

¹¹² NKT, *supra* note 16 at 2-7; Keurmaetha Rerkpornpipat, *Klity: Stream Community and Lead Poison*, (Campaign for Alternative Industrial Network: 2007), at 74-75.

¹¹³ Songkrant Pongboonjun & Suracha Trong-ngam, *Klity Creek's Environmental Remediation: Case Victory Reveals Failed System*, in "Year 14th Vol. 2 (2021): Jul - December 2021 | CMU Journal of Law and Social Sciences", 86-121, online: <<https://so01.tci-thaijo.org/index.php/CMUJLSS/issue/view/17015>>, at 91-92.

legal tools and public campaigns to pressure them to take action.¹¹⁴ In this sense, legal strategies combined with public campaigns stopped the source of pollution released into Klity Creek.

However, the government and the mining company did not solve the serious environmental problems Klity Lang village faced: the high lead pollution in the creek. The systematic clean-up process¹¹⁵ started after the Supreme Administrative Court delivered the final judgment that ordered the Pollution Control Department (PCD) to clean up the creek in 2012.¹¹⁶ After losing an administrative case, the PCD hired researchers to study the clean-up processes¹¹⁷ and began the groundwork in 2017.¹¹⁸ From 2020-2022, the PCD expended approximately 450 million Baht (about 18 million CAD) in the clean-up processes.¹¹⁹ In addition, the department planned to spend another 200 million Baht (about 8 million CAD) for its clean-up operation in the second phase.¹²⁰ It is unlikely that the government would allocate this budget without court case victories.¹²¹ The government allocation of this substantial budget to clean up the creek for the small-marginalized communities is unprecedented.¹²²

As of November 2021, the clean-up process has not finished yet, but some indicators signal the improvement of the environmental conditions of the polluted creek. For example, sediments show less lead compared to the lead level before the restoration.¹²³ In addition, in the latest monitoring, a high-ranking PCD official claimed that villagers have less lead levels in their blood, and only a few exceed the legal standard.¹²⁴ This data indicates that the clean-up measures reduce lead in the creek to some extent. Furthermore, the PCD

¹¹⁴ Bantowtook, *supra* note 10 at 186-189.

¹¹⁵ Several government agencies and the mining company did some clean up activities from 1998 to 2003 but abruptly stopped the processes claiming that the adopted methods would further rather than reduce lead pollution in the creek. See, Chakkapan Kangwan, When the Klity Case Enter the Administrative Court, in Darunee Paisanpanichkul, ed., *Nitithammachat: Essays and Interviews on Environmental Cases* Book 2, (Pappim Printing: 2008), at 131-132.

¹¹⁶ The Supreme Administrative Court Judgment No. Red No. A 753/2555, *supra* note 5 at 84-85.

¹¹⁷ GKT, *supra* note 29 at 6.

¹¹⁸ Nicha Wachpanich,, “Klity Creek lead cleanup stumbles”, *Bangk Post*, (28 February, 2021), online: <<https://www.bangkokpost.com/thailand/special-reports/2075699/klity-creek-lead-cleanup-stumbles>>; Pollution Control Department, “PCD Finished First Phase Klity Creek Clean-Up, Plan to Continue the Second Phase – Pollution Control Department”, (23 March, 2021), online: <https://www.pcd.go.th/pcd_news/12311/>.

¹¹⁹ GKT, *supra* note 29 at 19-20.; Phnom Thano, “Too late to save Klity Creek”, *Bangk Post*, (8 March, 2021), online: <<https://www.bangkokpost.com/thailand/general/2079879/too-late-to-save-klity-creek>>.

¹²⁰ Nicha Wachpanich, “The River is still Polluted and PCD adds 200 million more Budget to continue the Clean-Up”, (19 June 2020), online: *GreenNews* <<https://greennews.agency/?p=21260>>.

¹²¹ In 2004, one high-ranking government official openly rejected the idea of clean-up the creek claiming that it would require too much budget and too complicated to fulfill. See, Rerkpornpipat, *supra* note 112 at 69.

¹²² GKT&MP, interviewed on November 24, 2021, at 8.

¹²³ *Ibid* at 5-7; GKT, *supra* note 29 at 17-18.

¹²⁴ GKT&MP, *supra* note 122 at 6-7.

already approved the budget for the second clean-up phase. This investment can further the progress demonstrated in the first phase.¹²⁵ That said, the lead in the Klity Creek environment is still far higher than the Thai legal standard, so the creek is still inappropriate for use.¹²⁶ However, the data suggests that the clean-up measures have gradually improved the environmental quality in this community.

Community members recognize the PCD remediation in their community¹²⁷ and the environmental improvement.¹²⁸ As one community leader put it, “[t]he river is better, but it is not one hundred percent pure. I think one hundred percent pure is impossible. I would be happy if we get seventy or eighty percent. It is great they did not continue their mine.”¹²⁹

In other words, legal strategies contribute to improving environmental conditions by stopping the mine and reducing pollution in the creek. Villagers’ views resonate with the government data indicating that the clean-up reduces lead pollution in the stream, but the pollution still exceeds the legal standard.¹³⁰

The Klity Creek Lead Pollution Case demonstrates how legal strategies lead to the improvement of the environment. Legal tools combined with various public campaigns press the government agencies to enforce the law leading to the end of mining operations.

In addition, the litigation forces the PCD to clean up the polluted creek, which leads to the gradual improvement of environmental quality.

Another case that illustrates how legal strategies contribute to improving environmental quality is the Nong Mak Kheng Waste Pollution Case. Communities had endured the stench of waste pollution from the waste treatment site for two years¹³¹ before filing a lawsuit against the company in 2006.¹³² A few days after the lawsuit, the courts granted an injunction to temporarily prohibit the company from operating until it addresses environmental issues.¹³³ Under the effect of the court order and negative observations from the site visit examination, the company reached out to plaintiffs and PIELs to offer a settlement.¹³⁴ The parties reached an agreement that included, among other things, the

¹²⁵ Bangkokbiznews, “PCD Travel to Klity Creek to Clean Up Lead Pollution”, (16 June 2020), online: [bangkokbiznews <https://www.bangkokbiznews.com/social/885260>](https://www.bangkokbiznews.com/social/885260).

¹²⁶ GKT, *supra* note 29 at 19.

¹²⁷ CKT2, *supra* note 12 at 5.

¹²⁸ CKT1, *supra* note 14 at 10.

¹²⁹ *Ibid.*

¹³⁰ GKT, *supra* note 29 at 18.

¹³¹ EARTH, Stench from Profess Land Field, Sa Kaeo Pronvince, online: <https://www.earththailand.org/th/pollution/38>; CDK2, interviewed on December 17, 2021, at 2.

¹³² The Sakaeo Provincial Court, A Petition for an Injunction, No. Black 419/2549 (2006), *supra* note 93.

¹³³ The Sakaeo Provincial Court, Court Proceedings Report, No. Black 419/2549, May 22, 2006, Boonliang Khongsatuean and 199 plaintiffs vs Professional Waste Technology (1999) Public Company, at 1.

¹³⁴ PKT&DK2, *supra* note 19 at 26-28.

obligation of the company to resolve environmental problems, specifically odour issues, before the operation could begin again.¹³⁵

After the company took several measures to address environmental problems as promised in the agreement, the odour and polluted water problems improved. Villagers could resume their daily lives.¹³⁶ Later, there were occasionally odour issues from the factory, but overall, the air quality improved.¹³⁷ As one community leader put it succinctly, “[a]t present, it differs from 2006. But it returned in 2010, 2012, 2013, and 2014. Then, it was improved in 2018, 2019, and 2020 because they followed the environmental impact assessment.”¹³⁸ This statement demonstrates that legal strategies contribute to the improvement of environmental quality. The community leader’s view resonates with the government official involved in this case, confirming that the company completed its measures to prevent wastewater leaking, which solved the problems.¹³⁹

The Non Mak Kheng Waste Pollution demonstrates how legal tools force responsible parties to take actions that improve environmental quality. Without litigation and subsequent agreement, it is unlikely that the waste company would move to take action.

Another case that illustrates the function of legal strategies in improving environmental quality is the Khu Ha Mountain Quarry Mine Case. The Khu Ha communities had suffered from the reckless mining operation that created severe environmental and health impacts on their communities for decades before they included legal strategies in their movements.¹⁴⁰ The complaint villagers sent to the Prime Minister and other state agencies and three successful lawsuits likely contributed to the government’s rejection of mining license renewal¹⁴¹ and the mining company fleeing from these communities.¹⁴² As the PIEL who represented these communities asserts about the important role of litigations, “[s]ince we filed lawsuits in 2010, the mine closed. The lawsuits partially contribute to the end of the mine; I think this is clear.”¹⁴³ In other words, legal strategies play a crucial role in stopping the cause of environmental harm by ending Quarry mining in these communities.

¹³⁵ The Sakeaw Consent Judgment No. Red 1325/2549 (2006), *supra* note 5 at 1-2.

¹³⁶ CDM2, interviewed on December 17, 2021, at 7-10; PKT&DK2, *supra* note 19 at 32.

¹³⁷ CDM2, *ibid* at 9-10.

¹³⁸ *Ibid* at 10.

¹³⁹ GDM, interviewed on February 6, 2022, at 6.

¹⁴⁰ Eakachai Issarata et al., *Report of Citizens’ Consciousness and Local Natural Resources Allocation: A Case Study of Community Rights Protection Network Khu Ha Mountain Rattaphum District, Songkhla Province*, (Political Development Council: 2011), at 5-9.

¹⁴¹ The Songkhla Provincial Court, Complaint, No. Black 664/2554 (2011), Peerapol Mining Company Ltd. plaintiff vs Eakachai Issarata and 8 defendants, at 1-2.; PKH4, interviewed on April 30, 2021, at 10.

¹⁴² CKH1, interviewed on December 12, 2021, at 10; PKH4, *supra* note 110 at 10.

¹⁴³ PKH4, *supra* note 110 at 10.

The end of the mining operation ended the environmental and health problems these communities had endured for decades. Villagers get their healthy environment and normal lives back.¹⁴⁴ Villagers and visitors can access the mountain again. Recently, communities have turned this mountain into a tourist area.¹⁴⁵ In short, legal strategies improve their environmental quality and livelihood.¹⁴⁶ The end of the mining operation receives a warm welcome from communities whose real goal is to stop mining operation in their villages.¹⁴⁷

At present, Khu Ha communities do not worry about the environmental and health impacts of the mine; instead, they are changing the mining site to be a common area where every villager can benefit. As one community leader put it, “[o]verall, I am satisfied with the outcomes of the movements because people know much more about the Khu Ha Mountain. After the mine closed and the mining license was terminated, more villagers participated in activities. Communities advertised this mountain as an attractive tourist area.”¹⁴⁸

The Khu Ha Quarry Mine Case illustrates how various legal strategies and other tools can improve the environment. These legal tools do not directly stop the mining, but they indirectly make the responsible parties address environmental issues that stop the mine.

Legal strategies can rarely lead to the total termination of environmentally harmful development projects, as presented in the Klity Creek Lead Pollution and the Khuha Mountain Quarry cases. A more common situation is where legal strategies reduce harm or result in scaling down proposed development that would otherwise severely affect communities. This result is another tangible benefit that legal means can deliver.

A case in point is the Chana Pipeline and Industrial Complex Case. Chana communities’ main goal was to stop the project because they were concerned about environmental and social problems.¹⁴⁹ Local communities did not want their communities to become like Mab Ta Phut communities that had suffered from the Mab Ta Phut industrial estate for decades.¹⁵⁰

The tangible outcomes of the Chana case are mixed. On the one hand, communities failed to block the Pipeline that was constructed and started its operation in 2007.¹⁵¹ On the other hand, the government decided to drop the industrial complex they planned to establish

¹⁴⁴ PKH4, *supra* note 110 at 10.; CKH1, *supra* note 142 at 12.

¹⁴⁵ CKH1, *ibid* at 11.

¹⁴⁶ PKH4, *supra* note 110 at 10-11.

¹⁴⁷ The Songkhla Provincial Court, Complaint, No. Black 664/2554 (2011), *supra* note 141 at 1-2.; PKH4, *supra* note 110 at 13; NKH, *supra* note 110 at 5; CKH1, *supra* note 142 at 2; CKH2, *supra* note 110 at 9.

¹⁴⁸ CKH2, *ibid*.

¹⁴⁹ NCN, *supra* note 44 at 1-2; CCN1, *supra* note 37 at 3-5; CCN2, *supra* note 37 at 2-3;

¹⁵⁰ NMP&CN, interviewed on October 4, 2021, at 7; NCN, *supra* note 44 at 1-2; CCN1, *supra* note 37 at 3-5; CCN2, *supra* note 37 at 2-3.

¹⁵¹ HydrocarbonsTechnology, “Thai-Malaysian Pipeline and Gas Separation Plant - Hydrocarbons Technology”, online: <<https://www.hydrocarbons-technology.com/projects/thaimalaysia/>>.

following the pipeline.¹⁵² The revised project that abandoned the industrial complex lessened the environmental harm for Chana communities because most polluted activities villagers were concerned about would come from the industrial projects rather than the pipeline itself.¹⁵³

In this sense, the Chana community achieves their goal of reducing severe environmental damage that might occur in their communities. This view resonates among community leaders, NGOs, and PIELs engaged in this movement.¹⁵⁴ As one community leader asserts, “[a]s long as the industrial complex has not come, we have not lost... We have won as long as the industrial complex has not been built. Because the impacts from the pipeline are not the same as those from the industrial estate.”¹⁵⁵ To put it another way, legal strategies and other activities lessen environmental problems that might impact communities by stopping the main source of environmental concerns.

The complexity of environmental issues often creates a challenge for evaluating tangible outcomes of legal strategies. In some cases, it is difficult to accurately tell how various measures put in place by responsible parties improve environmental conditions. Some scholars address this challenge by assuming that if responsible parties put in place reasonable processes and measures to address environmental problems, they should improve the environment in the long run.¹⁵⁶ In this sense, better environmental management is a tangible benefit for communities.

The Mab Ta Phut Industrial Pollution Case illustrates the power of legal strategies in advancing environmental management to be more inclusive. Before communities won the administrative cases, the government and businesses were the two main actors in the decision-making processes on handling environmental problems in the Mab Ta Phut area. Communities and civil society had little influence in the decision-making processes.¹⁵⁷ For example, communities and civil society demanded that the government design the place to be a pollution control zone to begin a systematic approach to addressing the environmental

¹⁵² CCN1, *supra* note 37 at 10; NCN, *supra* note 44 at 15; NMP&CN, *supra* note 150 at 10.

¹⁵³ NCN, *ibid* at 15; Lohmann, *supra* note 39 at 4-5.

¹⁵⁴ CCN2, *supra* note 37 at 12; NCN, *ibid*; PCN5, *supra* note 46 at 5.

¹⁵⁵ CCN1, *supra* note 37 at 10-11.

¹⁵⁶ Yanmei Lin, “Environmental and Biodiversity Law Clinic at Southwest Forestry University: A New Environmental Law Clinic Model in China Articles Section I: Part One of a Two Part Series: Innovating the Environmental Law Classroom” (2016) 18:1 Vt J Environ Law 18–36.; Thomas B Jr Stoel, “Environmental Litigation from the Viewpoint of the Environmentalist” (1974) 7 Nat Resour Lawyer 547–554.

¹⁵⁷ Decharat Sukkamnoed, et al., *Rayong Future: The Route to Healthy Society*, (Office of National Health Commission: Nonthaburi, 2008), at 74-76; Manward Kunchorn Na Ayutthaya & Ruangthong Chanda, *Under Purple: Mab Ta Phut in Whose hand?*, (Thailand Environment Institute: Nonthaburi, 2011), at 17-23; Suphakit Nuntavorakarn, et al., *Politics of Pollution*, (Healthy Public Policy Foundation: Nonthaburi, 2008), at 13-17.

crisis for years.¹⁵⁸ However, the government rejected this proposal mainly because of its economic impact concerns.¹⁵⁹

The government changed its position and designated Mab Ta Phut and nearby areas to pollution control zones only after losing the court case in 2009.¹⁶⁰ In other words, the court forced the government to reconsider the communities' proposal and finally agreed with the communities. Consequently, relevant government agencies followed the National Environmental Board and took action to address environmental and health problems in the areas. Responsible agencies created a pollution reduction and mitigation plan.¹⁶¹ The government provided a substantial budget to various agencies to implement the plan. From 2010 to 2021, the approved funding for the plan reached 8,719 million Baht (approximately 348 million CAD).¹⁶²

In addition, the government appointed a Mab Ta Phut community leader to be a member of the advisory committee on implementing environmental rights.¹⁶³ This committee had the authority to advise the government on how to fulfil the requirements of the 2007 Constitution section 67, not only in the Mab Ta Phut area, but nationwide.¹⁶⁴ The committee proposed bylaws to set up an independent tribunal to review the environmental and health impact assessment of proposed development projects that have the potential to cause serious harm to the environment, health, or livelihood. This committee also proposed a list of the serious environmental and health projects required to conduct health and environmental impact assessments, which the government revised and enacted as bylaws.¹⁶⁵

¹⁵⁸ Sukkamnoed, et al, *ibid* at 20.

¹⁵⁹ Nopanun Wannathepsakul, *Network Bureaucracy and Public-Private Firms in Thailand's Energy Sector*, in Pasuk Phongpaichit & Christopher John Baker, eds, *Unequal Thailand: aspects of income, wealth and power* (Singapore: NUS Press, 2016), at 111; The Supreme Administrative Court Order, No. A. 921/2560 (2017), *supra* note 59 at 14.

¹⁶⁰ Rewadee Prasertcharoensook, et al, *The Action Plan to Mitigate and Eliminate Pollution in Rayong Province B.E. 2550-2554*, in Somrudee Nicro & Varakorn Noyphun, eds., *Environmental Governance of Mabtapud Industrial Zone in Rayong Province, Thailand*, (Thailand Environmental Institute: Nonthaburi, 2009), at 134.

¹⁶¹ Somrudee Nicro & Varakorn Noyphun, eds., *Environmental Governance of Mabtapud Industrial Zone in Rayong Province, Thailand*, (Thailand Environmental Institute: Nonthaburi, 2009), at 170.

¹⁶² Sutin Yoosuk, "The Outputs of the Mab Ta Phut Monitoring Sub Committee", in *Knowledge Forum for Mab Ta Phut 1: The State of Pollution, Health and Urban Planning* (in Thai), Vorawan Chaipaitoon, ed, (accessed April 15, 2019), online: <<http://www.tei.or.th/publications/2011-download/2011-maptaphut-SENSA-Stage1.pdf>> at 9-10; RYT9, "Systematic Plan to Address Environmental Problems in Mab Ta Phut", (June 21, 2012), online: [ryt9.com <https://www.ryt9.com/s/cabt/1429164>](https://www.ryt9.com/s/cabt/1429164); Pollution Control Department, "Mab Ta Phut Pollution Control Zone", (accessed April 15, 2019), online: <http://www.pcd.go.th/info_serv/pczs/pczDetail.cfm?id=13>.

¹⁶³ Prime Minister Order No. 250/2552, date 13rd November B.E. 2552 (2009), Title: The Appointment of a Committee to Solve the Compliance Issues of the Thai Constitution section 67 paragraph 2 (in Thai), 3, (accessed April 15, 2019), online: <<http://www.oic.go.th/FILEWEB/CABINFOCENTEROPM/DRAWER01/GENERAL/DATA0002/00002876.PDF>>, at 1.

¹⁶⁴ *Ibid* at 2-3.

¹⁶⁵ Wannathepsakul, *supra* note 159 at 133.

Although one NGO staff rejected an invitation to join this committee, questioning the effectiveness of the committee set up by the government, this staff member later accepted an appointment to work in the independent tribunal whose mandate is to review the environmental and health impact assessment of proposed development projects. She hoped that she could use the new mechanism to address environmental problems.¹⁶⁶ The new mechanisms, at least, led to the rejection of one industrial project in the Mab Ta Phut area. This rejection was possible because the new mechanisms allowed several environmental NGOs, as appointed committees, to review the project.¹⁶⁷ This relatively inclusive process happened after the Mab Ta Phut communities won an injunction in the second administrative court case that temporarily stopped 76 proposed development projects in the Mab Ta Phut Industrial Estate.¹⁶⁸

Data from the Mab Ta Phut Industrial Case suggests that legal strategies play a crucial role in improving environmental management by including aggrieved communities' voices in decision-making processes. The court cases made the government engage with local communities and concede to some of their demands. Litigations led to the creation of a pollution reduction and mitigation plan with substantial budget allocation. Communities' leader became a member of the national advisory committee that played an important role in implementing environmental rights enshrined in the constitution. This inclusive approach would unlikely happen without courts' decisions in favor of communities.

This section demonstrates how legal strategies delivered tangible benefits to aggrieved communities. The data suggests that legal strategies, especially litigations, bring substantial monetary rewards to communities, even though communities do not receive all of the compensation they deserve. In addition, communities can employ legal tools to improve environmental quality in their villages by stopping environmental harm projects, reducing environmental impacts from proposed projects, or forcing responsible parties to address environmental problems. These are important benefits that communities and their supporters appreciate. These tangible benefits are simple to observe and evaluate. However, not all impacts are easy to observe since some do not lead to material gains but change people's understanding or relationships. As the reviewed literature suggests, parallel to tangible benefits, legal strategies might lead to intangible improvements such as empowering social movements. Thus, the next section presents evidence to demonstrate how legal strategies play a role in empowering aggrieved communities to address environmental problems.

4. Empowering Environmental Movements

¹⁶⁶ NMP&CN, *supra* note 150 at 12-14.

¹⁶⁷ *Ibid* at 14-15.

¹⁶⁸ Prime Minister Order No. 250/2552, *supra* note 163; The Central Administrative Court Injunction Order No. 908/2552 (2009), September 29, 2009, Anti-global warming association and 42 claimants v National Environmental Board and 7 defendants.

This part moves from tangible benefits from legal strategies to intangible benefits. I present evidence demonstrating how legal strategies empower communities in their campaigns to protect the environment, health, and livelihood. Based on the literature review chapter, this chapter highlights four aspects brought about by legal strategies under the umbrella of empowerment: raising public awareness, supporting ongoing movements, establishing the ground for future campaigns, and embedding nuanced legal consciousness in villagers, NGOs, and PIELs. The following parts present findings of these four aspects separately, but it does not mean they are exclusively separate in practice.

4.1 Raising Public Awareness

Activists who employ legal strategies in environmental movements are not solely interested in winning court cases; they also want to raise public awareness about the ecological problems or legal issues they wish to pursue. Communities, NGOs, and PIELs tailor legal strategies by considering public awareness. When looking at the impacts of legal strategies, it is reasonable to pay attention to other aspects beyond legal recognition and tangible benefits. This part presents evidence of how legal processes increase public understanding of environmental issues they fight for. Data from case studies indicate that legal strategies attract great attention from media and academics and are likely to increase public awareness about environmental and legal issues.

A case in point is the Klity Creek Lead Pollution Case. This case has become one of the most well-known environmental cases for media, academics, and judges. The media played a crucial role in bringing this small community into the Thai public register.¹⁶⁹ Later, legal strategies became the media's main focus, which moved from environmental and health problems to paying more attention to how villagers exercised their constitutional rights to hold responsible parties accountable.¹⁷⁰

For example, when villagers filed lawsuits, litigations became essential to regular media coverage for years.¹⁷¹ In 2014, Human Rights Watch released a documentary about the Klity Creek legal struggles for a healthy environment.¹⁷² Later, several Thai and

¹⁶⁹ Churnrurtai Kanchanachitra et al. ed, *Thai Health 2014: Self-management communities: foundation of national reform*, (Nakhon Pathom: Institute for Population and Social Research, Mahidol University, 2014), at 68-71.

¹⁷⁰ Hodal, *supra* note 54; The Nation, "Klity Creek case sends strong signal to govt", (12 January 2013), online: [nationthailand <https://www.nationthailand.com/perspective/30197801>](https://www.nationthailand.com/perspective/30197801); BBC Thai, "Klity: Old Story that Creates New History of Community Environmental Cases", *BBC News*, (11 September, 2017), online: <https://www.bbc.com/thai/thailand-41225292>; ThaiPublica, "The awaited 15-years "Klity Lang Community Won Court Case Against PCD: Working Group Asks PCD to Clean Up Lead Toxin", (12 January, 2013), online: <https://thaipublica.org/2013/01/clity-won-the-case/>.

¹⁷¹ Piyarat Chongcharoen, "Klity Creek villagers win 19-year legal battle", (11 September 2017), online: <https://www.bangkokpost.com/thailand/general/1322371/klity-creek-villagers-win-19-year-legal-battle>; The Nation, Lead-contaminated villagers awaited justice two decades after verdict, (11 April, 2018), online: <https://www.nationthailand.com/in-focus/30343011>.

¹⁷² Human Rights Watch, "Toxic Water, Tainted Justice: Thailand's Delays in Cleaning Up Klity Creek", online: http://features.hrw.org/features/HRW_2014_reports/Toxic_Water_Tainted_Justice/index.html.

international media outlets picked up this documentary and reported it extensively.¹⁷³ Reporters raised public awareness about the tragedy and how this marginalized community successfully employed legal tools to hold accountable the powerful businesses and government agencies to clean up the polluted river and compensate them.¹⁷⁴ In 2019, one national newspaper selected the Klity Creek Lead Pollution Case as one of the top ten outstanding issues of the year.¹⁷⁵

As one PIEL explains about how media respond to court cases, “I think media are quite interested in Klity Creek’s issues. In particular, they are interested in problems that happened in this community, litigations, and court judgments. I think the media extensively reported to the public.”¹⁷⁶ In other words, legal strategies generate considerable media coverage and are likely to expand or reinforce public awareness about the villagers’ movements.

In addition to the extensive media coverage, the Klity Creek Lead Pollution Case has become a popular site for researchers.¹⁷⁷ Research about the Klity Lang community covers a wide range of issues ranging from environmental justice,¹⁷⁸ gender roles in adapting to environmental change,¹⁷⁹ medical and health sciences,¹⁸⁰ identity and community self-expression,¹⁸¹ remediation approaches for clean-up polluted areas¹⁸² and legal procedures

¹⁷³ Richard Pearshouse, “Klity Creek’s neglected toxic lead legacy”, (16 December 2014), online: <<https://www.bangkokpost.com/opinion/opinion/450120/klity-creek-neglected-toxic-lead-legacy>>; Thin Lei Win, “Thailand fails to clean poisoned creek despite court order: rights group”, *Reuters* (16 December 2014), online: <<https://www.reuters.com/article/us-thailand-lead-health-idUKKBN0JU11I20141216>>; Hodal, *supra* note 54.; Priyanka Singh, “Thai government fails to tackle lead pollution in Klity Creek”, (22 December, 2014), online: <<https://www.downtoearth.org.in/news/thai-government-fails-to-tackle-lead-pollution-in-klity-creek-47933>>.

¹⁷⁴ Weeratas Ingkapatrangkul, “27 years tragedy, Klity Lang Won Court Case-Missed Justice?”, (30 April 2016), online: *GreenNews* <<https://greennews.agency/?p=9206>>; Napat Peeluekna, “Lessons Learned from Klity Case: Before Historic Judgment”, (11 May, 2013), online: <<https://prachatai.com/journal/2013/05/46684>>; Waymagazine, “Failure of the Winner Klity: After Court Judgment River is still Polluted”, (5 January 2021), online: <<https://waymagazine.org/klity-after-the-judgment/>>; Roongroj Somboonkao, “Researcher-Villagers Ask Pollution Control Department to Pause Phase 2 Klity Clean-Up, Indicating that after Phase 1 Finished, Lead Pollution is still High”, (4 March, 2021), online: <https://theactive.net/news/20210304/>.

¹⁷⁵ Komchadluek, “2552 - 2562 Comparing 10 years Rights Progress-Deterioration for Thai People”, (20 December 2019), online: <<https://www.komchadluek.net/scoop/405671>>.

¹⁷⁶ PKT&MP1, *supra* note 19 at 21.

¹⁷⁷ PKT&MP1, *ibid* at 12.

¹⁷⁸ Malee Sitthikriengkrai & Nathan Porath, “‘Lead-polluted water changed our lives’: A Thai-Karen village’s quest for environmental justice” (2017) 25:2 South East Asia Res 139–156.; Bank Ngamarunchot, Justice, Court’s Judgment, and Environmental Problems, (PenThai: Bangkok, 2013).

¹⁷⁹ Bantowtook, *supra* note 10 at 114.

¹⁸⁰ Malee Sitthikriengkrai, Medical Treatment and the Re-creation of Social Suffering, *Social Science Journal*, Vol. 1, 2008, 41-80.

¹⁸¹ Passanan Assavarak, “Constructed Identity and Community Self-Expression to Perceive Human Security; Case Study of Klity Village, Kanchanaburi Province, Thailand” (2012) 3 *Mediterr J Soc Sci* 239–246.

¹⁸² Pongboonjun & Trong-ngam, *supra* note 113.

for administrative adjudication.¹⁸³ This research studies the Klity Lang community from different aspects and brings stories from this marginalized community back to their academic institutions and the public. These studies will likely raise public awareness about the Klity Creek Lead Pollution Case and other related issues.

Another case that generates considerable media and academic attention is the Mab Ta Phut Industrial Pollution Case. Media played an important role in this case before and after the court cases, raising public awareness and pushing responsible agencies to take action.¹⁸⁴ As one villagers' leader puts it, "[a]ll types of media covered our movements. It made our stories spread throughout the country and around the world. This made our movement very well known."¹⁸⁵ The Pollution Control Zone and the Constitution Article 67 cases attracted massive media attention. Media covering Map Ta Phut gradually increased in early 2007 when Map Ta Phut residents filed a Pollution Control Zone lawsuit and jumped again when the Rayong Administrative Court decided the case in March 2009. This trend continued during 2009-2010.¹⁸⁶ At the end of 2009, human rights organizations praised this case as one of the year's human rights advances.¹⁸⁷ In 2010, one academic journal reported the Map Ta Phut court cases as the second of the year's top ten health issues.¹⁸⁸ This case also attracted much research from legal,¹⁸⁹ social movements,¹⁹⁰ health,¹⁹¹ environmental

¹⁸³ The Academic Committee on Environmental Law, Administrative Court, Guideline for Environmental Administrative Case Adjudication, (The Academic Committee on Environmental Law, 2012).

¹⁸⁴ GKT&MP, *supra* note 122 at 12; NMP&CHN, *supra* note 150 at 8.

¹⁸⁵ CMT2, interviewed on January 26, 2022, at 2.

¹⁸⁶ Sarah Bishop, (2011). *The Thai Administrative Court and Environmental Conflicts: A Case Study of Map Ta Phut, Rayong*, 94-95, (Master thesis: 2011) (on file with the Australian National University), at 94-95; Thairath, "Announced Map Ta Phut a Pollution Control Zone" (in Thai), (April 30, 2009), online: <<https://www.thairath.co.th/content/2955>>; MGRonline, "Announce Map Ta Phut Pollution Control Zone Impacts Business" (in Thai), (March 3, 2009), online: <<https://mgronline.com/daily/detail/9520000024524>>;

¹⁸⁷ Prachatai, "Human Rights Organizations Rate 10 Progression and Falling Back of Human Rights", (in Thai), (December 10, 2009), online: <<https://prachatai.com/journal/2009/12/26947>>.

¹⁸⁸ Churnrurtai Kanchanachitra et al., ed, "Map Ta Phut: A Hot Economic Issue for the Nation, A Pollution Problem for Local Communities" (in Thai), in *Health 2010: Capitalism in Crisis, Opportunity for Society?*, (accessed April 15, 2019), online: <https://www.hiso.or.th/hiso/picture/reportHealth/ThaiHealth2010/eng2010_16.pdf>

¹⁸⁹ Kanongnij Sribuaiam, *Environmental and Health Legal Procedures: Lessons from Map Ta Phut Case* (in Thai), (Nonthaburi: Health System Research Institute, 2009).

¹⁹⁰ Chatree Bunnag, "Struggle History of Local Community for Participation in Map Ta Phut Area Industrialization Process" (in Thai), accessed April 14, 2019, in *Politics, Administration, and Law Journal*, Year 9th vol. 3, Sep-Dec, 2017, online:< <http://www.polsci-law.buu.ac.th/journal/document/9-4/14.pdf>>

¹⁹¹ Suda Paneangtong et al., The development of environmental related health surveillance system in Rayong Pollution Control Zone, in *Journal of Medicine and Health Sciences* (Vol.19 No.2 August 2012).

justice,¹⁹² and environmental study.¹⁹³ According to the PIEL who works on this case, the well-known case makes it a great example of the government's irresponsible industrial policies that many communities learn to avoid.¹⁹⁴

This case also raised awareness among judges in the administrative court. The administrative court treats the Pollution Control Zone Case as an outstanding lesson for judges dealing with environmental cases.¹⁹⁵ When administrative judges exchanged their experience about environmental issues with judges from other countries, the Pollution Control Zone Case was one of their showcases.¹⁹⁶ Moreover, when the Reform Council proposed that the Parliament establish a Special Environmental Court in Thailand, the Pollution Control Zone Case was an important case the Council used to illustrate their point for reform.¹⁹⁷

The considerable media coverage and judiciary and legislature's attention to the Mab Ta Phut Pollution Case demonstrate how legal strategies contribute to public awareness about the Mab Ta Phut issues and environmental constitutional rights in general. Legal strategies accompanied by other movements make this case a national agenda that is likely to increase public awareness.

The data I present in this section suggests that legal strategies contribute to a raising awareness of environmental and legal issues beyond legal recognition and tangible benefits. Legal strategies play a crucial role because they are newsworthy. Media tend to follow and cover litigations from the beginning to the end, even though litigation might take a decade or more to end. Reporters cover the trial in courts and explore other dimensions related to the cases. As a result, people who do not know about these environmental cases will likely increase their understanding of the cases through various media channels. In addition to media coverage, these cases also attracted researchers to study the cases from multiple perspectives. These researchers expand public understanding of these cases. Finally, some cases also raise awareness among judges responsible for adjudicating environmental cases in the future.

¹⁹² Piya Pangsapa, "Environmental justice and civil society", in *Routledge Handbook of Environment and Society in Asia*, (accessed April 14, 2019), online:<<https://www.routledgehandbooks.com/doi/10.4324/9781315774862.ch3>> 36-52.

¹⁹³ Phattraporn Soyong & Ranjith Perera, "Spatial analysis of the environmental conflict between state, society and industry at the Map Ta Phut-Rayong conurbation in Thailand" (2017) 19:3 *Environ Dev Sustain* 839–862.

¹⁹⁴ PKT&MP1, *supra* note 19 at 35.

¹⁹⁵ Office of the Administrative Court, *Thai Administrative Court and Environmental Cases*, (Bangkok: Office of the Administrative Court, 2010), 72-74.

¹⁹⁶ Office of the Administrative Court, *Environmental Justice: Learning from Japanese and Thai Experience*, (Bangkok: P Press, 2010), 176-177.

¹⁹⁷ The National Reform Council, *Special Reform Agenda 6: Establishment of Environmental Court*, 20-21, (accessed April 15, 2019), online: <https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/download/parcy/009.pdf>.

4.2 Supporting On-going Movements

One common way PIELs can help communities that struggle for environmental rights is to employ legal strategies to support ongoing movements as required by communities. Legal strategies can serve this function no matter the outcome of court cases. When PIELs use legal tools deliberately, they can contribute to the movements in at least two ways: clear away obstacles and strengthen communities' negotiating power.

4.2.1 Use Legal Tools to Remove Obstacles

It is not unusual for governments and businesses to use legal procedures like criminal charges and defamation lawsuits to stop or make it difficult for communities to express their concerns or exercise their rights in public issues.¹⁹⁸ Using the law to prevent people from exercising their rights or participating in decision-making concerning public issues is common in both the global north¹⁹⁹ and global south countries like Thailand.²⁰⁰ The use of meritless or disturbing litigation aims to stop the public from participating in debating or expressing concerns on social issues like environmental problems. In that case, scholars call this method strategic litigation against public participation (SLAPP).²⁰¹ When villagers who know little or nothing about legal procedures face criminal charges or civil lawsuits, they feel scared and worried. Without help from lawyers, this situation might weaken people's movements. Data from case studies suggests that PIELs play an essential role in helping villagers overcome legal challenges.²⁰²

PIELs inform people about legal procedures and work with them to design legal strategies to address their situations. They assist communities in dealing with legal attacks and help them to continue their movements.²⁰³ The Chana Pipeline and Industrial Complex Case is a case in point. Chana communities started protests against the Pipeline project in 2000 and sustained their activities for over twenty years.²⁰⁴ Because of their movements, police

¹⁹⁸ Byron M Sheldrick, *Perils and possibilities: social activism and the law* (Halifax, N.S: Fernwood, 2004) at 49-53;

¹⁹⁹ George W Pring, "SLAPPs: Strategic Lawsuits against Public Participation" (1989) 7:1 Pace Environ Law Rev 3-22; Judit Bayer, et al., Strategic Lawsuit Against Public Participation (SLAPP) in the European Union: A Comparative Study, (EU-CITIZEN, 2021).

²⁰⁰ Nikhil Dutta, Protecting Activists from Abusive Litigation: SLAPPS in the Global South and How to Respond, (International Center for Not-for-Profit-Law: DC, 2020); ICJ, "Thailand: Abusive lawsuits targeting journalists (SLAPPs) must be curtailed", (18 March 2022), online: *Int Comm Jurists* <<https://www.icj.org/thailand-abusive-lawsuits-targeting-journalists-slapps-must-be-curtailed/>>.

²⁰¹ Bayer, et al., *supra* note 199 at 12.

²⁰² CCN1, *supra* note 37 at 8; NCN2, *supra* note 44 at 16; CMK1, interviewed on December 10, 2021, at 3-6; CMK2, interviewed on December 29, 2021, at 3-5; NMK, interviewed on December 21, 2021, at 3; CKH2, *supra* note 110 at 3.

²⁰³ CCN1, *supra* note 37 at 8; CCN2, *supra* note 37 at 8; NCN, *supra* note 44 at 8-9; PCN, interviewed on April 22, 2021, at 26-27; CMK1, *supra* note 202 at 3-4; CKH2, *supra* note 110 at 5.

²⁰⁴ Their latest movement came back in 2020 when the government brought back the industrial complex in Chana district and has continued to the present. See, Rina Chandran, "FEATURE-'The sea is all we know': Thai villagers fight industrial zone", *Reuters* (29 December 2020), online: <<https://www.reuters.com/article/thailand-landrights-industry-idAFL8N2J20BO>>; Prachatai, "Chana

launched several criminal charges against their members and leaders, as described in chapter 4. Among these numerous charges, the cases charged after the dispersion of public demonstrations in December 2002 posed a severe challenge for the movements. If Chana communities did not receive assistance from PIELs, these criminal charges might have seriously impacted their campaign.²⁰⁵ One NGOs member who has long supported these communities and was arrested on December 2002 puts it succinctly:

The movement could have easily ended when we were arrested if no legal assistance had been provided because people felt there was no way to fight. We were not good about law and lost hope. Although we were right, we would be arrested and charged if we could not fight them through legal processes. It would be worse if they put us in jail.²⁰⁶

In other words, legal attacks could severely damage this movement by discouraging its members and making it difficult for their leaders to continue their activities. The government could do this if villagers did not know much about legal procedures and had no legal representatives.

However, the situation was not as difficult as it could be because PIELs came in on time. PIELs arranged the bail to get the villagers out of custody using university professors as their guarantors.²⁰⁷ This quick move had a positive psychological impact on Chana villagers because they knew they had experienced lawyers who understood their causes and were fighting on their behalf.²⁰⁸ The experienced PIELs recognize their roles in supporting communities beyond winning court cases.²⁰⁹ As one PIEL explains about criminal charges against villagers:

This is a large-scale SLAPP, but it was unsuccessful. Communities did not feel afraid and gave up. They fought back and demonstrated that the criminal charges against villagers were intentional and planned.”²¹⁰

villagers returned to protest industrial project”, online: *Pr Engl* <<https://prachatai.com/english/node/9602>>; Anish R M, “Villagers in Southern Thailand secure key victory against controversial industrial estate”, (17 December 2021), online: *Peoples Dispatch* <<https://peoplesdispatch.org/2021/12/17/villagers-in-southern-thailand-secure-key-victory-against-controversial-industrial-estate/>>.

²⁰⁵ NCN, *supra* note 44 at 16; CCN1, *supra* note 37 at 8.

²⁰⁶ NCN, *ibid*.

²⁰⁷ NCN, *supra* note 44 at 6.

²⁰⁸ CCN2, *supra* note 37 at 6-7; NCN, *ibid* at 6, 8.

²⁰⁹ PCN5, *supra* note 46 at 30.

²¹⁰ PCN5, *supra* note 46 at 5.

To put it another way, PIELs provide legal capacities to villagers and work with them to understand legal tactics launched against them. These legal capacities help villagers see criminal charges differently and respond to them properly.

Equipped with new legal understanding and help from PIELs, communities continued their movements and tailored their trials as opportunities to campaign their issues. They did not only defend themselves in criminal cases but launched administrative and criminal charges against the police.²¹¹ They came to court with their symbol Red-T-shirt that they used to protest the project.²¹² Although public prosecutors only charged twenty-two defendants, other villagers always accompanied them to show community support whenever the defendants went to court.²¹³ They packed the courtroom over its capacity every trial day for several years.²¹⁴ As one community leader describes the situation in a courtroom:

We filled the courtroom. We were all over the floor. The judges were surprised and asked us to get out because it was over the room capacity. We rejected and insisted on staying. At one level, villages had learned from their fighting experiences that they had rights. It made villagers stronger.²¹⁵

This statement demonstrates how legal strategies enable communities to deal with legal challenges and support their broader movements. In this sense, villagers see the legal process as their opportunity to foster their causes.

Another case that demonstrates how PIELs and legal strategies are crucial in removing hindrances for ongoing environmental movements is the Mae Om Ki Land Rights Case. In this case, forest officers arrested two Karen villagers and charged them with criminal offences accusing them of encroaching on reserved forest.²¹⁶ The two villagers were put in jail without bail and convicted with imprisonment terms before their leaders reached out to PIELs for assistance.²¹⁷ At this moment, PIELs played a vital role in arranging the bail, using communities' leaders' as their guarantors and representing them in court.²¹⁸ PIELs informed them about legal procedures²¹⁹ and successfully appealed their initial convicted

²¹¹ The Songkhla Administrative Court Complaint No. Black 545/2546 (2003), Chaden Auntaboripong and 29 plaintiffs V The Royal Thai Police and 2 defendants; The Songkhla Provincial Court Complaint No. 1818/2546 (2003), Sakariya Mhawangied and 24 plaintiffs v Police General San Sarutanon and 37 defendants.

²¹² NCN, *supra* note 44 at 7.

²¹³ PCN5, *supra* note 46 at 7.

²¹⁴ CCN2, *supra* note 37 at 7.

²¹⁵ *Ibid.*

²¹⁶ See more information in chapter 4 part 4.6.

²¹⁷ PMK3, *supra* note 68 at 62.

²¹⁸ *Ibid* at 62; NMK, *supra* note 202 at 3-4; CMK2, *supra* note 202 at 2-4.

²¹⁹ CMK1, *supra* note 202 at 5.

sentences.²²⁰ In 2016, the Supreme Court found the two defendants not guilty of all charges.²²¹

Outside of the prison, the two defendants, community leaders, NGO staff, and PIELs agreed to use these two criminal cases to help the defendants and push the court to affirm community land rights.²²² The litigations became one platform for a community campaign. During several years of trial, community members raised funds to support the defendants' court expenses.²²³ Together with their networks, they arranged various activities to support their movements.²²⁴ Legal strategies make it possible for the two defendants to regain their freedom and continue supporting their families during the long trial.²²⁵ As one defendant says, "I am very satisfied with lawyers' help. Without lawyers, I would be imprisoned. I would waste my time in prison and lose my rights. When lawyers came, I was not imprisoned and could go back to cultivate my land."²²⁶ In this sense, legal strategies clear legal challenges; so, villagers can continue their lives and support their movements.

Although the Supreme Court has not recognized the community rights over their land,²²⁷ legal strategies and community campaigns during the long legal fight helped clear legal hindrances and produced positive judgments, at least partially. The bail allows the two defendants to continue their daily lives and participate in community movements. The lively community campaign was unlikely to happen if the two defendants were kept in jail or confessed to offences they did not commit. In this sense, legal strategies play an important role in removing obstacles and making an ongoing movement possible.

4.2.2 Increase Negotiating Power

In addition to addressing legal hindrances launched against communities, legal strategies can increase community power in negotiating with powerful parties. Legal tools can shift an imbalance of power that tends to favour government officials or businesspersons to be more helpful to aggrieved communities. Data from the case studies indicate that legal tools empower communities to bargain with powerful parties under better terms.²²⁸ In other

²²⁰ The Appeal Court Region 6 Judgment Red No. 440/2552 (2009), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant; The Appeal Court Region 6 Judgment Red No. 439/2552 (2009), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

²²¹ The Supreme Court Judgment, No. 9962/2559 (2016), *supra* note 75 at 3-4; The Supreme Court Judgment, No. Red 10578/2559 (2016), *supra* note 75 at 8.

²²² Buiditersakul, *supra* note 70 at 73-74.

²²³ CMK1, *supra* note 202 at 5.

²²⁴ *Ibid*; PMK3, *supra* note 68 at 56; PMK7, interviewed on September 6, 2021, at 6.

²²⁵ These two cases took 9 years from the beginning to the end.

²²⁶ CMK2, *supra* note 202 at 5.

²²⁷ The Supreme Court Judgment, No. 9962/2559 (2016), *supra* note 75; The Supreme Court Judgment, No. 10578/2559 (2016), *supra* note 75.

²²⁸ In the Klity Creek Lead Pollution Case after winning civil cases, villagers were in a better position to negotiate for compensation. The main question is not whether villagers should get compensation or not, but how much villagers see acceptable. See above, at 5.3.1; In the Mab Ta Phut Industrial Pollution Case, the

words, government agencies and businesspersons that might overlook communities are forced by legal strategies directly or indirectly to take communities' demands seriously.

The Non Mak Kheng Waste Pollution Case is a case in point. Non Mak Kheng residents endured the noxious odour and polluted water from the waste management facility for many years.²²⁹ They asked the company to solve these problems, but nothing changed, and the problems continued.²³⁰ The company was interested in taking communities' demands seriously and negotiating with them only after villagers filed a lawsuit and got an injunction from the court. This legal strategy puts communities in a better position in the following negotiation processes.²³¹ As one PIEL who represented villagers in this case, puts it:

The courts deliberated for three days and granted an injunction to stop waste facilities temporarily. Communities were in a better position when the courts ordered the company to stop its operation. From now on, it does not matter to villagers how slow or speedy the case moves because the company must stop its operation. The company had a problem because it lost its revenue. So, the company tried to negotiate with villagers.²³²

This statement demonstrates how legal strategies change the power relations between villagers and the company in favour of villagers. In other words, the injunction empowers communities to be in a better position in their relationship with a company.

After the court injunction, the bargaining power between communities and the company changed in favour of the communities. The change is demonstrated clearly in an in-court agreement reached after the court injunction. In this agreement, the company implicitly accepted that they cause environmental problems to communities and promised to resolve all environmental issues within a specific timeframe.²³³ In addition, the company agreed to pay compensation to villagers who had land or lived near the waste facility and contribute some of its revenue to communities' funds for addressing environmental and health problems in the future.²³⁴ This monetary agreement was not part of the lawsuit, but

National Environmental Board did not agree to designate Mab Ta Phut area a pollution control zone until losing administrative case. See above, at 5.3.2; In the Khu Ha Mountain Quarry Case, the mining companies insisted to continue its operation until losing court cases and did not get mining licenses renew. See above, at 5.3.2.

²²⁹ Methina Isariyanon, *Review and Development Strategy Adjustment of Eastern Seaboard Development Program Toward Asean Country in Chachoengsao Province: The Case of Solid Waste and Industrial Hazardous Waste Management*, in *Burapha Journal of Political Economy* Vol. 7 No. 2 (2019), at 12.

²³⁰ CNK2, interviewed on December 17, 2021, at 3-4.

²³¹ PKT&DM2, *supra* note 19 at 26; CDM1, *supra* note 99 at 2.

²³² PKT&DM2, interviewed on May 25, 2021, at 26.

²³³ The Sakeaw Consent Judgment No. Red 1325/2549 (2006), *supra* note 5 at 1-2.

²³⁴ The Sakeaw Consent Judgment No. Red 1325/2549 (2006), *supra* note 5 at 4-6.

the communities successfully negotiated it. In this sense, communities recognized their increasing power and used it to gain greater benefits for their communities.

This case demonstrates that legal strategies are crucial in changing power relations between parties. The injunction increases communities' power to negotiate better with the company. The empowerment aspect of legal strategies appears even in the case that leads to a bad legal precedent, like the Mae Om Ki Land Rights Case.²³⁵ In this case, communities found that legal strategies placed them in a better position to campaign for their rights, especially in negotiating with forest officials.²³⁶

Although the courts did not recognize the defendants' rights over their lands, they found them not guilty and accepted that the two defendants occupied and used these lands long ago.²³⁷ The court cases empower communities in dealing with forest officials. The court cases demonstrate to forest officials that villagers would not confess to crimes they did not commit; instead, with support from NGOs and PIELs, they would fight back.²³⁸

Consequently, after the Mae Om Ki judgements, no one in this village was charged again by the forest officials, even though they had no land title.²³⁹ This positive situation might come from the fact that forest officials recognize that villagers would fight back like the two defendants. As one community leader states, “[b]oth sides suffered the same. I think both officials and villagers learned that this lesson [criminal legal procedures] unreasonably wasting time and money.”²⁴⁰ In other words, legal strategies make forest officials realize they cannot use criminal charges to address forest preservation and land rights issues.

In addition, following the Mae Om Ki judgments, the forest officials and villagers came together to address land rights and forest encroachment by considering traditional Karen land use, government policy, and law.²⁴¹ The forest officials recognized that they could not enforce the law without cooperation from communities around the reserved forest.²⁴² In this sense, the forest officials moved from one-way legal enforcement, as they did in the two cases, to a cooperative approach.

As this case illustrates, Mae Om Ki villagers are empowered by engaging in legal strategies and can turn court cases to support their movements effectively. They partially lost in court, but they were in a better position to negotiate with the forest officials. Consequently, they

²³⁵ See *above*, at 5.2.3.

²³⁶ CMK1, *supra* note 202 at 6.

²³⁷ The Supreme Court Judgment, No. 9962/2559 (2016), *supra* note 75 at 3-4; The Supreme Court Judgment, No. 10578/2559 (2016), *supra* note 75 at 8.

²³⁸ CMK1, *supra* note 202 at 7-8.

²³⁹ NMK, *supra* note 202 at 7; CMK1, *ibid* at 8.

²⁴⁰ CMK1, *ibid* at 9.

²⁴¹ *Ibid* at 8-9; GMK, interviewed on April 26, 2022, at 4-6.

²⁴² GMK, *ibid* at 5-6.

can continue cultivating their land and work with forest officials to protect the reserved forest.

4.3 Establishing Ground for Future Movements

Legal strategies do not only address current environmental problems, but also prepare the ground for further movements. One indirect impact of legal strategies is that they can establish a foundation for future struggles. The case studies suggest that legal strategies contribute to future campaigns in at least three ways: establishing facts, creating new organizations, and spreading inspiring stories.

4.3.1 Establish Useful Facts Through Litigation

Legal strategies can be useful beyond legal binding in a court judgment. Environmental movements can use facts validated through legal procedures to support their campaigns. The case studies suggest that this is possible not only when communities win cases²⁴³ but also when other parties respond negatively to their demands.²⁴⁴

The most common way communities and PIELs can take advantage of previous legal cases is to use facts validated by legal procedures to launch a new case or support the movements. For instance, in the Klity Creek Lead Pollution Case, communities and PIELs used evidence from the first successful case to help win the second case.²⁴⁵ This process is possible because the second case relied on the same facts as the first case, whether the mining company was responsible for polluting Klity Creek.²⁴⁶ When the first court had already decided that the mining company was responsible for the pollution, PIELs successfully used these validated facts from the previous judgment to support the second case.²⁴⁷ As one PIEL explains, “[t]he main argument is whether the defendants caused tort. The way we proof was the same as the eight plaintiffs’ case, the first case. Judges believed that defendants caused pollution and decided to favor the plaintiffs.”²⁴⁸ In other words, the first litigation established a strong foundation for the second litigation to be successful.

Another case that demonstrates how legal strategies can establish a foundation for further movement is the Map Ta Phut Industrial Pollution Case. In this case, communities formally petitioned the National Environmental Board to designate the area pollution control zone

²⁴³ PKT&DM2, *supra* note 19 at 7; The Central Administrative Court Injunction, No. Black 908/2552 (2009), September 29, 2009, Anti-global warming association and 42 claimants v National Environmental Board and 7 defendants, at 5; The Supreme Administrative Court Judgment No. Red A. 711/2555 (2012), *supra* note , at 12-14.

²⁴⁴ CMK1, *supra* note 202 at 6; Rayong Administrative Court Complaint Red No. A 32/2552, Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 35.

²⁴⁵ PKT&DM2, interviewed on May 25, 2021, at 7.

²⁴⁶ *Ibid.*

²⁴⁷ The Kanchanaburi Provincial Court Judgment No. Red 1290/2553 (2010), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants, at 23-24.

²⁴⁸ PKT&DM2, *supra* note 19 at 7.

and started systematically addressing environmental problems. However, the board rejected the communities' demand.²⁴⁹ Communities successfully used the board's inaction as key evidence in the administrative case to demonstrate that the board did not fulfill its duty required by law.²⁵⁰ And after they won the first administrative case, communities and PIELs also used facts in the first case as evidence to support their second administrative case that led to an unprecedented court injunction.²⁵¹ To put it succinctly, the second administrative case is built on the validated facts of the successful first case.

In the Khu Ha Mountain Quarry Mine Case, villagers and PIELs used the facts from the litigations to support their movements to stop the Quarry mine effectively. The main controversy between the mining company and communities was whether the mining operation was causing impacts on villagers. This issue was settled when villagers filed and won lawsuits against the company in civil cases.²⁵² The court affirmed that the mining company was responsible for damages to the plaintiffs' properties and health and ordered the firm to pay compensation.²⁵³ At this point, the company could not deny that its operation was the cause of the problem in Khu Ha communities. Communities used court judgment as a fact to continue their campaigns which ultimately forced the company to leave these communities.²⁵⁴ As one PIEL puts it, "[t]he lawsuits play a crucial role in closing the mine because when the companies were sued, they had no money to pay; they need to leave."²⁵⁵ In other words, legal strategies may not deliver financial reward to villagers, but it gives villagers validated facts to use in their campaigns that companies cannot easily deny.

Legal strategies can benefit communities beyond legal binding. As I present in this part, villagers and PIELs take advantage of some useful facts from legal processes and use them in new cases or movements. They utilize these facts as steppingstones for their next moves. These validated facts are crucial in supporting communities to push their causes forward.

4.3.2 Leading to New Organizations

Legal strategies sometimes encourage communities to think about setting up a new organization to support their movements in the long run. Creating new organizations usually comes from communities' experience with legal processes that force them to

²⁴⁹ Rayong Administrative Court Complaint Red No. A 32/2552, Charoen Dechkhoom and 16 claimant vs National Environmental Board, at 35.

²⁵⁰ The Rayong Administrative Court Judgment Red No. A 32/2552, *supra* note 5 at 13-14, 69.

²⁵¹ The Central Administrative Court Injunction, No. Black 908/2552 (2009), *supra* note 243 at 5.

²⁵² The Songkhla District Court Judgment No. Red 313/2554 (2011), Renu Saengsuwan and 5 plaintiffs v Peerapol Mining Company Ltd. defendant.; The Songkhla Provincial Court Judgment No. Red 854/2556 (2013), Nareumon Chantasuwana and another plaintiff v Peerapol Mining Company Ltd. and another defendant.

²⁵³ The Appeal Court Region 9 Judgment No. Red 516/2555, *supra* note 62 at 23; The Songkhla Provincial Court Judgment No. Red 854/2556 (2013), *ibid* at 31.

²⁵⁴ PKH4, *supra* note 110 at 10.

²⁵⁵ *Ibid*.

deliberate about their campaigns more effectively. They learn from their interaction with various stakeholders and find that their existing organization is insufficient to address emerging issues. These challenges lead some communities to initiate new organizations in response to these issues. These new organizations are new tools for villagers to continue their movements.

The Khu Ha Mountain Quarry Mine Case illustrates this point well. Khu Ha communities' ultimate goal is clear at the outset of their movement: they want to bring the mountain back and permanently stop mining operations.²⁵⁶ As one community leader puts it succinctly, "[e]verybody is clear that our main goal is to take the Khu Ha Mountain back to communities."²⁵⁷ They accomplished partial success from legal strategies that forced the mining companies to stop their operations and leave Khu Ha Mountain.²⁵⁸ However, communities are not satisfied with these results because Khu Ha Mountain is still a potential mining area designated by government decree.²⁵⁹ This legal status means the government can grant another mining licence at any time.

The Khu Ha communities responded to this challenge by founding a new organization, Khu Ha Mountain Community Rights Protection Association.²⁶⁰ This new organization has its own legal status and mandate focusing on protecting Khu Ha Mountain.²⁶¹ This new organization acquired a piece of land near Khu Ha Mountain to ensure that whenever the government decides to give a new mining permit, the organization will be informed as a potentially impacted party and be able to take action.²⁶² As one community leader explains community's long-term strategy to protect the environment:

I think about this all the time. This is why we founded Khu Ha Mountain Community Rights Protection Association and bought a piece of land two hundred meters from Khu Ha Mountain. This is because, according to the new Mineral Act, it only includes villages where the mountain is and the nearby villages. Hence, if they arrange public consultation and someone disagrees with the project, a referendum will be set. And we have the right to vote as an association.²⁶³

In other words, this new organization is a product of a long-term strategy. The founding of this organization makes the association a permanently involved party with whom the

²⁵⁶ NKH, *supra* note 110 at 5; CKH2, *supra* note 110 at 9; CKH1, *supra* note 142 at 2.

²⁵⁷ CKH1, *supra* note 142 at 2.

²⁵⁸ PKH4, *supra* note 110 at 10.

²⁵⁹ CKH1, *supra* note 142 at 9-10; CKH2, *supra* note 110 at 9; NKH, *supra* note 110 at 2.

²⁶⁰ CKH1, *ibid* at 11; NKH, *ibid* at 16.

²⁶¹ PKH4, *supra* note 110 at 11

²⁶² NKH, *supra* note 110 at 16; CKH1, *supra* note 142 at 11.

²⁶³ CKH1, *ibid*.

government and other parties interested in utilizing the mountain need to consult prior to granting any permit.

In the Klity Creek Lead Pollution Case, villagers set up a community fund for community development rather than creating a formal organization.²⁶⁴ The fund's mandate is to provide low-interest borrowing money to Klity Lang villagers in need in various situations.²⁶⁵ Funding for this new organization came from community members' donations. When they received compensation from lawsuits, rather than taking payment individually, all villagers collectively agreed to donate part of the compensation to this fund to benefit their community in the long run. Currently, their fund has about 400,000 CAD to manage.²⁶⁶ Villagers invented this fund because legal strategies brought them substantial compensation, and they needed a new organization to help manage this money to benefit the whole community. As one community leader explains how villagers handle their received payment, "[w]e had procedures to manage. We used part of the compensation to set up a community fund. Then we divided it into several funds for specific purposes, such as tap water, educational, and cultural funds. Overall, we have about ten funds."²⁶⁷ This statement shows how legal strategies encourage the community to come up with a new organization that serves their community to deal with current problems and to support their community in general.

Communities have learned from their struggles that environmental and social problems may require both short-term and long-term solutions. One way they respond to this issue is to create a new organization with specific mandates. Some of these organizations are legal entities that guarantee formal legal participation in the government decision-making processes. Some have no legal entity, but communities establish them to provide new services to communities. These organizations offer a solid ground for addressing existing and future environmental issues.

4.3.3 Inspiring other communities

Legal strategies as new tools for communities to protect the environment, health, and livelihood are part of stories experienced communities share with other communities. Environmental movements learn from each other both negative and positive lessons. This aspect is important for Thai contexts where environmental law, rights, and public interest litigations are relatively new. Practical experiences are valuable for new communities preparing to tailor their movements. Data from case studies suggests that sharing experiences and strategies is common among environmental movements in Thailand. Villagers, PIELs, and NGOs emphasize this benefit.²⁶⁸

²⁶⁴ CKT1, *supra* note 14 at 9; CKT2, *supra* note 12 at 6.

²⁶⁵ CKT2, *ibid* at 6.

²⁶⁶ CKT1, *supra* note 14 at 9.

²⁶⁷ CKT2, *supra* note 12 at 6.

²⁶⁸ NKH, *supra* note 110 at 15; NMP&CN, *supra* note 150 at 6; NCN, *supra* note 44 at 16.

For example, the Klity Creek Lead Pollution Case has become a popular environmental case for environmental groups. These environmental groups attended seminars²⁶⁹ or visited the Klity Lang village to learn how this small, marginalized village can win over a mining company and government agencies.²⁷⁰ As one PIEL asserts about the influence of this case on other communities:

The obvious case is the gold mine case that caused cyanide pollution in Loei province. Because before judgments, Loei communities visited Klity Lang village to support multi-cultural activities and had a chance to exchange experiences with the Klity Lang community directly...Klity Creek Lead Pollution Case became a model. It demonstrates that creating a clean-up plan and pushing for the remediation of a large-scale polluted area is possible.²⁷¹

This statement illustrates how communities could influence others by sharing their hard-learned experiences. In this sense, this case disseminates an inspiring story and might help other communities to address their issues more effectively.

The indirect impacts of legal strategies that inspire other communities through successful movements are common in this research. Participants repeatedly mention how they share their stories with other groups or communities to help them better deal with their issues.²⁷² Although this research does not examine how these inspiring stories shape the movements in other communities in action, the evidence suggests that the movement's experiences passed on to other communities may influence, shape, or guide other environmental campaigns.

4.4 Changing Legal Consciousness

One of the most outstanding findings in this research is how legal strategies contribute to changing legal consciousness in villagers, NGOs members and PIELs. The change demonstrates a shift from their prior understanding of how the law works. After engaging with legal processes for a long time during the movements, data suggests that villagers, NGOs members and PIELs have changed their perspective about law and rights to be more nuanced: they see and treat law in a more complicated way. This part presents evidence from case studies to illustrate this point by first looking at aggrieved villagers and NGOs members and then moving to PIELs.

²⁶⁹ Thai Publica, "Lessons from Environmental Cases from Toxin to Workplaces 'Klity, The Beach, and Santica Plub' - ThaiPublica", (3 March 2013), online: <<https://thaipublica.org/2013/03/lesson-environmental-cases/>>.

²⁷⁰ PKT&MP1, *supra* note 19 at 22.

²⁷¹ PKT&MP1, *supra* note 19 at 22.

²⁷² CKH1, *supra* note 142 at 4; NKH, *supra* note 110 at 6; NCN, *supra* note 44 at 16; CMT1, interviewed on Januar, 26, 2022, at 3; CMT2, *supra* note 185 at 5.

4.4.1 Change to Nuanced Understanding of Law

Through their interaction with legal procedures, aggrieved communities and NGO members have witnessed how powerful legal tools have changed their situations. They have seen that they can achieve their goals through legal instruments such as legal recognition, monetary reward, environmental quality improvement, and public attention. Legal tools can force government agencies to take actions they have long denied taking. Legal actions can force businesses to stop doing harmful activities they have done previously. In addition, legal strategies also lead to changes in the villagers' and NGO members' understanding of law and legal institutions.

In this study, most villagers and NGOs had no direct experience with legal procedures, law, or courts before they engaged with legal strategies in environmental cases. For the first time, environmental advocacy allows these groups to participate in the legal processes as petitioners, plaintiffs, defendants, or supporters. Through practice, villagers and NGOs develop a realistic understanding of law that differs from what they had before the movements.²⁷³ Data in this research suggests that villagers and NGOs have changed from having minimal legal knowledge and trust in legal institutions to seeing the law as a powerful tool they can use to support their movements. Villagers and NGOs gradually come to see the law in a more complex way: from a fixed and hostile institution to a powerful tool they can use to support their movements in various ways.²⁷⁴ In other words, they move from seeing the law as something the state imposed on them, to a tool they can use to address their problems and change other parties' behaviours.

For instance, in the Non Mak Kheng Waste Pollution Case, villagers refer to law, legal strategy, lawyer, judge, or court judgment as powerful tools that help them overcome problems they have faced for years and could not solve.²⁷⁵ As one community leader comments on how government officials behave before and after a court order:

After the court order, their behaviours changed dramatically. They were very active and stringent in enforcing environmental impact assessment law... Because of the court order, the provincial industrial office needed to take action. Even the Industrial Ministry needed to listen to the Sa Kaeo court order. When the court ordered the Industrial Ministry must follow because you violated. They, the provincial industrial office and the provincial governor all actively worked. I feel like nothing more powerful than the court order.²⁷⁶

²⁷³ CKT2, *supra* note 12 at 4-8; CMT2, *supra* note 185 at 7-8; CCN1, *supra* note 37 at 8-9; CMK1, *supra* note 202 at 5-9; CKH1, *supra* note 142 at 7-10;

²⁷⁴ NCN, *supra* note 44 at 12-13; NKH, *supra* note 110 at 7-10; NMK, *supra* note 202 at 9-11; NKT, *supra* note 16 at 9-11; CCN2, *supra* note 37 at 11.

²⁷⁵ CDM1, *supra* note 99 at 5; CDM2, *supra* note 136 at 12;

²⁷⁶ CNK2, interviewed on December 17, 2021, at 12.

This statement reflects the villager's belief that the government officials changed their behaviours from inertia or indifference to proactive because of the court's power. In other words, they think what they could not obtain for years be achieved through the court even though it did not directly order the government officials to take action.

Another example that illustrates this point is the Klity Creek Lead Pollution Case. In this case, villagers and NGOs refer to courts as a core mechanism that helps them to solve environmental problems they could not solve for years. One NGO member puts it succinctly about the court's role in the overall movement:

I think the movements outside [courts] do not affect much in terms of the enforcement. They might propose some recommendations that help greatly, but court judgments have enforceable legal authorities that can impose on responsible parties.²⁷⁷

In this sense, court cases are key in forcing responsible parties to take action. After winning court cases, they have seen changes in government officials and the company.²⁷⁸ This experience makes them believe that the law and courts have real power over businesses and government officials. As one community leader observes about the responsible party's reactions to court orders, "[t]hey had changed a lot. Because before the lawsuits, it seemed we had no power, voice, or influence. The mine and government agencies were not concerned about villagers at all."²⁷⁹ In other words, villagers and NGOs see the law and the courts as vital tools that empower them to achieve what they could not otherwise: to force government officials and businesses to address environmental problems and compensate them.

In the Chana Pipeline and Industrial Complex Case, villagers and NGOs experienced both negative and positive treatment from several lawyers. The negative experience with two lawyers before working with a group of PIELs makes villagers and NGOs doubt they will obtain justice through legal processes.²⁸⁰ Their first experience, when represented initially by a lawyer with no background in environmental movements, showed them that law and justice were not always the same. A court acquitted a man whom villagers believed fired a gun into their public demonstration.²⁸¹ Thus, at the beginning of their movement, they did not think the law could support them.²⁸²

²⁷⁷ NKT, *supra* note 16 at 10.

²⁷⁸ CKT1, *supra* note 14 at 8; CKT2, *supra* note 12 at 5-6.

²⁷⁹ CKT1, *ibid.*

²⁸⁰ NCN, *supra* note 44 at 5-8.

²⁸¹ *Ibid* at 5.

²⁸² *Ibid* at 8.

However, when they later worked with a group of PIELs who specialized in the environmental movement and human rights, their perspectives about law and legal processes changed.²⁸³ They have come to believe that they can find justice through legal means.²⁸⁴ In addition, they can employ legal tools to support their broader movements in various ways.²⁸⁵ As one NGO member explains:

From the hopelessness in the first case, legal processes [in the following cases] made us understand that they could be useful for our movements. Although we did not fully win, like the [criminal] case where we lost, we thought we had tools. And this tool affected the public. In the administrative case I mentioned, they knew judges punished the police; and the public attention increased demonstrators' morale.²⁸⁶

In other words, the interaction with legal processes changes villagers' perception of the law from something they cannot do anything about to a tool they can use to support their causes. Villagers and NGOs recognize that they can use legal means to foster their movements in many ways. However, they need to work with lawyers who understand their causes, not just a conventional lawyer.²⁸⁷

This new understanding of law as a tool to foster their broader movements was reflected when villagers filed a criminal charge against high-ranking police officers in charge of the violent dispersion of the villagers' peaceful public demonstration in December 2002.²⁸⁸ Communities wanted the police to experience the difficulty villagers endured during court cases, and the lawsuit served this goal well: villagers and NGOs were satisfied with the legal processes.²⁸⁹

Although the Supreme Court found the high-ranking police officers not guilty, villagers considered this case useful for their movements. They could put the Police Chief and high-ranking policeman in the same situation as the villagers. In other words, they were defendants who had to go through a lengthy trial and experience uncertainty about their future. This case illustrates the villagers' new and sophisticated understanding of law.

Considering the Khu Ha Mountain Quarry Mine Case, villagers started their struggles with little understanding of the law and developed more nuanced perspectives. Khuha communities had long suffered from the mining operation. However, they did not take any legal action against the mining company because they believed that the law gave the

²⁸³ *Ibid* at 9-11.

²⁸⁴ CCN 2, interviewed on January 21, 2022, at 8; CCN2, *supra* note 37 at 9, 21.

²⁸⁵ NCN, *supra* note 44 at 12-14.

²⁸⁶ NCN, *ibid* at 16.

²⁸⁷ CCN1, *supra* note 37 at 8-9; CCN 2, interviewed on January 21, 2022, at 6; NCN, *supra* note 44 at 4-6.

²⁸⁸ The Songkhla Provincial Court Complaint No. 1818/2546 (2003), *supra* note 211.

²⁸⁹ NCN, *supra* note 44 at 10-11; CCN 2, interviewed on January 21, 2022, at 9-10.

company the the authority to operate. Thus, the villagers had no right to challenge the mining company.²⁹⁰ They never had direct experience with legal processes and courts and did not think law and courts could help them. Indeed, they feared them rather than perceiving them as solutions.²⁹¹ Even after being informed several times by PIELs, only eight villagers decided to take legal action, and two withdrew later.²⁹²

As one NGO member who has worked with these communities for more than twenty years asserts succinctly, “[t]his is common. I talked on many occasions that it was not easy for villagers to file a lawsuit.”²⁹³ Therefore, the villagers started their movement with the perception that the law and the courts were something they should avoid rather than seeing them as a solution to their problems.

However, the long engagement with legal processes makes the villagers realize how law works in practice. They understood that with knowledge and experience, they could use the legal system to support their movements.²⁹⁴ As one PIEL explains:

This is a small but interesting story. In the past, villagers were afraid of the court. They thought that only criminals went to court. So, when they went to the courts, they were worried. Later, when we worked with them for a while. We asked our clients, most of whom were quite aged women from 50-60 years old, to submit documents [in courts]. Consequently, they told us later that they were not afraid of court anymore.²⁹⁵

This shift was also reflected when villagers filed a counter-civil lawsuit against the mining company that tried to use a lawsuit to stop their activities. They also filed another administrative lawsuit to prevent the government from granting a mining license in this area again.²⁹⁶ The more strategic use of law was clear when villagers decided to set up an association and acquire land to protect the mountain in the future.²⁹⁷ This move demonstrates how communities develop a more sophisticated understanding of the law and its role in their movements.

To put it another way, through experience, villagers change from seeing the law as a threat to a tool they can use in their favour. With help from PIELs, they can use legal means to

²⁹⁰ PKH4, *supra* note 110 at 4.

²⁹¹ *Ibid.*

²⁹² NKH, *supra* note 110 at 11.

²⁹³ *Ibid.*

²⁹⁴ CKH1, *supra* note 142 at 7; NKH, *ibid* at 7-11.

²⁹⁵ PKH4, *supra* note 110 at 7.

²⁹⁶ NKH, *supra* note 110 at 12.

²⁹⁷ CKH1, *supra* note 142 at 11; PKH4, *supra* note 110 at 16.

support their movements in various ways. In short, the law and the courts have become instruments to help them deal with their issues rather than seen a threat.

The Mae Omki Land Rights Case, maybe the most interesting study to show how legal strategies can instill new legal consciousness in villagers and NGOs. Mae Omki villagers and NGO staff once knew little and were afraid of the law, viewing it as a governmental tool to regulate them.²⁹⁸ The involvement in court cases instilled in them a new perspective on how the legal system work. Through their engagement, they gradually see it as a tool to protect themselves and increase their negotiating power with government agencies.²⁹⁹ They experienced firsthand that they, with help from PIELs, can change court judgment and their status from convicted to innocent.³⁰⁰ As one NGO member puts it succinctly, “I have learned from the Mae Om Ki case that we can revoke the lower court judgment that sentenced to imprison or fine us. This is the lawyer’s credit that led to a retrial. In the past, we believed that if the court judged, it was final.”³⁰¹ In other words, communities have learned that with legal knowledge and support from PIELs, they can use the law in their favor.

These experiences change villagers’ perspectives about the legal system. They develop a deeper understanding of the law that can be viewed as a tool used by the government to constrain their rights but, at the same time, the law and legal strategies protect them from forest officials and even judges. In short, they move from seeing the law as a fixed institution imposed on them to something that can be utilized to supporting their campaigns.

Although villagers in this research changed their perspective, they also hold a critical view of legal processes. They experience that winning court cases does not guarantee their problems will be solved completely.³⁰² They recognized that other parties could delay court judgments’ enforcement by appealing to the higher courts.³⁰³

Even when villagers won the Supreme Court Judgment, they realized that it was not straightforward to enforce court orders. The losing parties still had much space for negotiation to mitigate their losses³⁰⁴ or get around the court order completely, such as what happened in the Khu Ha Mountain Quarry Mine Case.³⁰⁵ As one community leader complains about the Khu Ha Mountain Quarry court order, “[t]he court already delivered

²⁹⁸ CMK1, *supra* note 202 at 3, 5; NMK, *supra* note 202 at 6,9.

²⁹⁹ CMK1, *ibid* at 6.

³⁰⁰ CMK2, *supra* note 202 at 4-5; CMK1, *ibid* at 6.

³⁰¹ NMK, *supra* note 202 at 10.

³⁰² CKT2, *supra* note 12 at 10-11; CMT2, *supra* note 185 at 3; CMK1, *supra* note 202 at 6; CDM1, *supra* note 99 at 6; NCN, *supra* note 44 at 8.

³⁰³ When communities won court cases the lost parties appealed to the higher courts in all cases in this research.

³⁰⁴ This situation happened in the Klity Creek Lead Pollution Case and the Don Mak Kheng Waste Pollution Case.

³⁰⁵ This situation happened in the Khuha Mountain Quarry Mining Case.

the judgment, and this judgment is final. The court ordered the mining company to pay villagers compensation. One problem about law, which I do not understand, is when the court ordered them to pay, they still did not pay.”³⁰⁶ In other words, the legal system is far from perfect in addressing villagers’ problems. This criticism resonates with Klity Lang community leaders’ complaints about the delay and inefficiency of the clean-up process in Klity creek.³⁰⁷

These critiques demonstrate a critical view of the law and the courts that evolves from firsthand experience. Villagers and NGOs may view them as useful resources, but they do not simply accept legal tools as a perfect solution. In this sense, villagers see the reality of the law unfold in practice. Although the law and the courts are important for their movements, these tools and institutions alone are insufficient to solve all of their issues.

Evidence from environmental cases in this research suggests that aggrieved communities and NGOs gradually develop a new understanding of the law and legal institutions through their interaction with legal processes. Most villagers and NGOs never have direct experience with legal processes, especially court procedures. For these people, they are intimidating institutions which should be avoided. This belief system gradually changes to a more practical view, one in which they understand that the law and the courts are powerful tools for their movements, yet, still present limitations. This new understanding allows villagers to comprehend what happens to their communities and what can be done through legal tools. They know that the legal tools may not guarantee victory, but these tools can benefit and help their communities achieve what they cannot achieve by other means.

4.4.2 Change to View Law as a Supporter of the Movements

In the previous section, I present evidence to explain how engaging with legal strategies, legal processes, and courts changes villagers’ and NGO members’ legal consciousness to be more nuanced and realistic. In this part, I offer evidence to demonstrate the change in PIELs’ understanding of law and legal strategies. This change is different from the villagers, yet, similar in the sense of being more nuanced and practical. PIELs have learned a great deal through their legal works with environmental movements that differ from conventional legal cases. They gradually move from focusing on legal tools to seeing legal strategies as part of larger environmental movements.³⁰⁸ They shift from seeing purely legal recognition as a success to highlighting various benefits legal strategies can provide to communities.³⁰⁹ This comprehensive understanding of the law enables PIELs to tailor legal strategies to align with communities’ movements and supplement their efforts. In other words, PIELs change from viewing the law as a sufficient means for solving

³⁰⁶ CKH2, *supra* note 110 at 7.

³⁰⁷ CKT1, *supra* note 14 at 8-10; CKT2, *supra* note 12 at 8.

³⁰⁸ PKT&MP1, *supra* note 19 at 7-9; PCN5, *supra* note 46 at 35-36; PCN6, interviewed on June 27, 2022, at 11; PMK7, *supra* note 224 at 10; PKT&DM2, *supra* note 19 at 10-11; PMK3, *supra* note 68 at 30-31; PKH4, *supra* note 110 at 13-14.

³⁰⁹ PKT&MP1, *ibid* at 7-9; PCN5, *supra* note 46 at 9-10.

community problems to one of several tools that communities can use to address their issues.

PIELs recognize that their roles in environmental movements are not solely about winning a court case, but the most important purpose is to empower communities to deal with their environmental problems;³¹⁰ so, the main actors are communities, and PIELs are supporters.³¹¹ This understanding of lawyers' roles and the roles of legal strategies have gradually developed through their long engagement with the environmental movements.

To illustrate this point, one PIEL who worked on the Klity Creek Lead Pollution Case reflects on how he gradually revised his idea of effective legal strategies.³¹² He started with the rigid notion of effective legal strategies in which he would focus on winning court judgments and creating a legal precedent that expands the scope of environmental rights.³¹³ Later, he realized that his definition of effective legal strategies was too narrow.³¹⁴ As a result, he broadened his evaluation to include other aspects, such as community and organizational empowerment.³¹⁵ As he explains his current organization's consideration of effective legal strategies:

Hence, currently, we consider many aspects. For example, first, we think about how we can help communities or NGOs foster their rights through legal processes...Second, how communities can use strategic litigation to support their movements. They can use the cases to push forward their agendas during trials without waiting for the final court judgements.³¹⁶

This statement demonstrates how engaging with environmental movements helps PIELs to develop a more nuanced understanding of the role of law and lawyers in environmental movements. Through long engagement with environmental movements, this lawyer expands his understanding of law from highlighting legal binding to its capacity to empower the communities.

Another PIEL in the Chana Pipeline and Industrial Complex Case resonates with this broad idea of the law and lawyers in environmental movements, which differs from what conventional lawyers are familiar with. The PIEL emphasizes the new approach to legal

³¹⁰ PKT&MP1, *ibid* at 13; PCN5, *ibid* at 14; PMK3, *supra* note 68 at 9-10; PCN6, *supra* note 308 at 3.

³¹¹ NCN, *supra* note 44 at 8-9; CDM1, *supra* note 99 at 3; KCH1, interviewed on December 12, 2021, at 6; CKT2, *supra* note 12 at 4; CMK1, *supra* note 202 at 3-4.

³¹² PKT&MP1, *supra* note 19 at 7-9.

³¹³ *Ibid* at 7-8.

³¹⁴ *Ibid* at 8.

³¹⁵ *Ibid* at 8-9.

³¹⁶ PKT&MP1, *supra* note 19 at 8.

practice that highlights strengthening environmental campaigns inside and outside communities that are new for lawyers.³¹⁷ As he criticizes conventional legal practices:

We need a new approach to legal practices that differ from what conventional lawyers have done. I think this [new approach] began and was often used in two cases, Chana [Pipeline and Industrial Complex] and Bornok [Coal Power Plant Project] cases. Before these cases, we, lawyers, did not think it was important to connect with communities. We would communicate only with defendants and witnesses to prepare them for trial and ensure they were aligned with the law and facts we plan to use in our cases. Most lawyers are familiar with these practices. When they have sustained these practices for years, they tend to limit themselves to these activities.³¹⁸

This criticism demonstrates how PIELs elaborate and revise their understanding of the law and legal practices to reflect realities and better support the movements. This self-reflection leads them from emphasizing the legally binding aspect of law to community empowerment.³¹⁹ One NGOs member describes experiences with PIELs in the Chana Pipeline and Industrial Complex Case by comparing them to other lawyers used to represent communities:

This group of lawyers [PIELs] differs from lawyers who represented us in previous cases. They consulted us, allowed us to tell our stories, and were concerned about our thinking. They did not concern only about facts but also our opinions on why the situation happened. There were meetings for most of the trial days to explain the case's progress.³²⁰

This testimony demonstrates PIELs move from the court's focus to the community empowerment focus. In this sense, PIELs treat the law and legal strategies more as a tool to support broader community movements rather than focusing on simply winning court cases.

In addition, PIELs recognize that communities have the final decision on legal actions, such as whether they should file a lawsuit. PIELs' role is to help communities understand their rights, legal options, benefits and risks, and then, they let communities decide which option they prefer.³²¹ This legal practice encourages communities to solve their problems

³¹⁷ PCN5, *supra* note 46 at 6.

³¹⁸ PCN5, *supra* note 46 at 6-7.

³¹⁹ *Ibid* at 35-36; PMK3, *supra* note 68 at 9-11; PKT&MP1, *supra* note 19 at 13.

³²⁰ NCN, *supra* note 44 at 6.

³²¹ PCN5, *supra* note 46 at 26; PKT&MP1, *supra* note 19 at 8; PMK, interviewed on April 15, 2021, at 45-46.

rather than allowing PIELs to make key decisions for their communities. As the NGO staff explains the decision-making processes of key issues of Chana communities:

It is our decision. The lawyers explained to us and answered our questions. They helped us understand more information, law, contexts, and details, but we, demonstrators, collectively decided. We decided on our own whether we file a lawsuit or not. In the case we filed a lawsuit against them [the police], we discussed extensively to understand the complexity that would come after the lawsuit. If we file a lawsuit against them, we might increase our risk... Shall we do it?... They decided to go forward.³²²

This statement demonstrates how PIELs' legal practices create new opportunities for communities to employ legal tools to support their movements. In other words, PIELs use legal strategies to enable communities to solve their problems.

PIELs, through their interaction with environmental movements, have developed a more complicated idea of law. They recognize the law and legal strategies as important tools for environmental movements, but not exclusive ones. To put it another way, PIELs expand their understanding of the law and legal strategies by focusing on the role of community empowerment in the legal processes in addition to legal recognition and tangible benefits.

5. Conclusion

This chapter presents findings demonstrating various impacts of legal strategies contributing to environmental movements. In organizing this chapter, I draw on the literature reviewed chapter by looking at three major impacts of legal strategies: legal recognition, tangible benefits and community empowerment. The chapter presented evidence that communities in this study successfully employ legal tools to receive legal recognition from the courts. I introduced in section 2, several legal cases in which litigation led to positive court judgments: affirmation and expansion of rights. This recognition created a receptive environment for communities and helped them to push responsible parties to take action.

However, legal recognition does not guarantee that communities will receive tangible benefits from court cases. In section 3, I offered data to demonstrate that legal strategies not only lead to legal recognition, but also deliver tangible benefits to communities. These tangible benefits came in two main forms: monetary rewards and the improvement of the environment. In this part, I presented evidence that litigations made it possible for communities to gain substantive financial rewards from responsible parties that were otherwise impossible to obtain. In addition to direct compensation, legal strategies also improve the environment, health, and livelihood by either stopping projects that posed environmental harm or forcing responsible parties to address these issues. This part suggests

³²² NCN, *supra* note 44 at 8-9.

that although legal strategies cannot fully solve communities' problems, they deliver considerable concrete benefits to communities.

Finally, in part 4, I move from tangible to indirect, and less concrete, benefits communities can obtain from legal strategies: community empowerment. I presented data demonstrating that legal strategies empowered environmental movements in several ways. First, legal actions increased public awareness about environmental issues and related environmental laws and policies. Legal strategies, especially litigations, were widely reported. They also attracted researchers to take on these cases as their research topics and produced a variety of studies about these issues.

Second, legal strategies played a crucial role in supporting ongoing environmental movements in at least two ways. First, these tools help communities clear up legal obstacles preventing them from continuing their activities. Second, legal strategies increase communities' negotiating power with government agencies and businesses. Villagers are better at bargaining with other parties when they employ legal tools.

Third, legal strategies established foundations for future environmental movements by establishing useful facts, leading to new organizations, and becoming inspiring stories. Legal processes provide communities facts to support their campaigns. In addition, some communities established new organizations to serve their movements in response to new challenges. Furthermore, successful legal strategies become inspiring stories that experienced communities pass on to other communities who face or are likely to face similar situations.

Finally, engaging with legal strategies and legal processes in environmental cases changed villagers, NGOs and PIELs' perspectives on law and legal strategies to be more nuanced and realistic. Villagers and NGOs started with minimal knowledge and experience about legal processes but developed a sophisticated view of law along the way. They realized that the law and legal strategies are powerful tools that they can use to foster their campaigns, but they are far from a perfect solution. PIELs also develop a more comprehensive view of law and legal strategies. They expand their perspectives that used to focus narrowly on legal issues to larger environmental movements. PIELs move from highlighting court cases to concentrating on community empowerment. They recognize that, in environmental movements, lawyers and legal strategies play a supporting role. Their roles as lawyers are to provide legal capacities to communities; hence, communities can address their problems more effectively.

Data in this chapter demonstrates various direct and indirect impacts of legal strategies on environmental movements. Legal strategies brought to these communities by PIELs helped them achieve what could not do previously. This phenomenon of communities using legal strategies to hold government agencies and businesses accountable for environmental issues is new in Thai society. How could marginalized communities use the law and the courts to change their situations in a country with a weak rule of law culture? Drawing on the results from this chapter, I will try to answer this question in the following chapter.

Chapter 6: Supportive Factors for Effective Legal Strategies

1. Introduction

In chapter 5, I presented results from the case studies to answer how and what changes environmental movements obtain from employing legal strategies. This chapter tries to answer how these changes impact Thai law and society in light of the literature on law and social change. I draw on the law and social change literature review in chapter 2 to assess the findings presented in chapter 5. In particular, the works of scholars who discussed factors that contribute to successful law reform or social movements.¹ Although most papers examine large-scale social movements, I find some of their frameworks can apply to a smaller, local scale.²

In the previous chapter, I presented results from case studies demonstrating that environmental movements are able to use legal strategies to bring about legal recognition, substantial tangible benefits, and community empowerment. The case studies provide strong data to support these points. I argue, in this chapter, that environmental movements forcefully utilized legal strategies to push their campaigns forward because of three key factors: new legal opportunities, the presence of PIELs and NGOs, and communities. These three factors together made it possible for environmental movements to use the new legal mechanisms to create changes in a way they have never done before.

First, since 1997, the Thai Parliament has passed new constitutions and laws recognizing several new rights, including substantive and procedural environmental rights. In addition, the Parliament passed a law to establish a new administrative court and human rights monitoring agencies, such as the National Human Rights Commission and the Ombudsman, to investigate, protect and implement the newly recognized rights. These constitutions and laws give people new rights and allow them to use the legal venue to address their problems and hold powerful parties such as government agencies and businesses accountable for rights violations and abuse of power. As the data collected in this research shows, these new legal opportunities enable environmental movements to create unprecedented change.

¹ See for example, Charles R Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago, IL: University of Chicago Press, 1998); Gerald N Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change? Second Edition*, American Politics and Political Economy Series (Chicago, IL: University of Chicago Press, 2008); Joel F Handler, *Social movements and the legal system: a theory of law reform and social change*, Institute for Research on Poverty monograph series (New York: Academic Press, 1978).

² For example, Epp, *ibid* at 3. Epp argues that the country's support structure, including right-advocacy organizations, rights-advocacy lawyers, and sources of funding from the government, makes rights revolution possible. His argument can be revised and applied to small scale environmental movement too, because, communities that want to address environmental issues by employing legal strategies are unlikely to succeed if they lack some of the support structure such as environmental lawyers, environmental organizations, and funding.: See also, Handler, *ibid* at 35.

Second, PIELs and NGOs' support makes it possible for aggrieved communities to utilize the new legal opportunities to address their problems. Villagers have minimal knowledge of the law and the legal system; hence, it is hard for them to use the new legal opportunities, no matter how great these new prospects are. PIELs help villages to understand legal information and its potential to support their movements. PIELs and NGOs provide the capacity and resources to communities enabling them to navigate unfamiliar, complicated legal mechanisms and utilize these new tools to help campaigns. Without assistance from PIELs and NGOs, it would be difficult for communities to overcome the complexity of legal texts and the burden of high legal costs.

Third, communities that initiate and sustain active roles throughout the legal process play a crucial role in bringing the new legal opportunities into reality. It is not straightforward to deliver what a written law states, especially in Thailand, where the idea of the rule of law has not been firmly established. Academics contend that Thai people do not like using laws or courts to solve disputes.³ Researchers point to religion,⁴ disconnected from custom, and the legal system's inaccessibility as reasons Thais avoid legal channels to address their problems and turn to other means, such as negotiation⁵ or demonstration.⁶ In the Thai context, one cannot assume that when the Parliament enacted a constitution or statutes to address environmental problems, relevant parties would comply, and the issues would be addressed accordingly. This research shows that Thai society needs communities willing to participate in environmental movements in the long term to transform these laws and rights into reality. It is true that the aggrieved communities consult PIELs and NGOs and get various supports from them, but still, they are the ones who start, sustain, and bear the enormous cost of long environmental struggles. Without communities, it is unlikely that environmental movements would be able to utilize the new legal opportunities effectively.

I divide this chapter into six parts. Following this introduction, in Part 2, I assess the first key factor, new legal opportunities presented after the 1997 Constitution. I demonstrate how new environmental rights, a new administrative court, and new human rights monitoring agencies contribute to the effectiveness of legal strategies.

In Part 3, I assess the role of PIELs and NGOs in making legal opportunities accessible for aggrieved communities. I assert that PIELs and NGOs play essential roles in helping communities utilize new legal opportunities. I highlight PIELs' role in bringing these novel tools into communities' awareness and assisting villagers to navigate complicated legal processes.

³ Khetta Langkarpint, *Sustainable Development: Law, the Environment and Water Resources in Modern Thailand*, PhD. Dissertation (University of Warwick, 2000), at XI.; Frank Munger, "Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand" (2007) 40:2 Cornell Int Law J 455–476, at 470.; Andrew Harding & Peter Leyland, *The constitutional system of Thailand: a contextual analysis*, Constitutional systems of the world (Oxford: Hart Publishing, 2011), at 220.; David M Engel, *Tort, custom, and karma: globalization and legal consciousness in Thailand* (Stanford Law Books), at 153.

⁴ Munger, "Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand", *ibid* at 470.

⁵ Engel, *supra* note 3 at 153.

⁶ Munger, "Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide", *supra* note 3 at 471.

In Part 4, I assess the essential role of communities in initiating and sustaining prolonged legal processes. I argue that active community engagement is necessary for environmental movements that want to employ legal strategies to support their campaigns effectively. This factor is particularly critical in Thai contexts where one cannot assume that people and government agencies would follow what the constitution and law state. Without communities willing to actively support legal strategies throughout the long legal process, it is unlikely that new legal opportunities, no matter how advanced they are, would be able to attain their goals.

In Part 5, I observe that the relationship between progressive environmental rights and resilient environmental movements is symbiotic. I highlight a virtuous cycle or symbiotic relationship between rights and environmental movements in which new legal opportunities empower environmental movements. In turn, strong environmental movements empower the legal system to be able to deliver what constitutions and law state. Part 6 is the conclusion, where I revisit the key points of my arguments.

2. New Legal Opportunities

Scholars recognize the paradoxical relationship between law and society, in which, on the one hand, citizens can apply the law to protect their rights and create a more egalitarian society.⁷ On the other hand, states and elites can use the law to control and exploit citizens and resources, creating and sustaining inequality.⁸ In the Thai context, scholars assert that the Thai legal system has not embedded the concept of the rule of law in the sense that law is a mechanism to constrain state power.⁹ The legal system, instead, plays a key role in denying people rights and upholding state authority.¹⁰ Consequently, Thailand has many human rights violations undertaken by government authorities, and the legal system cannot

⁷ Michael Ignatieff, *The rights revolution*, Massey lectures series (Toronto: House of Anansi Press, 2000); Charles R Epp, *The rights revolution: lawyers, activists, and supreme courts in comparative perspective* (Chicago: University of Chicago Press, 1998); Michael W McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, 1 edition ed (Chicago: University of Chicago Press, 1994).

⁸ Jens Meierhenrich, *The remnants of the Rechtsstaat: an ethnography of Nazi law*, first edition ed (Oxford, United Kingdom: Oxford University Press, 2018).; Tom Ginsburg & Tamir Moustafa, eds, *Rule by law: the politics of courts in authoritarian regimes* (Cambridge [UK]; New York: Cambridge University Press, 2008).; Byron M Sheldrick, *Perils and possibilities: social activism and the law* (Halifax, N.S: Fernwood, 2004); Marc Galanter, "Why the Haves Come out Ahead: Speculations on the Limits of Legal Change Essay" (1974) 9:1 Law Soc Rev 95–160.

⁹ Thongchai Winichakul, *Full speech, The Legal Privileged State and The Royalist Rule of Law: The genealogy of Thai-style Rule by Law (in Thai)*, waymagazine.org | WAY", online: <<https://waymagazine.org/thongchai-winichakul-rule-by-law/>>, at 163.

¹⁰ *Ibid* at 166; Charan Khosananan, *Law and Rights and Liberty in Thailand: The Parallel from 1932 to Present (in Thai)*, (Religious Cooperation for Society Group, 1985); Withit Mantāphōn & Charles Taylor, *Roads to democracy: human rights and democratic development in Thailand* (Bangkok; Montreal: publisher not identified, 1994).

hold state officials accountable for the violations which creates the conditions for further abuses.¹¹

However, Thai society has attempted to change the Thai legal system to be more responsive to people and have less preference for the state for years, mainly through constitutional reform.¹² One important milestone of this attempt was the 1997 Constitution, in which drafters aimed to use the constitution to reform the country.¹³ This constitution, among other things, established new rights and created new courts and human rights monitoring agencies to ensure that people's rights would be respected.¹⁴ In other words, Thai society tried to use law reform to create new legal opportunities for Thai people. So, they could use these legal mechanisms to protect themselves and address their problems in a way the legal system never allowed them to do.

This research finds that, for the first time in environmental law, the new legal opportunities allow aggrieved communities to access various legal venues that were unavailable until then. Before the 1997 Constitution, the Thai environmental movements rarely used legal tools to address their problems. Environmental campaigns started to include various legal strategies to utilize the new legal opportunities after enacting the 1997 Constitution and its accompanying laws.¹⁵ Environmental movements, in this research, find environmental rights, administrative courts, and human rights monitoring agencies conducive to their campaigns and utilize these new legal opportunities to support their movements.

Although the Thai environmental rights movements had rarely used legal tools before 1997, they recognized the potential of new environmental laws and rights in advancing the environment. They have advocated reforming environmental laws and introducing new environmental rights for years; one of the most well-known law reform campaigns was the national campaign for enacting the Communal Forest Act from 1990-2000.¹⁶ Indeed, many environmental activists were active during the 1997 Constitutional Drafting period and successfully campaigned to recognize new rights, including environmental rights, in the

¹¹ Tyrell Haberkorn, *In plain sight: impunity and human rights in Thailand*, New perspectives in Southeast Asian studies (Madison, Wisconsin: The University of Wisconsin Press, 2018), at 221; Human Rights Watch, "World Report 2019: Rights Trends in Thailand", (28 December 2018), online: Human Rights Watch <<https://www.hrw.org/world-report/2019/country-chapters/thailand>>.

¹² Andrew Harding & Peter Leyland, *The constitutional system of Thailand: a contextual analysis*, Constitutional systems of the world (Oxford: Hart Publishing, 2011), at 257.

¹³ Borwornsak Uwanno, Overview of the Constitution and the 1997 Thai Constitution, (King Prajadhipok's Institute: Bangkok, 2003), at 1-3; Leyland, Peter, The Emerging of Administrative Justice in Thailand under the 1997 Constitution, in Tom Ginsburg & Hongyi Chen, eds, *Administrative law and governance in Asia: comparative perspectives*, Routledge law in Asia (Abingdon, Oxon [England]; New York: Routledge, 2008), at 232.

¹⁴ Harding & Leyland, *supra* note 3 at 257; See also See also, the Constitution of the Kingdom of Thailand B.E. 2540 (1997), in Royal Gazette, Book 114/Chapter 5 Kor/p.1/ October 11, 1997.

¹⁵ See chapter 1 part 4 in this dissertation.

¹⁶ Prachatai, "Key chronologies of Communal Forest Bill", Prachatai, (3 November 2005), online: <<https://prachatai.com/journal/2005/11/6267>>.

1997 Constitution.¹⁷ These new rights provide environmental movements with further legal protection and entitlements and allow them to challenge other powerful parties. The case studies demonstrate that these new legal opportunities are not fiction; they provide real benefits to the environmental movements in various ways that would otherwise have been impossible.

First, new environmental rights offer environmental movements a framework to structure their struggles more powerfully. Communities in this research frame their local environmental issues to a rights claim referencing newly adopted environmental rights. In this way, their environmental problems are not just ecological issues, but constitutional rights violations that require legal responses from responsible parties, especially state institutions.

All six case studies frame their movements under constitutional rights terms, such as rights to a healthy environment, public participation rights, community rights and public assembly rights. These constitutional rights claims are possible because the Thai constitutions have recognized them as enforceable rights. These rights allow local communities to connect their local problems to constitutional provisions and turn local issues into national ones. In this rights framework, what aggrieved communities try to address are both local problems and constitutional integrity issues. This new framework is more powerful than using other frameworks in forcing responsible parties to take communities' issues seriously. The responsible parties would find it more difficult to ignore constitutional rights claims than typical challenges to ecological problems brought under regulatory statutes. Within the new framework, regulatory agencies are simultaneously liable for environmental and local communities' damages and constitutional rights violations.

To illustrate this point, consider the Klity Creek Lead Pollution Case. Klity Lang villagers and networks framed their movements not merely as a pollution problem, but also as environmental rights claims. The central argument of the three lawsuits is the constitutional environmental rights violation committed by the mining company and the Pollution Control Department. This characterization resonates in the lawsuits and their broad movements, in which they successfully frame their campaigns as community rights.¹⁸ The Klity Lang villagers and their networks can turn their local environmental issues into constitutional rights claims because 1997, 2007, and 2017 constitutions have recognized environmental rights. The movements took advantage of the newly adopted constitutional environmental rights by using them as their legal references. Consequently, the movements transformed local problems into constitutional rights violations and created unprecedented

¹⁷ Naruemon Thabchumpon, NGOs and Grassroots Participation in the Political Reform Process, in Duncan McCargo, ed, *Reforming Thai politics* (Copenhagen S., Denmark: Nias Pub, 2002), at 257; NKH, interviewed on September 14, 2021, at 195.

¹⁸ Special Rapporteur on Human Rights and Environment, The Right to Clean, Healthy and Sustainable Environment: non-toxic environment, Annex 2 to A/HRC/49/53, (United Nations Human Rights Special Procedures: 2022), at 12; Songkrant Pongboonjun & Surachai Trong-ngam, "Klity Creek's Environmental Remediation: Case Victory Reveals Failed System" (2021) 14:2 CMU J Law Soc Sci 86–121.

changes for the Klity Lang community and Thai society in improving government environmental management.¹⁹

With these new rights, communities and networks could increase their power in a way that make it difficult for other parties to disregard their demands. In other words, they transform local environmental problems into constitutional rights issues requiring several responsible parties to take action. These constitutional rights' claims effectively mobilized involved parties to produce strong responses. The courts affirmed and expanded environmental rights and awarded substantial compensation to the villagers. Judges ordered the mining company, its executives, and the Pollution Control Department to clean up the polluted creek for the first time in Thai history. The Klity Lang community received considerable compensation from the mining company and the PCD, and used this money to support the villagers' livelihood. In addition, the PCD expended a significant budget in cleaning up Klity Creek.

Legal strategies strengthen the community when negotiating with the mining company and other state agencies. These unprecedented responses to the Klity Creek Lead Pollution Case are understandable only if one looks at this case as constitutional rights violations rather than just local environmental problems. Environmental movements could employ legal strategies to create these changes because of the presence of environmental rights. The situation might be different if the Thai Parliament did not recognize environmental rights in these constitutions and the movement could not frame their struggles in terms of constitutional rights claims.

Second, an administrative court is a new mechanism for environmental movements to challenge a strong Thai bureaucracy and force government agencies to fulfill their duties mandated in the constitution and laws. The new administrative court is an independent institution whose main responsibility is to ensure that government agencies exercise their power within the scope of the constitution and other laws. The court is also mandated to protect people's rights and liberty from government agencies' use of power. The constitution and accompanying law give the court new jurisdiction and provide people new opportunities to challenge government agencies' actions, which they were never allowed to do previously. Thailand had never had an independent administrative court like this until 2001.

Communities who are the focus of this research effectively used this new court to challenge administrative agencies and force them to pay compensation or take strong measures to address environmental problems that the responsible agencies had long rejected. This research shows that the administrative courts play an important role in improving

¹⁹ The Nation, "Klity Creek case sends strong signal to govt", (12 January 2013), online: *nationthailand* <<https://www.nationthailand.com/perspective/30197801>>; Frank W Munger, "An Alternative Path to Rule of Law: Thailand's Twenty-First Century Administrative Courts" (2019) 26:1 *Indiana J Glob Leg Stud* 133–172, at 166.

government agencies' responses to environmental issues.²⁰ In this sense, the new court makes it possible for communities to move forward with their campaigns.

To illustrate this point, one can look at the Mab Ta Phut Industrial Pollution Case. As discussed in Chapters 4 and 5, the Thai government initiated the Mab Ta Phut Industrial Complex to improve Thailand's economy. The government designated Mab Ta Phut areas to take advantage of natural gas newly discovered in the Thai gulf. This complex hosted various heavily polluting industries, especially petrochemical industries. Hence, the heavy pollution that was released and created a serious problem for local communities was a byproduct of government policies.

Mab Ta Phut communities tried many ways to ask the government and businesses to address environmental and health issues. However, they saw no major change in government and business practices. Local people's voices had little or no impact on how government and businesses manage environmental and health problems in Mab Ta Phut communities. Indeed, the government and businesses were the sole players in dealing with environmental and health issues in this area for years until communities turned to administrative courts.

The situation changed after communities won an administrative case against the National Environmental Board in 2009 and got the administrative court injunction to stop 76 new industrial projects in the same year. This was the first time that aggrieved communities filed lawsuits against the NEB and could convince the court to force the NEB to fulfill their duty by designating Mab Ta Phut and nearby areas as pollution control zones. After losing court cases, the government and businesses changed their behaviours. The NEB conceded to designate the Mab Ta Phut and nearby areas pollution control areas and created a systematic plan accompanied by a substantial budget to address the problems. Businesses were willing to engage with local communities and be more responsive to communities' demands. These changes are possible because local people can use the administrative court to challenge the NEB.

The results of this research demonstrate that the government and businesses have changed their approaches to managing environmental problems in Mab Ta Phut to be more inclusive because of the administrative court's orders. The government and corporations had long rejected the idea of designating the Mab Ta Phut area as a pollution control zone because they were concerned about the economic impacts. Without the new administrative court with new jurisdiction over government agencies, communities would have had no mechanism to force government agencies to adopt the communities' demands. Consequently, it is unlikely that government agencies and businesses would change their approaches to the problems. In other words, the new administrative court makes it possible

²⁰ The important role of the Thai administrative court in addressing environmental rights is also recognized in the Human Rights Council 49 session 28 February – 1 April, 2022, United Nations General Assembly. See, United Nations, General Assembly, The Rights to Clean, Healthy, and Sustainable Environment: non-toxic environment, Report of Special Rapporteur on the issues of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, (United Nations, General Assembly: 2022), at 17.

for communities to push their movements forward, which was almost impossible to obtain in the past.

Third, independent human rights agencies set up after the 1997 Constitution play an important role in supporting environmental movements. The 1997 Constitution and following constitutions not only recognized new rights, but also supplemented the new rights by establishing several independent agencies whose main mandate is to monitor human rights violations and unfair treatment. These new institutions, such as the National Human Rights Commission and the Ombudsman, investigate and give recommendations to relevant agencies, businesses, the government, and the Parliament about human rights issues. They cannot overrule government agencies' actions or force the private sector to follow their recommendations. However, they have investigative power that allows them to interrogate involved parties and submit suggestions and reports to relevant parties. Environmental movements use these institutions to support their campaigns. Most of the communities in this research take advantage of these new agencies to advance their movements.

The Khu Ha Mountain Quarry Mine Case demonstrates this point well. In addition to litigations, Khu Ha communities utilized the new human rights institutions in several ways. During their movements, they asked the National Human Rights Commission, the Ombudsman and the Parliament Committee to investigate their cases, framing their issues as community rights violations. Although these institutions had no final say about the mining license, they had the legal power to interrogate and obtain information from relevant government agencies and businesses. These new mechanisms support their movements in various ways. Human rights agencies' involvement raises public awareness about communities' problems. The investigations of these independent agencies increased communities' power in relation to government agencies and businesses. Communities also use reports produced by these agencies to support their campaigns and lawsuits.²¹ These agencies may not have ultimate power over the responsible parties, but their investigative roles strengthen communities' campaigns.

These three new legal opportunities established after the 1997 Constitution create new tools that environmental movements in Thailand can employ to push their causes forward. The new environmental rights give communities a powerful reference to frame local ecological issues into a stronger constitutional rights claims. Communities in this research successfully frame their local problems as constitutional rights violations that require government agencies, businesses, and courts to address their issues seriously.

In addition, the new administrative court offers a powerful legal channel for environmental movements. This new court allows communities to challenge administrative actions and force government agencies to fulfill their duties regarding environmental issues. As this research demonstrates, it is unlikely that government agencies would change their practices that they believed to be in align with government policies or change their old procedures if

²¹ NKH, interviewed on September 14, 2021, at 9; NKT, interviewed on September 12, 2021, at 6-7.

people have no legal mechanism to challenge them. The administrative court helps communities overcome this barrier.

Finally, the new independent human rights agencies support environmental movements by raising public awareness, providing investigation reports, and empowering communities in relation to government agencies and businesses. Although these agencies have no authority over how responsible parties should address environmental problems, their supplementary roles help communities to push their issues forward.

These new legal opportunities are crucial in providing conditions that enable environmental movements to employ legal strategies effectively. Without these legal opportunities, it is unlikely that communities can use legal systems to create such large impacts demonstrated in the previous chapter. They could not frame their local issue as constitutional rights claims and could not use the administrative court to force government agencies to change their practices. Communities could not ask independent human rights agencies to investigate their cases. These basic factors enable environmental movements to utilize legal strategies effectively. The effectiveness of the new legal opportunities in this research demonstrates how important progressive law is to environmental movements.

However, the new legal opportunities are inadequate to create desired change, as many may expect. Environmental movements need resources that would enable them to tailor these opportunities into concrete legal strategies and transform them into reality. In the next section, I introduce two main actors that play an important role in providing the necessary resources to make it possible for environmental movements in this research to utilize the new legal opportunities: public interest environmental lawyers and non-governmental organizations.

3. PIELs and NGOs as Resources

Scholars who criticize using the law to create social change assert that progressive law does not necessarily lead to significant change as law reformers anticipated.²² They support their arguments by pointing to many barriers that prevent the law from delivering on its promises. These barriers include the nature of rights, that include some rights but exclude others, the lack of a court independent from other branches of government, the lack of court power to enforce its judgments,²³ and the lack of necessary supportive conditions for transforming rights into reality.²⁴ Epp argues that support structures, including rights advocacy organizations, rights lawyers, and financial support, must accompany progressive law to overcome these barriers and make the law work in practice.²⁵ These

²² Stuart A Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Ann Arbor, UNITED STATES: University of Michigan Press, 2004); Ran Hirschl, *Towards juristocracy: the origins and consequences of the new constitutionalism* (Cambridge, Mass: Harvard University Press, 2004); Rosenberg, *supra* note 1.

²³ Rosenberg, *supra* note 1 at 10-21;

²⁴ Galanter, "Why the Haves Come out Ahead", *supra* note 8 at 149.

²⁵ Epp, *supra* note 2 at 3.

support structures enable the law to function as reformers expected it would. In other words, without other supportive factors, law reform programs are unlikely to bring about social change, no matter what the text states.

In the Thai context, PIELs and NGOs play an important role relatively similar to the support structure argument. They benefit communities in four ways: connecting communities to PIELs, providing legal information to communities, providing legal representation to community members, and providing financial support to communities. I find the argument that highlights the inadequacy of rights recognition in creating social change convincing, and the findings in this research resonate with it. Based on this research, at least three main barriers are preventing Thai communities from utilizing the new legal opportunities: legal knowledge, access to environmental lawyers, and lack of financial support. Communities in this research were able to overcome these obstacles and effectively employ the new legal opportunities to support their movements because they received help from PIELs and NGOs. These groups function as support structures in Epp's argument and play a key role in helping communities overcome the three barriers.

First, NGOs play an important role in connecting communities to PIELs and other networks, enabling communities to utilize legal opportunities effectively. NGOs are actors that support aggrieved communities and enable them to include legal strategies in their movements. Even though NGOs do not provide legal services to communities, they offer supports that make legal strategies possible for communities. NGOs contribute to legal tools in at least two main ways – connecting communities to PIELs and other actors such as the media.

NGOs connect communities to the new-small group of PIELs who have offices mostly in Bangkok, far away from aggrieved communities. As mentioned earlier, PIELs are new in Thailand, and their number is very small compared to all licensed lawyers in Thailand. From my fieldwork, I estimate no more than 50 PIELs actively work throughout Thailand out of about 90,000 licensed lawyers.²⁶ This small number of PIELs is concentrated in Bangkok. Most of the PIELs have engaged with some environmental or human rights movements that overlap with NGOs who usually work both in Bangkok and rural areas. Commonly, NGOs function as a connector between communities and PIELs. The connection role is important because it is unlikely that communities in rural Thailand would have contact with this small specialized groups of PIELs. Without the NGOs' connection, aggrieved communities will likely either have no support from PIELs or get help from a conventional lawyer that may weaken their overall movements rather than strengthen them.

NGOs not only connect communities to PIELs, but also to other actors, such as the media, that contribute to effective legal strategies. In Chapter 5, I presented data demonstrating that legal strategies contribute to public awareness about environmental issues through widespread media coverage. Besides the nature of newsworthy court cases, NGOs play an important role in bringing environmental issues to the attention of reporters. Then

²⁶ As 2018, there are 89,503 license lawyers in Thailand among them there are no more than 50 PIELs or 0.05%. See, Nandana Indananda & Mansawee Wongsuryrat, "An Overview of the Legal Profession in Thailand", online: *Tilleke Gibbins* <<https://www.tilleke.com/insights/overview-legal-profession-thailand/>>.

communities can use media coverage to push their movements forward. More media coverage means more public attention to their issues and more pressure on the responsible parties to address environmental problems. This public attention leads to more effective overall campaigns.

The role of the NGOs' media connections is demonstrated well in the Klity Creek Lead Pollution Case. NGOs brought Klity Lang Village stories to the Thai public by taking a handful of reporters into the Village in 1998. After that, the NGOs continued to be a focal point between the community and media throughout the movements. It is unlikely that reporters would have paid such considerable attention to the Klity Creek Lead Pollution Case for such a long time if NGOs did not facilitate the media for the movements.

One PIEL complains about the relationship between the frequency of media attention and the effectiveness of legal strategies when comparing another case to the Klity Creek Lead Pollution Case. As the PIEL put it, "the weakness of this case [zinc mine pollution] is that no NGOs is working as a connector between communities, lawyers, and media. Public attention on the issue is less, even though it is a larger issue [than the Klity Creek Lead Pollution Case]." ²⁷ This statement emphasizes the important role of NGOs as a connection between communities, media, and PIELs. Without NGOs playing this role, it will be difficult for communities to do this on their own. Consequently, environmental movements would lose one of the most important tools to support their campaigns: media coverage.

Second, PIELs help communities to interpret legal information that very few lay people can understand. Lawyers use language that make it difficult for people outside their profession to understand. ²⁸ There are too many statutes, decrees, bylaws, and regulations to study before properly applying laws to a specific legal issue. As a result, most people find it difficult to comprehend legal procedures and cannot utilize the law to protect themselves. ²⁹ People would need help from lawyers to understand the legal systems properly, especially when the stakes are high and complicated, as most environmental issues are. Without support from lawyers, it is difficult for lay people to deliberate complex legal problems, make sound legal decisions, and go through legal processes by themselves.

The unapproachable nature of the law for lay people resonates in this research. The aggrieved communities in this research could not access the law for a long time until PIELs came in and helped them overcome this obstacle. All communities in this research initially found the law and legal procedures irrelevant, difficult, or intimidating rather than a solution. They had no direct experience with the legal system and had minimal knowledge of state law and legal processes. The lack of legal knowledge made them depend solely on other familiar tools, such as asking for help from local leaders, or organizing protests. A

²⁷ PKT&NM2, interviewed on May 25, 2021, at 19.

²⁸ Zsolt Zodi, "The Limits of Plain Legal Language: Understanding the Comprehensible Style in Law Special Issue on the Many Faces of Style in Law and Legal Scholarship" (2019) 15:3 *Int J Law Context* 246–262.

²⁹ Ariyaporn Pothisai, People's Right to Access to Justice, in *Julaniti Journal*, Volume 19 September-December 2021, 146; Prachatai, "Justice System Reform for the Poor", (1 May 2019), online: <<https://prachatai.com/journal/2019/05/82278>>.

pattern replicated amongst the communities in this research was their attempts at these strategies for years with little success before they learned about the new legal opportunities from PIELs.

The aggrieved communities started to include legal strategies in their ongoing movements when they began working with PIELs. PIELs came to their communities to learn about their problems and inform them about the new legal opportunities they could utilize to support their movements. This new legal knowledge was valuable for communities already exhausted from the long struggles with limited resources. PIELs expanded communities' understanding of law from a minimal to a more nuanced way. Gradually, communities learned how to use legal tools to advance their causes. These new legal opportunities allow them to challenge people in power on several legal platforms. Communities recognized that they had new powerful legal tools of their choice. With legal tools at their disposal, environmental movements have more bargaining power than they used to have. PIELs help communities overcome the difficulty of interpreting legal texts and work with them to turn this new knowledge into new tools to support their movements. Without PIELs, it is unlikely that environmental movements would be able to employ legal strategies to foster their movements as they have done in this research.

Third, aggrieved communities need a passionate environmental lawyer willing to work with them for the long term on a pro bono basis, and PIELs help them overcome this obstacle. In connection with the second point, environmental movements also need a lawyer who understands legal processes and sympathizes with environmental movements. They also want a lawyer who is an expert in environmental and human rights laws and understands social movements. This lawyer must be enthusiastic about working with environmental movements in the long term on a pro bono basis. In other words, communities have high expectations from a lawyer, but cannot offer this lawyer proper financial compensation for legal services.

Although Thailand has some free legal aid programs offered through several institutions, most lawyers are not experts in environmental and human rights laws and are not interested in other aspects of the movements except legal issues. These lawyers are likely to focus solely on legal problems and disregard other parts of environmental campaigns. Their approach to law might weaken the overall environmental movements rather than strengthen them.

The experience of the Chana communities illustrates this point well because they had opportunities to work with three types of lawyers throughout their long movements. The participant describes the first lawyer as an irresponsible lawyer. This lawyer did not pay attention to the communities' stories and worked poorly in court. This lawyer made villagers feel dependent on him. The lawyer clarified that the communities' role was to listen and act as the lawyer told them. Working with this lawyer made communities feel hopeless and disempowered.³⁰ The second lawyer was competent in the legal realm, but had no interest in other aspects of the environmental movement except winning court cases.

³⁰ NCN, interviewed on September 22, 2021, at 5.

This lawyer did not think about how the law could empower environmental movements. The lawyer was shocked when he saw villagers had come to court with their campaign T-shirts and asked them to change their clothes immediately.³¹ These lawyering styles did not strengthen environmental movements. This story demonstrates how conventional lawyers could weaken environmental movements rather than support them. These lawyers tend to separate legal issues from the overall environmental movement and focus solely on court cases. Consequently, the legal strategies they employed disempowered the broad campaigns leaving environmental movements hopeless rather than hopeful.

However, this research demonstrates that it is possible for communities to effectively employ legal strategies to support their movement if they work with lawyers who are experts in environmental and human rights law and are interested in environmental campaigns. These lawyers are public interest environmental lawyers. PIELs differ from conventional lawyers because they are interested in environmental movements and want to use their skills to support the campaigns. Hence, their approach to addressing environmental problems is different from conventional lawyers. For PIELs, legal strategies are one of several tools that environmental movements can employ to solve their issues. In other words, PIELs consider themselves part of the movements in which they are supporters and the communities are leaders. Their main role is to provide legal capacity to strengthen the overall movements.

I presented evidence and asserted in Chapter 5 that PIELs do not exclusively separate legal aspects from other aspects of the environmental movements. Indeed, PIELs take on a unique role that wields legal strategies as one part of the broader movement. They consider legal strategies as part of the overall struggle. They help communities understand legal situations and how they can utilize legal tools. PIELs work with communities to navigate their movements through the complicated legal realm and let communities lead the campaigns. This unique lawyering style is important to environmental movements because it does not remove the crucial decision power from communities. Instead, it focuses on enabling communities to be more effective in making their own decisions by providing them with the knowledge and skills they do not have. In other words, PIELs play a crucial role in empowering communities. As one research participant describes:

After they (Chana villagers) learned through legal cases, they clearly understood that whenever the government and businesses wanted something [development projects], they [the government and businesses] would use state mechanisms to achieve their goals. Hence, villagers would not passively accept what the government and businesses proposed. This type of problem would not limit only to their communities; so, if they [environmental issues] happened in other places, villagers must resist them as well... This story demonstrates the impact of well-planned litigation. If we consider the old lawyering style adopted by conventional

³¹ *Ibid* at 6-7.

lawyers, they would say other issues [rather than legal issues] are irrelevant. NGOs or communities are responsible for them, not lawyers. Lawyers must be neutral and not biased toward any party. This lawyering style cannot answer communities' questions; it cannot solve problems and cannot create anything like this.³²

This statement illustrates the uniqueness of PIELs in environmental movements. To be able to utilize the new legal opportunities, aggrieved communities not only need legal knowledge, but they also need help from PIELs who understand and sympathize with their causes. Without PIELs, it is unlikely that communities in this research could effectively employ legal strategies to address their issues as they have done.

Fourth, PIELs and NGOs help communities overcome some financial hindrances, especially lawyer fees and legal expenses, by providing free services to aggrieved communities. Scholars argue that one important obstacle preventing people from taking advantage of new legal opportunities is the high cost of legal expenses.³³ This argument is sound and resonates with this research. Communities in this research are unlikely to utilize legal strategies as they did if they have to bear the full cost of legal expenses. It turned out that communities in this research could take advantage of the new legal opportunities because they got support from PIELs and NGOs. Communities did not pay lawyer fees and most legal expenses that came with legal strategies. PIELs and NGOs were responsible for most of these costs. If communities bore all legal expenses by themselves, it would put a huge burden on them. As a result, these communities might not include legal strategies in their movements and continue using conventional tools that cost less.

The Klity Creek Lead Pollution Case can illustrate this point. First, as discussed earlier, Klity Creek needed specialized lawyers committed to working with them for the long term on a pro bono basis. This high expectation would come with premium lawyer fees like hiring specialized lawyers. Second, it is common that once communities start their environmental movements, they may need lawyers to help them with not only one case, but several cases. This requirement would increase lawyer fees and legal expenses. In the Klity Creek Lead Pollution Case, communities filed three lawsuits and submitted numerous petitions to government agencies.

Third, the legal processes in Thailand take a long time to finish. The long legal process costs a lot of lawyer fees and legal expenses because as long as the case does not end, communities must continue to pay a lawyer and legal expenses. The three Klity Creek court cases took approximately 12 years for each case to finish. This prolonged litigation would normally produce an exorbitant lawyer's fee and legal expenses if communities were responsible for paying. Fourth, expenses for collecting evidence in environmental cases are high, especially when one needs an expert to testify or provide evidence to support the

³² PCN5, interviewed on April 22, 2021, at 6.

³³ Epp, *supra* note 2; Galanter, *supra* note 8.

claim. In the Klity Creek Lead Pollution Case, villagers needed a specialized doctor to prove their cases. This expert would have cost the villagers a huge amount of money. These expected costs would burden the Klity Lang community, which had already suffered from environmental harm. If the Klity Lang villagers must bear all these costs, it is unlikely they could afford legal strategies as part of their movements. The employment of legal strategies in this research is possible, partly because PIELs and NGOs bear most of these costs instead of letting communities take all of the responsibilities.

Considering the four barriers presented in this part, legal knowledge, lack of specialized lawyers, access to PIELs and media, and high legal costs, one can understand why many progressive laws do not transform into reality. It is unrealistic to believe that the advanced law will automatically deliver what the legal text states because so many hindrances prevent good laws from delivering effective results. This research resonates with this argument, but also adds some revisions. This research argues that PIELs and NGOs in Thailand provide resources that help communities overcome some major hindrances to utilizing the new legal opportunities. The PIELs and NGOs' support makes it possible for aggrieved communities to turn the new legal opportunities into effective legal strategies and change their situations. Hence, PIELs and NGOs are necessary for environmental movements that want to employ legal strategies to strengthen their causes.

4. Community

Progressive laws or rights will not deliver their promises if people do not try to utilize them.³⁴ In other words, regarding legal opportunities, the users are the ones who transform written laws or rights into reality. In the Thai context, communities are crucial to transforming environmental laws or rights into reality. This factor is another necessary element that makes legal strategies in this research work effectively, but, at the same time, it receives less attention from Thai scholars. Communities are essential for turning legal opportunities into effective legal strategies for at least four main reasons.

First, Thailand does not have a rule of law culture that perceives law as both a source and a limit of state power. This lack makes it difficult for people who want to create change to use legal tools. The country that changed from an absolute monarchy regime to a constitutional monarchy about eighty years ago has continued its strong state nature where the state has power over its people, but less accountability in the legal system. The Thai legal system historically privileges state institutions over people's liberty and freedom. Many human rights violations have happened on behalf of state governments, and few government officials have been held accountable throughout modern Thai history. Government officials have not embraced the idea that they are regulated by the law, and that people have the right to challenge them. Officials prefer to follow government policies or their superiors' suggestions rather than follow the law.

³⁴ Frank Munger, "Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide: Citizen Participation in Legal Decision Making: A Cross-Cultural Perspective" (2007) 40 Cornell Int'l LJ 455, online: <<https://heinonline.org/HOL/P?h=hein.journals/cintl40&i=461>> at 464.

Because of the lack of the rule of law culture, legal compliance is one of the environmental movements' biggest challenges. When communities face a cultural problem, they cannot rely solely on conventional legal tools such as litigation. To overcome this cultural issue, communities need to do more than litigation. They must continue their campaign both inside and outside the courts. Communities must work with the media to raise public awareness. And they may need to launch public demonstrations to support their legal strategies. In short, they need to be active. Changing norms and practices takes time and requires active engagement from communities in the long term.

Second, it is a difficult decision for aggrieved communities in Thailand to challenge people in power because, historically, Thai people are deferential to authority.³⁵ Culturally, Thais are afraid of authority because the Thai rights and liberty concepts have been founded on the idea of respecting authority rather than valuing individual freedom or equality.³⁶ Thais tend to believe that they have no right to challenge people in power. The imbalance of power between government officials and businesses, on the one hand, and environmental movements, on the other hand, makes it difficult for communities in Thailand to think about challenging people in power.

As this research indicates, communities feared using legal tools to challenge government agencies or businesses because they did not think they had the right to do so and were concerned about backlash. Communities' concerns about negative consequences are sound, as the case studies in this research revealed. When communities decided to use legal tools to address their issues, it was common for them to receive legal attacks from government agencies or businesses. In addition, it was not unusual for local communities to be attacked by illegal means. It is unlikely that individual activists can bear this challenge alone. Environmental movements need a community that is active and willing to overcome the deference to authority and endure expected backlash.

Third, legal processes in Thailand take time and resources and requires communities' continuing support. After the aggrieved communities overcome the cultural and psychological challenges and decide to use legal tools to address their problem, they face the legal process delay that may take a decade to finish. As discussed, using the law to create change requires proactive communities to do more than litigation. Effective legal strategies need active communities to do various activities to supplement legal strategies, costing communities a lot of their limited resources, such as time and money. Although PIELs and NGOs bear some legal costs, legal strategies and other activities still burden communities' time and resources.

The Chana Pipeline and Industrial Projects Case demonstrates this point well. Chana communities have engaged with legal processes for more than ten years. As presented in Chapter 5, villagers went to courts and organized numerous activities to support court cases

³⁵ The Economist, "Thailand", (28 February, 2002), online: *The Economist* <<https://www.economist.com/taxonomy/term/%25?page=25>>.

³⁶ Thanet Aphornsuvan, *Freedom and Rights in Thai Political History*, (Thammasat University Press: 2013), at 10.

from the beginning to the end. Besides lawyers' fees and some expenses supported by PIELs and NGOs, Chana communities spent many of their limited resources to support their activities for years. This contribution is possible partially because these communities are committed to their causes and support each other through the long-legal processes. Community active engagement makes it possible for the movements to endure pressure from the government and businesses and carry out their campaign for years.

When considering the role of aggrieved communities in environmental movements in this research, one would recognize that they play a crucial role in the overall campaigns and legal strategies. After obtaining information about the new legal opportunities from PIELs, they are the ones who decide to include legal strategies in their movements. They are the ones who organize varieties of activities to supplement legal tools that finally lead to positive results presented in Chapter 5. Communities play a crucial role in transforming legal opportunities into reality. They, with support from PIELs and NGOs, are the ones who make the law work in unprecedented ways. In this sense, the aggrieved communities, through their movements, are shaping the new legal opportunities into a powerful tool for environmental movements.

Community active engagement allows environmental movements to incorporate legal strategies into their struggles. This factor is a necessary and crucial condition that makes legal strategies effective. It is hard to imagine that individual activists could make the same impacts as the communities did in this research. In other words, without communities who take the trouble to utilize the new legal opportunities by employing various legal strategies, it is unlikely that the new legal opportunities presented by constitutions and the law would be effectively transformed into reality.

5. Virtuous Cycle of Empowerment

Drawing from the results of this research, I argue that progressive law and environmental movements empower each other, creating a virtuous cycle of empowerment. From the environmental movement side, the new legal opportunities make it possible for them to create unprecedented changes. The new constitutional environmental rights make it possible for environmental campaigns to bring about legal recognitions that help them overcome stalled situations and pave the way for future movements. Litigations bring substantial financial rewards to aggrieved communities and improve environmental qualities that had long damaged their communities. Legal tools strengthen environmental movements by raising public awareness, supporting ongoing campaigns and changing the legal consciousness of villagers, NGOs, and PIELs to support overall movements better.

Environmental movements in this research can use legal strategies to create these various changes because of the new legal opportunities presented in Thai society after the 1997 Constitution. These new legal opportunities offer them new powerful tools to push their agendas forward. Through their engagement with legal processes, environmental movements realize that they can utilize the law to support their campaigns in various ways. They see how legal strategies can help them obtain what they could not get by other means. Their experiences with legal processes change their understanding of the law from viewing

it solely as state tools to regulate people's rights to resources communities can employ to protect and fulfill their demands. For the first time, environmental movements feel they can use the law to defend their communities. In this sense, the law empowers environmental movements.

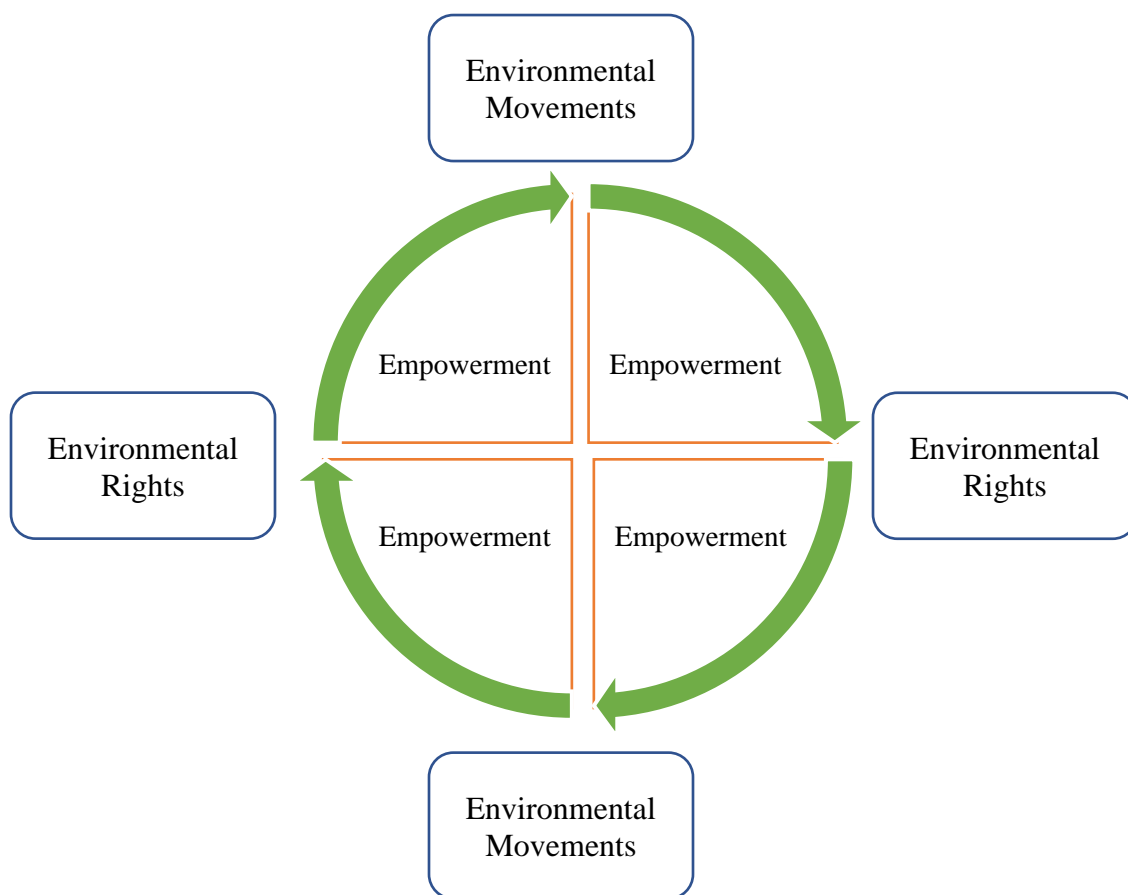


Figure 1: The Virtuous Cycle of Environmental Rights Empowerment

From the legal system perspective, the written law that the state enacted to guarantee Thai people's environmental rights can gain its credibility only when this law at least delivers some of what the text states. But many obstacles stand between the progressive law and its implementation, preventing good law from delivering effective results. As this research asserts, the success of environmental strategies in this research is possible not only because of the presence of new legal opportunities, but also the presence of communities, PIELs, and NGOs. Without these important factors, it is unlikely that the new legal opportunities would be able to create changes, as presented in this research. In this sense, these factors make it possible for the legal system to fulfill its goals in delivering what the law states, at least in some cases. This point resonates with Epp's argument that successful law reform needs both progressive law and a support structure.

The relationship between the new legal opportunities and environmental movements in this research is symbiotic. They benefit each other by empowering each other to achieve what is hard to reach on their own. On the one hand, the new legal opportunities make the environmental movements more effective in solving and pushing their issues forward. On the other hand, environmental movements are the key driver that makes it possible to transform progressive constitutional provisions and laws into reality. Without new legal opportunities, the environmental movements would not be able to achieve the many gains they were able to obtain in this research. Without active environmental movements, the Thai legal system is unlikely to be able to deliver unprecedented changes on environmental issues as it did. In this sense, the new legal opportunities and the environmental movements create a positive feedback loop where the presence of each side empowers the other creating a virtuous cycle of environmental rights empowerment.

6. Conclusion

This chapter set out to answer how the changes created by legal strategies presented in Chapter 5 impact Thai law and society in light of the literature on law and social change. I briefly responded to the question in the introduction. Then, I gave a detailed assessment in the following parts. Part 2 assessed and asserted that the new legal opportunities presented in the 1997 Constitution and other subsequent constitutions and laws provided constitutional frameworks, courts, and human rights monitoring agencies that environmental movements could employ to support their campaigns. The constitutional environmental rights allowed environmental movements to frame their struggle as constitutional rights violations that can forcefully mobilize responsible parties to take action. This new constitutional framework was supplemented by the new administrative courts that made it possible for environmental movements, for the first time, to challenge powerful government agencies to respect the newly recognized rights and fulfill their legal duties. And the human rights monitoring agencies helped environmental movements raise public awareness, negotiate, and produce reports that environmental movements can use in other activities.

Part 3 assessed and argued that new legal opportunities are inadequate if not supplemented by two key actors: PIELs and NGOs. This part emphasized the roles of PIELs and NGOs in helping aggrieved communities overcome capacity and resource barriers. PIELs and NGOs provide legal knowledge, legal services, and funding to aggrieved communities. These two actors make it possible for communities to include legal strategies in their campaigns and transform the new legal opportunities into reality. Without support from these two actors, it is unlikely that communities in this research could navigate and afford a complicated and expensive legal process and effectively utilize legal tools to create change. PIELs and NGOs function as support structures for environmental rights movements.

Part 4 assessed and argued that a community willing to engage with the legal process in the long term is another important factor that makes legal strategies effective. I asserted in this part that environmental movements need communities to initiate and sustain their engagement with legal strategies for years to achieve effective results. Community active

engagement makes it possible for environmental movements to overcome the lack of the rule of law culture, the society's deference to authorities, and the delayed legal process. These communities play a crucial role in making legal strategies more effective by accompanying them with other campaigns. They use legal strategies as one of their tools to create change. They are the ones who bear the high costs and consequences of challenging authorities. Without them, no matter how impressive the law is, it is unlikely that environmental movements could transform the new legal opportunities into reality.

In Part 5, I assert that the results from this research suggest that the new legal opportunities and environmental movements empower each other. On the one hand, the data indicates that the new legal opportunities enable the environmental movements to create unprecedented change that the campaigns have never achieved by other means. These results are unlikely to happen if Thailand did not pass constitutions and laws to recognize environmental rights and establish administrative courts and other human rights monitoring agencies. On the other hand, the legal system gains credibility by delivering what the constitutions and law promised: enforceable environmental rights. The concrete results of recognized environmental rights presented in this research are possible because the strong environmental movements push hard to make the new legal opportunities work. In this sense, the environmental rights and environmental movements empower each other, creating a virtuous cycle of environmental rights empowerment.

Chapter 7: Conclusion

1. Introduction

I started this research because I wanted to understand how the environmental rights first adopted in the 1997 Constitution work for environmental movements in Thailand. Before the 1997 Constitution, the Thai government used the law and the legal system mainly to regulate citizens. Citizens rarely used the law and the legal system to limit, or make government or businesses accountable to the people. Indeed, the Thai government has a long history of using the legal system to restrict and violate human rights.¹ This historical background raised an important question that law and social change scholars and I are interested in: what impacts do these new rights create for Thai society? This question is important because, as many scholars warn, law reform does not always lead to substantive societal changes.² To answer this question, I decided to explore the work of PIELs that evolved and played an important role in ecological campaigns approximately after 1997. This research examined how environmental movements utilized the new legal opportunities to support their causes and strengthen their campaigns. In other words, it is empirical research on law and environmental movements in Thailand after the adoption of the 1997 Constitution.

This research began by examining the relationship between the Thai legal system and environmental movements in Thailand before 1997, in which ecological campaigns rarely turned to legal tools to support their struggles. This reluctance to use legal tools might come from the Thai state's long history of human rights violations by lawful means and brutal force. Concerning environmental movements, before 1997, the Thai legal system did not recognize environmental rights and provided limited venues for people to utilize the legal system to protect their environment, health, and livelihood. The aggrieved communities had limited channels to address environmental issues and usually used familiar methods such as adaptation, relying on leaders, and protests. In this sense, the law played a limited role in ecological movements because the Thai legal system did not provide legal opportunities for people to rely on when they faced environmental problems.

The legal arena has changed since the Thai Parliament enacted the 1997 Constitution recognizing environmental rights and establishing the administrative court and several rights agencies. This shift toward environmental rights was where my empirical data

¹ See for example, Charan Khosananan, *Law and Rights and Liberty in Thailand: The Parallel from 1932 to Present (in Thai)*, (Religious Cooperation for Society Group, 1985.; Withit Mantāphōn & Charles Taylor, *Roads to democracy: human rights and democratic development in Thailand* (Bangkok ; Montreal: publisher not identified, 1994).; Tyrell Haberkorn, *In plain sight: impunity and human rights in Thailand*, New perspectives in Southeast Asian studies (Madison, Wisconsin: The University of Wisconsin Press, 2018).

² See for example, Gerald N Rosenberg, *The hollow hope: can courts bring about social change?*, 2d ed, American politics and political economy series (Chicago: University of Chicago, 1998).; Ran Hirschl, *Towards juristocracy: the origins and consequences of the new constitutionalism* (Cambridge, Mass: Harvard University Press, 2004).; Marc Galanter, "Why the Haves Come out Ahead: Speculations on the Limits of Legal Change Essay" (1974) 9:1 Law Soc Rev 95–160.

contributed to understanding the law and environmental movements in Thailand. This research examined what impacts environmental movements were able to achieve through these new legal opportunities. Did these new rights result in any changes to Thai society? How did environmental movements transform these new rights into realities? Lastly, how could these research findings explain the relationship between environmental rights and environmental movements? I briefly revisit findings and arguments emphasizing that community empowerment is crucial for effective legal strategies and environmental movements. As one community leader suggests about community power in environmental movements, “one thing I have learned is that community power does exist. But it is not brought up. Suppose this power is brought up and used as soft power. I am confident that Thailand will survive and thrive. Community power will reduce inequality in our society.”³ This statement demonstrates how important community empowerment is for ecological movements and why relevant parties should pay more attention to empowering environmental movements.

Drawing from the community empowerment aspect, I formulate recommendations for relevant parties to improve their roles in protecting the environment, health, and livelihood.

First, I suggest that the government and law reformers should revise or supplement existing environmental rights and institutions with more accessible and responsive legal mechanisms. Supplemental law and legal mechanisms should aim to strengthen communities and civil societies.

Second, PIELs and NGOs should prioritize community empowerment rather than focus exclusively on legal recognition or tangible benefits. This suggestion does not mean that they should not pay attention to these two benefits, but these two benefits should align with community empowerment.

Third, communities should recognize their central roles in environmental movements. They should consider the new legal opportunities as one of the resources they can utilize to support their broad campaigns and tailor legal strategies to align with other activities and not solely rely on legal tools.

Following this introduction, in Part 2, I restate the first finding of how legal strategies lead to legal recognition. I emphasize the court’s role in affirming and expanding rights, making stalled parties take action. Part 3 moves from the abstract impacts to tangible benefits brought about by legal tools. This part highlights the power of legal instruments in forcing responsible parties to pay substantial money to compensate the aggrieved communities or remediate the environment. Part 4 is about the community empowerment aspect of legal strategies. In this part, I emphasize how legal tools enable communities to change their relationship with government agencies and businesses. Villagers, NGOs, and PIELs have learned from their experiences to see and treat law in a more nuanced and realistic way.

³ CKH1, interviewed on December 12, 2021, at 12.

Part 5 reiterates three important factors that make legal strategies a powerful tool for environmental movements. I highlight how each factor is a necessary function, but insufficient for making law work. I also emphasize the essential role of community engagement in legal strategies. Part 6 summarizes my general observation of the relationship between environmental rights and environmental movements. I illustrate the symbiotic relationship between these two aspects: the presence of one empowers the other, creating a cycle of empowerment. Drawing on this research, in Part 7, I formulate recommendations to the Thai government, PIELs, NGOs, and communities. Each party has different roles in protecting the environment, health, and livelihood. However, this research shows that they should prioritize empowering communities because only empowered communities can start and sustain the long movements to transform a written law into reality.

2. Legal Recognition

In the finding chapter (Chapter 5), I presented empirical data demonstrating that the environmental movements could use legal strategies unprecedentedly to affirm and expand environmental rights. This court recognition and expansion of rights helped push parties to take action. As scholars warned, the newly adopted environmental rights had not automatically transformed Thai society to deal with the environment better.⁴ Government agencies and businesses had continued as usual and barely changed their practices toward ecological movements. The constitutional change recognizing the new environmental rights did not change their practices.

However, with support from PIELs and NGOs, the aggrieved communities in this research found the new legal opportunities useful. They used legal strategies to push the involved parties to change their practices. These legal strategies led to court affirmation of rights that put more pressure on government agencies and businesses. The court affirmation made government agencies and businesses that had long disregarded environmental rights change their practices to be more responsive to the environment, health and citizen livelihood. In some cases, the court adopted a broad interpretation of rights that allowed the larger population to benefit from these rights, or made it more convenient for people to exercise their rights.

Legal recognition benefits environmental movements both in the short term and the long term. In the short term, court affirmation of rights pushes responsible parties to take action. In the Thai context, it might not be unusual for government agencies and businesses to ignore constitutional provisions. However, it would be difficult for them to do the same if the courts affirmed these constitutional provisions. In the long run, court affirmation and expansion of rights pave the way for future movements, so they can use these court

⁴ Frank Munger, “Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand *The Rising Tide: Citizen Participation in Legal Decision Making: A Cross-Cultural Perspective*” (2007) 40 *Cornell Int’l LJ* 455, online: <<https://heinonline.org/HOL/P?h=hein.journals/cintl40&i=461>> at 464.; Alan Hunt, *Explorations in law and society: towards a constitutive theory of law*, After the law (New York: Routledge, 1993), at 247.

precedents to support their campaigns. In this sense, legal recognition is useful for current and future environmental movements.

3. Tangible Benefits

In addition to legal recognition and in contrasted with some scholars' warnings about the ineffectiveness of law in creating change,⁵ data from this research illustrated that legal strategies brought substantive tangible benefits to environmental movements. Legal tools significantly changed communities that have long suffered from ecological harm. Environmental movements effectively employed legal strategies and other approaches to gain compensation and environmental quality.

Money cannot solve environmental, health, and livelihood damages caused by environmentally harmful activities. However, it can help relieve the suffering and burden of the aggrieved communities and to punish the polluters. Data in Chapter 5 demonstrated that legal strategies, especially litigation, were crucial in making responsible parties concede and pay considerable money to the aggrieved communities they had long refused to pay. Communities used the received money to compensate for their losses and support their movements. Litigation and court orders forced responsible parties to expend substantial resources to address environmental issues. Government agencies and businesses would continue to refuse to pay compensation and expend money to solve ecological problems if communities did not legally challenge them. In this sense, a monetary award was compensation for the aggrieved communities, but a punishment for responsible parties.

A common view within environmental movements is that improving the environment is more important than getting compensation. The reason is that communities cannot sustain their livelihood in a polluted environment. In Chapter 5, I presented data to show that legal strategies contributed to improving the environment by stopping the source of pollution or remediating the damaged environment. Legal tools enabled environmental movements to force the responsible parties to stop environmentally harmful activities such as mining. Communities successfully employed legal tools to move government agencies and businesses to revise their operation or plan to reduce pollution. Data showed that legal means contributed to improving environmental quality, even though pollution was still high in some cases. This research demonstrated that law and legal strategies substantially benefit environmental campaigns but are far from perfect in addressing environmental issues.

4. Community Empowerment

One important finding from this research is that law and legal strategies, employed in various ways in multiple situations, empower the environmental movements to better

⁵ See, for example, Rosenberg, *The hollow hope*, *supra* note 3; Janet E Halley & Wendy Brown, eds, *Left legalism / left critique* (Durham [NC]: Duke University Press, 2002); Alan Freeman, "Anti-discrimination Law: The View from 1989," in David Kairys, ed, *The Politics of Law: A Progressive Critique*, (New York: Pantheon Books, 1990).

advocate and be better advocates for a healthy environment. This finding challenges the scholars who warn about the disempowering characteristic of legal tools.⁶ This research found that including legal strategies in environmental movements did not weaken the campaigns. The key point is that environmental groups did not treat legal tools as the only tools they relied on. In contrast, they tailored legal strategies to fit their broader movements. They did not simply believe what government agencies or businesses told them about how the law should be interpreted. They treated the law as a network of the relationship of negotiated practices where their voices counted in the legal process.⁷ Consequently, these new legal tools strengthened their campaigns and enabled them to achieve what they could not achieve by other means.

Environmental movements utilized the newsworthy legal actions by including legal strategies in their campaigns. Reporters were interested in how communities employed the new legal opportunities to protect their environment, health, and livelihood. The data show that reporters reported on legal cases over a long period until the legal process's end and beyond. Media brought environmental issues to public awareness, bringing researchers to investigate the problems and, as a result, put more pressure on the responsible parties to address the concerns. Legal actions helped environmental movements bring attention to issues within and beyond their communities.

Environmental movements effectively employed legal tools to support their ongoing campaigns in various ways. PIELs helped environmental campaigns clear legal obstacles other parties had used to stop their activities. Community leaders, NGOs, and community members could continue their movements despite facing legal attacks because they received legal capacity support from PIELs. Legal tools also strengthened environmental movements in their interaction with government agencies and businesses. With help using legal strategies, environmental campaigns gained more negotiating power. Consequently, responsible parties took their requests seriously and responded more responsively.

Engaging legal strategies in environmental movements changed how villagers, NGOs and PIELs viewed the law and legal strategy. They developed legal consciousness that was more nuanced and realistic and better supported their campaigns. Villagers and NGOs changed their views of the law from state tools that govern people to resources they could tailor to support their movements. This understanding evolved from their long interaction with legal processes, in which they first experienced legal tools helping them achieve what they could not previously achieve. The legal process that government agencies and businesses used to threaten them became one of the powerful means they utilized to push their agenda forward. The law became a resource that they could include in their broad movements. In this way, their new legal consciousness better fits into the environmental movement than their previous understanding of the role of law.

⁶ Janet Halley & Wendy Brown, *Left Legalism/Left Critique* (Duke University Press, 2002), at 19-20.

⁷ James Tully, *Public philosophy in a new key*, Ideas in context, volume II: Imperialism and Civic Freedom (Cambridge, UK: Cambridge University Press, 2008) at 286.

PIELs involved in environmental movements also changed their legal consciousness from focusing on litigation and creating a legal precedent to focusing more on empowering environmental campaigns through various legal strategies. PIELs started working with communities by emphasizing using the court to obtain legal recognition and create good legal precedents. Later, after a long engagement with environmental movements, PIELs viewed legal strategies as more nuanced than they formerly understood: legal tools could benefit environmental groups in various ways. PIELs, then, moved from concentrating on legal outcomes to community empowerment. They recognized that a legal instrument was only one of several tools environmental movements could utilize to support their campaigns. PIELs' roles were strengthening these movements by providing legal capacity. In this sense, PIELs' understanding of the law and legal strategies is more sophisticated and realistic and better serves environmental movements.

5. Factors for Effective Legal Strategies

I argued in Chapter 6 that environmental movements could utilize legal strategies to support their campaigns effectively because of the new legal opportunities, support from PIELs and NGOs, and community engagement. These three factors provided conditions for environmental campaigns to employ legal tools powerfully. Each element was important to make the law work for the movements but, left on its own, was insufficient. This argument suggests that making the law work in practice requires various factors beyond just good law or good lawyers.

The first critical factor for environmental movements was the new legal opportunities presented in Thai society after adopting the 1997 Constitution. The new environmental rights adopted in Thai constitutions and other statutes allowed environmental groups to tap into potentially powerful legal instruments. Communities framed their movements in constitutional rights terms and used the constitutional provisions as their reference. They used the new administrative courts to challenge government decisions that violated their rights. Activists petitioned the new rights agencies to investigate their issues and tailored these processes to support their overall movements. The new legal opportunities provided environmental campaigns with powerful resources to solve environmental problems.

The second element that enabled environmental movements to employ legal strategies effectively was the support from PIELs and NGOs. This factor received little attention from Thai reformers when they drafted the constitutions and laws to push forward environmental rights. However, I argued that this support was necessary for transforming complicated and costly legal opportunities into realities. It is unrealistic to assume that when the Parliament passed constitutions and laws recognizing environmental rights, people would easily access and take advantage of these new rights. There is always a wide gap between a written law and its implementation. Support from NGOs and PIELs helped narrow this gap. NGOs connected communities to a small group of PIELs and provided some funding to support legal procedures. PIELs helped communities understand numerous legal tools and enabled them to include legal strategies in their broad movements. Without support from NGOs and PIELs, who were experts in environmental laws and had a passion for

ecological campaigns, it was unlikely that communities could transform the new legal opportunities into effective legal strategies.

Community engagement is the last factor contributing to effective legal strategies. Communities played a crucial role in making legal strategies work, but they received less attention from Thai reformers and legal scholars when introducing new rights and institutions. It was true that the new legal opportunities presented after the 1997 Constitution gave communities powerful resources never available to them before. It was also true that the support from PIELs and NGOs made it possible for communities to understand and use the new legal opportunities. But these new opportunities and support would not lead to change on the ground if aggrieved communities were passive and did not engage with environmental movements and legal advocacy.

In contrast, to use the new legal opportunities and resources provided by PIELs and NGOs, communities actively engaged with legal processes and environmental movements for a long time. They put their limited energy and resources into these new legal mechanisms and organized various activities to supplement legal strategies. The Thai legal system, which has not firmly embedded the rule of law concept, would not likely work for the aggrieved communities if they did not actively push hard for years. In other words, community engagement made it possible to transform new legal opportunities and resources into concrete legal strategies that led to unprecedented changes presented in this research.

In sum, the three factors together made it possible for environmental movements to mobilize legal strategies to support their campaigns more effectively. They provided key structures for environmental movements to utilize legal tools forcefully. Each of these factors alone was insufficient for environmental campaigns to take advantage of legal opportunities; environmental movements needed all three factors. In this sense, these three factors were minimum conditions that enabled environmental movements to transform environmental rights into realities in Thailand.

6. A Cycle of Empowerment

Analyzing the research findings in light of the law and social change literature led me to another argument about the relationship between rights and environmental movements in Thailand. I argued in Chapter 6 that the relationship between the new legal opportunities and environmental campaigns was symbiotic. They empower each other to achieve what they could not achieve by themselves.

On the one hand, the new legal opportunities offered environmental movements powerful new frameworks, institutions, and mechanisms to address their environmental issues. In Thai history, communities could never frame their environmental, health, and livelihood problems in terms of constitutional rights until the adoption of the 1997 Constitution. Environmental movements could use the new administrative court to push stalled government agencies to fulfill their duties or revoke their harmful actions. Communities increased their negotiating power concerning government agencies and businesses because

they could use several legal tools to support their campaigns. These benefits did not guarantee success, but they empowered environmental movements and improved their capacity to deal with their problems. The movements recognized they had powerful legal tools to add to their campaigns.

On the other hand, the active environmental movements enabled the Thai legal system to deliver what it promised in the constitutions and other statutes: a healthy environment. It is unrealistic to believe that constitutional promises would be fulfilled without active users, especially in a country where coups regularly destroy the constitutions and the rule of law is not firmly embedded. Many obstacles stand between good law and implementation. To make environmental rights work in this context, one needs active users willing to put these rights into practice. This research found that the unprecedented changes presented in Chapter 5 resulted from the long fights of environmental movements. The movements enabled the legal system to deliver concrete benefits of environmental rights to Thai society. Without active environmental movements, it was unlikely that the Thai constitutions and legal system could deliver substantial changes for Thai society as they did in this research.

The symbiotic relationship between environmental rights and environmental movements is interesting because it helps address the question: what should society choose between law and political movements to push forward a healthy environment? This research suggested that to advocate for a healthy environment effectively one needs both established environmental rights and active movements. For societies that do not have any environmental rights in their legal system, this research shows that living social movements are a foundation of a healthy environment and a recognition of environmental rights. For societies with these rights in their legal systems, their focus should be putting these rights into action, seeing how they work or do not work, and advocating for a better version. But emphasizing legal tools should not come at the expense of strong social movements. This research reminds us that rights and movements are not on opposite sites, and people do not need to choose one over another: societies need established environmental rights and active environmental movements to advocate for a healthy environment effectively.

7. Research Implication

Drawing on research findings and analysis, I have some suggestions for relevant parties to improve their roles in advocating for a better environment, health, and citizen livelihood. These recommendations may not guarantee that all environmental issues will be addressed, but they would help Thai society increase its capacity to better deal with environmental problems in the future. I place an emphasis on the Thai government, PIELs, NGOs, and communities who play a different but important role in making the law work for a healthy environment. If they can change even a little, it would empower Thai society to handle ecological problems better.

For the Thai government, adopting the environmental rights and enforcement institutions in constitutions and statutes beginning in 1997 was the important first step. These rights and institutions have laid a strong foundation for environmental rights movements, but

these are far from perfect solutions to preserve or restore a healthy environment. The government and law reformers should revise or supplement these rights and institutions with more accessible and responsive legal mechanisms. The law and legal mechanisms should aim to strengthen communities and civil societies, enabling them to address environmental problems effectively. The government and reformers should realize that Thai society has not firmly embedded the rule of law concept in its culture, and government officials are not always following what laws require. Good laws are important but not sufficient to create change. To make progressive law work, the drafters must design laws and legal mechanisms to empower and encourage people to utilize legal opportunities to advocate for a healthy environment.

For PIELs and NGOs, they should prioritize community empowerment. According to this research, PIELs and NGOs are crucial in making legal strategies work for environmental movements. Support from PIELs and NGOs enables the aggrieved communities to do things they cannot do on their own. The support allows the communities to employ legal tools to push forward their agendas effectively. Communities can understand and utilize the new powerful legal tools because PIELs and NGOs provide the necessary resources. In short, communities are stronger, and these empowered communities play an important role in legal processes and overall environmental movements. PIELs and NGOs help communities transform new legal opportunities into effective legal strategies and bring about unprecedented changes; however, their support works because it empowers communities to advocate better for their issues. Without active communities, laws and support will not work. In this sense, PIELs and NGOs should aim to empower communities.

Communities should recognize and embrace their central roles in environmental movements. No legal opportunities, legal institutions, PIELs, or NGOs can replace their positions in the campaigns. Communities are the ones who are affected or likely to be affected by environmentally harmful activities and who will bear the consequences of environmental movements. They play a crucial role in environmental campaigns and legal strategies from the beginning to the end. As this research suggested, communities should consider the new legal opportunities as one of the resources they can utilize to support their broad campaigns. Communities should treat a legal tool as a means to solve environmental issues not an end by itself. As a result, they should tailor legal strategies to align with other activities and not solely rely on legal approaches.

Communities need to work with PIELs and NGOs to use legal tools effectively. These actors can provide communities the necessary resources to employ legal strategies. Communities should work with these supporters to develop a nuanced understanding of the laws and legal procedures; hence, they can make an informed decision on using legal tools in their movements. It is important to emphasize that communities are the ones who should make the last decision about legal strategies, not lawyers nor NGOs.

Legal tools and supporters may help communities make better decisions or advocate, but they do not replace or displace the decision-making power from communities. After deciding to include legal strategies in their movements, communities should sustain their

active roles in the legal process. They cannot leave their matters to government agencies, courts, PIELs, or NGOs. Their active role in the legal process is critical to make laws work in their favour. In short, communities should continue their active role inside and outside official venues to ensure legal strategies effectively work for their communities. Throughout this long engagement, communities would gain knowledge and experience on better advocating for a healthy environment. As a result, they would become stronger in their advocacy.

This last implication brings back my argument that environmental rights and environmental movements have a symbiotic relationship: they empower each other to achieve beyond what they had ever achieved before. This relationship means societies should think and invest resources into developing responsive law and empowering people to utilize it. This research examined how environmental rights worked after the Thai Parliament passed the 1997 Constitution to recognize environmental rights; it illustrated the importance of these new rights and other supplementary institutions. However, I also argued that without the active environmental movements that mobilize their energy and resources to transform these new rights into concrete legal strategies, it is unlikely that the established rights would lead to unprecedented changes. The good news is that Thai society has environmental rights and institutions they can mobilize to advocate for a healthy environment. The bad news is that to make these legal opportunities work, Thai society cannot passively wait for change but must be active and keep pushing these new rights to work and deliver what it is supposed to: a healthy environment. And this will benefit all of us.

Bibliography

LEGISLATION: THAILAND

The Siam Temporary Constitution Act B.E. 2475 (1932), Royal Gazette, Book 49/-/ p.166/ June 27, 1932.

The Constitution of the Kingdom of Thailand B.E. 2540 (1997), in Royal Gazette, Book 114/Chapter 5 Kor/p.1/ October 11, 1997. For unofficial English translation, see, online: <<http://www.asianlii.org/th/legis/const/1997/1.html>>.

The Constitution of the Kingdom of Thailand B.E. 2550 (2007), in Royal Gazette, Book 124/Chapter 47 Kor/p.1/ August 24, 2007. For the Office of the Council of State's English translation, online: <<https://www.krisdika.go.th/documents/67673/181643/C04.pdf/929d6735-87ac-89b6-74e3-d90cd503304f>>.

The Constitution of the Kingdom of Thailand B.E. 2560, (2017), in Royal Gazette, Book 134/Chapter 40 Kor/p.1/ April 6, 2017. For the Office of the Council of State's English translation, online: <https://www.krisdika.go.th/documents/67673/181643/837163_0001.pdf/3d0aab10-e61f-03a4-136a-75003ce4c625>

The National Health Act B.E. 2550 (2007), in Royal Gazette, Book 124/Chapter 16 Kor/p.1/March 19, 2007.

JURISPRUDENCE: THAILAND

THE COURT OF JUSTICE

The Supreme Court Judgment No. 12653-12661/2556 (2003), Songkla Provincial Public Prosecution plaintiff vs Ratchada/Ratchata Wattanasak and 19 defendants.

Supreme Court of Justice Judgment No. 4571/2556 (2013), online: DEKA.in.th <<https://deka.in.th/view-544466.html>>.

The Supreme Court of Justice No. 12668/2557 (2014), Renoo Saengsuwan and 5 plaintiffs V Peerapol Mining Ltd. defendant.

The Supreme Court Judgement No. 15219/2558, Kamtorn Seesuwannamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant.

The Supreme Court of Justice Judgment, No. 9962/2559 (2016), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant.

The Supreme Court of Justice Judgment, No. Red 10578/2559 (2016), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

The Supreme Court Judgement No. 10797/2559 (2016), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants.

The Supreme Court Judgment No. 4494/2562 (2019), Sakriya/Sakariya Mhawangied and 24 plaintiffs v Police General San Sarutanon and 37 defendants.

The Appeal Court Region 7 Judgment No. Red 3426/2550, Kamtorn Seesuwamala and 7 plaintiffs V Takua Concentrate (Thailand) Ltd. and 1 defendant.

The Appeal Court Region 6 Judgment Red No. 439/2552 (2009), Mae Sod Provincial Public Prosecutor plaintiff vs Di Paepho defendant.

The Appeal Court Region 6 Judgment Red No. 440/2552 (2009), Mae Sod Provincial Public Prosecutor plaintiff vs Naw Haymui Wiangwicha defendant.

The Appeal Court Region 7 Judgment No. 2604/2554 (2011), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants.

The Appeal Court Judgment Region 9, No. Red 516/2555 (2012), Renu Saengsuwan and 3 plaintiffs vs Peerapol Mining Ltd. defendant.

The Appeal Court Region 9 Judgment No. Red 407/2557 (2014), Nareumon Chantasuwana and another plaintiff v Peerapol Mining Company Ltd. and another defendant.

The Sakeaw Consent Judgment No. Red 1325/2549 (2006), Boonliang Kongsatorn and 199 plaintiffs V Profession Waste Technology (1999) Public Co, Ltd.

The Kanchanaburi Provincial Court Judgement No. Red 1565/2549 (2006), Kamtorn Seesuwamala and 7 plaintiffs V Lead Concentrate (Thailand) Ltd. and 1 defendant.

Mae Sod Provincial Court Judgment Red No. 1737/2551 (2008), Mae Sod Public Prosecutor vs Ms. Naw Haymui.

Mae Sod Provincial Court Judgment Red No. 1738/2551 (2008), dated May 6, 2010, Mae Sod Public Prosecutor vs Mr. De Peapho.

The Kanchanaburi Provincial Court Judgment No. Red 1290/2553 (2010), Yasoe Nasuansuwan and 150 plaintiffs V Takua Concentrate (Thailand) Ltd. and 6 defendants

The Songkhla District Court Judgment No. Red 313/2554 (2011), Renu Saengsuwan and 5 plaintiffs v Peerapol Mining Company Ltd. defendant.

The Songkhla Provincial Court Judgment No. Red 854/2556 (2013), Nareumon Chantasuan and another plaintiff v Peerapol Mining Company Ltd. and another defendant.

The Songkhla Provincial Court Judgment No. Red 922/2556 (2013), Eakachai Issarata and 8 plaintiffs vs Peerapol Mining Company Ltd. and 1 defendant.

THE ADMINISTRATIVE COURT

The Supreme Administrative Court Order No. 592/2552 (2009), Anti-Global Warming Association and 42 claimants vs National Environmental Board and 7 defendants, (accessed April 15, 2019).

The Supreme Administrative Court Order No. KorSor 48/2557, Noosai Polsa and 77 plaintiffs V Industrial Minister and 2 defendants.

The Supreme Administrative Court Judgment Red No. A 753/2555 (2012), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department.

The Supreme Administrative Court No. Red A. 711/2555 (2011), Chaden Auntaboripong and 29 plaintiffs V The Royal Thai Police and 2 defendants.

The Supreme Administrative Court Order, No. A. 921/2560 (2017), Charoen Dechkhoom and 16 claimant vs National Environmental Board.

The Supreme Administrative Court Judgment No. Red A. 884/2564 (2021), Anti-Global Warming Association and 42 claimants vs National Environmental Board and 7 defendants.

The Songkla Administrative Court Judgment, No. Red 51/2549 (2006), Jaeden Anantaboripong and 29 plaintiff vs Thai Royal Police and 2 defendants.

The Central Administrative Court Judgment, Red No. 1352/2553 (2010), Stop Global Warming Association and 42 claimants vs National Environmental Board and 7 defendants.

The Rayong Administrative Court Judgment Red No. A 32/2552 (2009), Charoen Dechkhoom and 16 claimant vs National Environmental Board.

The Central Administrative Court Injunction Order No. 908/2552 (2009), Anti-global warming association and 42 claimants v National Environmental Board and 7 defendants.

The Central Administrative Court Judgment No. Red 637/2551 (2008), Yasoe Nasuansuwan and 21 claimant vs Pollution Control Department.

JURISPRUDENCE: CANADA

Thomas and Saik'uz First Ntion v. Rio Tinto Alcan Inc, 2022 BCSC 15.

LEGISLATION: GOVERNMENT DOCUMENTS

Ministry Decree No. 1,019 (B.E. 2526), according to the Forestry Act B.E. 2506, Royal Gazette, Book 100, section 190, December 6, 1983.

The National Environmental Committee, The Announcement of Pollution Control Zone, in Royal Gazette, Book 126/Special issue 65 NG/p.99/May 1, 2009.

Prime Minister Order No. 250/2552, date 13rd November B.E. 2552 (2009), Title: The Appointment of a Committee to Solve the Compliance Issues of the Thai Constitution section 67 paragraph 2.

The Supreme Administrative Court President's Decree on The Establishment of Environmental Tribunal in The Supreme and Lower Administrative Courts, Royal Gazette, Book 128/section 54 Kor/July 4, 2011.

The Lawyers Council of Thailand's Regulation on Departments Division and Power and Duty of Lawyer Council Committee, Royal Gazette, Book 130/Special section 189 NG, December 25, 2013.

SECONDARY MATERIALS: MONOGRAPHS

Agardy, Franklin J & Nelson Leonard Nemerow, *Environmental Solutions: Environmental Problems and the All-Inclusive Global, Scientific, Political, Legal, Economic, Medical, and Engineering Bases to Solve Them* (San Diego, UNITED STATES: Elsevier Science & Technology, 2005).

Aphornsuvan, Thanet, *Freedom and Rights in Thai Political History*, (Thammasat University Press: 2013).

Baker, Christopher John & Pasuk Phongpaichit, *A history of Thailand*, third ed (Port Melbourne, VIC, Australia: Cambridge University Press, 2014).

Bantowtook, Jeerawan, *Coping with Environmental Change Affecting Health from a Gender Perspective: A Case Study of Karen Village at Lower Klity, Kanchanaburi Province*, (Master Degree Thesis, Sociology and Anthropology Department, Chulalongkorn University: 2004).

Batson, Benjamin A, *The end of the absolute monarchy in Siam*, Southeast Asia publications series no. 10 (Singapore: Oxford University Press, 1984).

Bayer, Judit at al., *Strategic Lawsuit Against Public Participation (SLAPP) in the European Union: A Comparative Study*, (EU-CITIZEN, 2021)

- Bello, Walden F, et al, *A Siamese tragedy: development and disintegration in modern Thailand* (London; New York: Oakland Calif.: Bangkok: Zed Books; Food First; White Lotus, 1998).
- Berg, Bruce L & Howard Lune, *Qualitative research methods for the social sciences*, 8th ed ed (Boston: Pearson, 2012).
- Berg, Bruce L, *Qualitative research methods for the social sciences*, 6th ed ed (Boston: Pearson/Allyn & Bacon, 2007).
- Bishop, Sarah, *The Thai Administrative Court and Environmental Conflicts: A Case Study of Map Ta Phut, Rayong*, (Master thesis: 2011) (on file with the Australian National University).
- Bogart, W A, *Consequences: the impact of law and its complexity* (Toronto: University of Toronto Press, 2002).
- Boyd, David R, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (UBC Press, 2012).
- , *The Rights of Nature: A Legal Revolution That Could Save the World* (Toronto, ON: ECW Press, 2017).
- Bundidterdsakul, Laofang, ed., *Mae Omki: The Life of the Forest and Ideals of the Justice Process*, (Human Rights Association: Bangkok, 2015).
- Bystrianský, Martin et al., *Toxic Hot Spots in Thailand*, (accessed April 14, 2019), online: ResearchGate
<https://www.researchgate.net/publication/334600149_Toxic_Hot_Spots_in_Thailand>.
- Ceric, Irina, *Lawyering from Below: Activist Legal Support in Contemporary Canada and the US*, (York University: 2021), online:
<https://www.academia.edu/82597709/Lawyering_from_Below_Activist_Legal_Support_in_Contemporary_Canada_and_the_US>.
- Chairat, Panuphan, *The Developing of Legal Principles for Protecting Thai Citizens' Rights and Liberties in Administrative Cases related to Urban Planning, Building, Factories, and Nuisance*, (Bangkok: Winyuchon, 2006)
- Changglom, Krissana, *Environmental Courts and Problems of Thai Judicial Systems*, (Winyuchon: Bangkok, 2013).
- Chanasongram, Suppawan, *People's Participation in the State's Development Projects:*

A Case Study of the Thai-Malaysia Natural Gas Pipeline and Gas Separation Plant Projects, (Thesis of Master of Science in Environmental Management, Prince of Songkla University, 2006).

Coorey, Panikabutara, Pornsakol, *Restraining arbitrary power in Thailand: the sociological approach in examining the rule of law* (Thesis, UNSW Sydney, 2010) [unpublished].

Cotterrel, Roger & Austin D Sarat, *Law, Culture and Society: Legal Ideas in the Mirror of Social Theory* (Milton, UNITED KINGDOM: Routledge, 2006).

Crossley, Nick, *Making sense of social movements*, (Buckingham [UK] ; Philadelphia [PA]: Open University Press, 2002).

Dembowski, Hans, *Taking the state to court: public interest litigation and the public sphere in metropolitan India* (New Delhi; Oxford: Oxford University Press, 2001).

Dutta, Nikhil, *Protecting Activists from Abusive Litigation: SLAPPS in the Global South and How to Respond*, (International Center for Not-for-Profit-Law: DC, 2020).

Engel, David M, *Law and kingship in Thailand during the reign of King Chulalongkorn*, Michigan papers on South and Southeast Asia 9 (Ann Arbor: Center for South and Southeast Asian Studies, University of Michigan, 1975).

———, *Tort, custom, and karma: globalization and legal consciousness in Thailand* (Stanford Law Books).

Epp, Charles R, *The rights revolution: lawyers, activists, and supreme courts in comparative perspective* (Chicago: University of Chicago Press, 1998).

Ewick, Patricia & Susan S Silbey, *The Common Place of Law: Stories from Everyday Life*, (Chicago: University of Chicago Press, 1998).

Gomez, Mario, *In the public interest: Essays on public interest litigation and participatory justice*, (Colombo, Sri Lanka: Legal Aid Centre, Faculty of Law, University of Colombo, 1993).

Haberkorn, Tyrell, *In plain sight: impunity and human rights in Thailand*, (Madison, Wisconsin: The University of Wisconsin Press, 2018).

———, *Revolution interrupted: farmers, students, law, and violence in northern Thailand*, *New perspectives in Southeast Asian studies* (Madison, WI: The University of Wisconsin Press, 2011).

Handler, Joel F, *Social movements and the legal system: a theory of law reform and social change*, Institute for Research on Poverty monograph series (New York: Academic Press, 1978).

Halley, Janet E & Wendy Brown, eds, *Left legalism / left critique* (Durham [NC]: Duke University Press, 2002).

Hamel, Jacques, et al., *Case study methods, Qualitative research methods v. 32* (Newbury Park: SAGE, 1993).

Harding, Andrew & Peter Leyland, *The constitutional system of Thailand: a contextual analysis, Constitutional systems of the world* (Oxford: Hart Publishing, 2011).

Hirschl, Ran, *Towards Juristocracy: the origins and consequences of the new constitutionalism* (Cambridge, Mass: Harvard University Press, 2004).

Hoonard, Deborah K Van den, *Qualitative research in action: a Canadian primer, Themes in Canadian sociology* (Don Mills, Ontario, Canada: OUP Canada, 2015).

Houck, Oliver A., *Taking Back Eden: Eight Environmental Cases that Changed the World*, (Island Press: Washington/Covelo/London, 2010).

Hunt, Alan, *Explorations in law and society: towards a constitutive theory of law, After the law* (New York: Routledge, 1993).

Ignatieff, Michael, *The rights revolution*, Massey lectures series (Toronto: House of Anansi Press, 2000).

Issarata, Eakachai et al., *Final Research Report on "Citizens' Political Consciousness about Local Natural Resources Allocation: A Case Study of Khuha Mountain Community Rights Protection Network, Rattaphum district, Songkhla province*, (Office of Political Development Council, King Prajadhipok's Institute, 2011).

Jain, Nilanjana, *Judicial Activism In India With Special Reference to the Quest* (Delhi : New Delhi: Kalpaz Publications, 2013).

Janchitfah, Supara, *The Nets of Resistance*, (Campaign for Alternative Industry Network: 2004).

Jingjit, Supot, et al., *Exploring Southern Development Plan*, (Southern Development Plan Educational and Monitoring Group: 2013).

Khosananan, Charan, *Law and Rights and Liberty in Thailand: The Parallel from 1932 to Present*, (Religious Cooperation for Society Group, 1985).

- Kongcharoen, Nuthmon, et al., *Legal Mechanisms for Ecological Revitalization and Compensation for Victims*, (Bangkok: 2017).
- , *Community Forest management in Northern Thailand: perspectives on Thai legal culture*, (Doctor of Philosophy Dissertation, Faculty of Law, University of Victoria: 2012).
- Langkarpint, Khettai, *Sustainable Development: Law, the Environment and Water Resources in Modern Thailand*, PhD. Dissertation (University of Warwick, 2000).
- Lertdhamtewee, Pawarit, et al., *Constitution and the Recognition and Protection of Basic Environmental Rights* (Bangkok: Constitutional Court Office, 2015).
- Lohmann, Larry, *The Struggle of Villagers in Chana District, Southern Thailand in Defence of Community Land and Religion against the Trans Thai-Malaysian Pipeline and Industrial Project (TTM) 2002-2008*, (Dorset: 2008).
- Loos, Tamara Lynn, *Subject Siam: family, law, and colonial modernity in Thailand* (Ithaca, N.Y: Cornell University Press, 2005).
- May, James R & Erin Daly, *Global environmental constitutionalism*, (New York, NY: Cambridge University Press, 2016).
- McCann, Michael W, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*, (Chicago: University of Chicago Press, 1994).
- Mantaphon, Withit & Charles Taylor, *Roads to democracy: human rights and democratic development in Thailand* (Bangkok; Montreal: publisher not identified, 1994).
- Meierhenrich, Jens, *The remnants of the Rechtsstaat: an ethnography of Nazi law*, (Oxford, United Kingdom: Oxford University Press, 2018).
- Merriam, Sharan B & Elizabeth J Tisdell, *Qualitative Research: A Guide to Design and Implementation* (Newark, United State: John Wiley & Sons, Incorporated, 2015).
- Missingham, Bruce D, *The Assembly of the Poor in Thailand: from local struggles to national protest movement* (Chiang Mai, Thailand: Silkworm Books, 2003).
- Na Ayutthaya Kunchorn, Manward & Ruangthong Chanda, *Under Purple: Mab Ta Phut in Whose hand?*, (Thailand Environment Institute: Nonthaburi, 2011).
- Nikam, Jae & et al., *Air Quality in Thailand: Understanding the Regulatory Context*, (Stockholm Environment Institute: Stockholm, 2021), online: <<https://cdn.sei.org/wp-content/uploads/2021/02/210212c-killeen-archer-air-quality-in-thailand-wp-2101e-final.pdf>>.

Neely, Richard, *How courts govern America* (New Haven, Conn: Yale University Press, 1981)

Neuman, W Lawrence, *Social research methods: qualitative and quantitative approaches*, 5th ed (Boston: Allyn and Bacon, 2003).

Ngamarunchot, Bank, *Justice, Court's Judgment, and Environmental Problems*, (PenThai: Bangkok, 2013).

Nonet, Philippe & Philip Selznick, *Law and society in transition: toward responsive law* (New York: Octagon Books, 1978).

Nuntavorakarn, Suphakit, et al., *Politics of Pollution*, (Healthy Public Policy Foundation: Nonthaburi, 2008).

Office of the Administrative Court, *Environmental Justice: Learning from Japanese and Thai Experience*, (Bangkok: P Press, 2010).

———, *Thai Administrative Court and Environmental Cases*, (Bangkok: Office of the Administrative Court, 2010).

Olson, Susan M, *Clients and lawyers: securing the rights of disabled persons*, Contributions in legal studies no. 28 (Westport, Conn: Greenwood Press, 1984).

Panichkul, Paisit, et al, *Karen's Rights and the Establishment of Rotational Farming Special Cultural Area in Strategic Area for Resolving Land Disputes of Northern Karen*, (Office of the National Human Rights Commission, 2017).

Parmar, Pooja, *Indigeneity and legal pluralism in India: claims, histories, meanings*, Cambridge studies in law and society, (New York, NY: Cambridge University Press, 2015).

Pavlich, George C, *Law & society redefined, Themes in Canadian sociology* (Don Mills, Ont: Oxford University Press, 2011).

Pochareung, Chakrit, *Chana in the Offshore Wind Season*, (Four-Regions Scholar Working Group: 2003).

Pongboonjun, Songkrant, *Margin of Judgement and Judicial Review in the Thai Administrative Court: A Comparison with the German Administrative Court and the European Court of Justice*, (Master of Law Thesis, Faculty of Law, Thammasat University, 2012)

Preechasinlapakun, Somchai, *This is an Ambitious Aspiration: Thai Constitutional Drafting Organizations' Discourses on Monarchy from B.E. 2475-2550*, (Nontaburi: Samesky, 2018).

Razzaque, Jona, *Public Interest Environmental Litigation in India, Pakistan, and Banglades*, (Kluwer Law International: Hague, 2004).

Rerkpornpipat, Keurmaetha, *Klity: Stream Community and Lead Poison*, (Campaign for Alternative Industrial Networpk: 2007).

Riggs, Frederick Warren, *Thailand, the modernization of a bureaucratic polity* (Honolulu: East-West Center Press, 1966).

Saeng-uthai, Yut, *Basic Understanding of Law*, 17th ed, (Thammasat University Press: Bangkok, 2009).

Saetang, Penchom & Walaiporn Mooksuwan, *The Health Impact Assessment of Map Ta Phut Industrial Development and Its Vicinity* (in Thai), (Health System Research Institute, 2003)

Sangphongsanont, Tanapan, *Determination of Mental Damages in Environmental Cases*, (Thammasat University, Faculty of Law, Master Degree Thesis; Bangkok, 2014).

Scheingold, Stuart A, *The Politics of Rights: Lawyers, Public Policy and Political Change* (Ann Arbor, United States: University of Michigan Press, 2004).

Scheingold, Stuart A & Austin Sarat, *Something to believe in: politics, professionalism, and cause lawyering* (Stanford, Calif: Stanford Law and Politics, 2004).

Sheldrick, Byron M, *Perils and possibilities: social activism and the law* (Halifax, N.S: Fernwood, 2004).

Silverstein, Helena, *Unleashing Rights: Law, Meaning, and the Animal Rights Movement* (Ann Arbor, United States: University of Michigan Press, 1996).

Spaeth, Harold J, *Supreme Court policy making: explanation and prediction* (San Francisco: W. H. Freeman, 1979).

Sribuaiam, Kanongnij, *Environmental and Health Legal Procedures: Lessons from Map Ta Phut Case*, (Nonthaburi: Health System Research Institute, 2009).

Streckfuss, David, *Truth on Trial in Thailand: Defamation, Treason, and Lèse-Majesté* (London, United Kingdom: Taylor & Francis Group, 2010).

Stern, Rachel E, *Environmental Litigation in China*, (Cambridge University Press: New York, 2013).

Sukkamnoed, Decharat, et al., *Rayong Future: The Route to Healthy Society*, (Office of National Health Commission: Nonthaburi, 2008).

Thailand Science Research and Innovation, *Ethnic Groups in Thailand-Research and Challenges*, (Thailand Science Research and Innovation: Bangkok, 2021).

Thompson, E P, *Whigs and hunters: the origin of the Black Act*, (New York: Pantheon Books, 1975).

Tully, James, *Public philosophy in a new key, Ideas in context, volume II: Imperialism and Civic Freedom* (Cambridge, UK: Cambridge University Press, 2008).

Uwanno, Borwornsak, *Overview of the Constitution and the 1997 Thai Constitution*, (King Prajadhipok's Institute: Bangkok, 2003).

Vago, Steven, *Social change*, (Upper Saddle River, N.J: Prentice Hall, 1999).

Winichakul, Thongchai, *Full Speech Legal Privileged State and Royalist Rule of Law*, waymagazine.org, online: <<https://waymagazine.org/thongchai-winichakul-rule-by-law/>>.

———, *Siam mapped: a history of the geo-body of a nation* (Honolulu: University of Hawaii Press, 1994).

Yin, Robert K, *Case study research: design and methods*, 4th ed ed, Applied social research methods series v. 5 (Los Angeles, Calif: Sage, 2009).

SECONDARY MATERIALS: BOOK SECTIONS

Anna-Maria Marshall, “Social Movement Strategies and the Participatory Potential of Litigation” in Austin Sarat & Stuart A. Scheingold, eds, *Cause Lawyers and Social Movements* (Stanford University Press: Stanford, 2006) 164-181.

Bantowtook, Jeerawan, “Karen Way of Life: The Way of Fighting and Accessing to the Court of Justice of Klity Lang Villagers” in Darunee Paisanpanichkul, ed., *Nitithammachat: Essays and Interviews on Environmental Cases Book 2* (Pappim Printing: 2008) 91-125.

Berger, Jonathan, “Litigating for Social Justice in Post-Apartheid South Africa: A Focus on Health and Education” in Varun Gauri & Daniel M Brinks, *Courting social justice: judicial enforcement of social and economic rights in the developing world* (Cambridge University Press, 2008) 38-99.

Bunditdersakul, Laofang, “Local Context, National Law: The Rights of Karen People on the Salween River in Thailand” in Carl Middleton & Vanessa Lamb, eds, *Knowing Salween River Resour Polit Contested Transbound River, The Anthropocene: Politik—Economics—Society—Science* (Cham: Springer International Publishing, 2019) 141-158.

Burikul, Thawilwadee, “Access to Justice and Public Participation in Thailand” in Andrew Harding, ed, *Access to environmental justice: a comparative study*, London-leiden series on law, administration and development v. 11 (Leiden ; Boston: Martinus Nijhoff Publishers, 2007), 271-288.

Byrne, Iain & Sara Hossain, “South Asia: Economic and Social Rights Case Law of Bangladesh, Nepal, Pakistan and Sri Lanka”, in Malcolm Langford, ed, *Social rights jurisprudence: emerging trends in international and comparative law* (Cambridge, UK; New York: Cambridge University Press, 2008) 125-143.

Cummings, Scott L., “Mobilization Lawyering: Community Economic Development in the Figueroa Corridor” in Austin Sarat & Stuart A. Scheingold, eds, *Cause Lawyers and Social Movements* (Stanford University Press: Stanford, 2006) 302-335.

Curran, Deborah, “Putting Law in Its Place: Field School Explorations of Indigenous and Colonial Legal Geographies” in Deborah Curran et al, eds, *Out there learning: critical reflections on off-campus study programs* (Toronto: University of Toronto Press, 2019), at 135-151.

David A Schultz, ed, *Leveraging the law: using the courts to achieve social change*, Teaching texts in law and politics v. 3 (New York: P. Lang, 1998).

Engel, David M., “How does law matter in the constitution of legal consciousness?” in Bryant G. Garth & Austin Sarat, eds, *How does law matter?*, (Northwestern University Press: Evanston, 1998) 109-144.

Feeley, Malcolm M., “Implementing Court Orders in the United States: Judges as Executives” in Marc Hertogh & Simon Halliday, eds, *Judicial review and bureaucratic impact: international and interdisciplinary perspectives*, Cambridge studies in law and society (Cambridge, UK ; New York: Cambridge University Press, 2004) 221-248.

Freeman, Alan, “Anti-discrimination Law: The View from 1989” in David Kairys, ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1990) 121-150.

Galanter, Marc, “The Rediating Effects of Courts” in Keith O Boyum & Lynn M Mather, eds, *Empirical theories about courts*, Longman professional studies in law and public policy (New York ; London: Longman, 1983) 117-142.

Gargarella, Roberto, et al, eds, *Courts and social transformation in new democracies: an institutional voice for the poor?* (Hampshire, England; Burlington, VT: Ashgate, 2006).

Ginsburg, Tom & Tamir Moustafa, eds, *Rule by law: the politics of courts in authoritarian regimes* (Cambridge [UK] ; New York: Cambridge University Press, 2008).

- Gordon, Robert W., "New developments in legal theory" in David Kairys, ed, *The politics of law: a progressive critique* (New York: Pantheon Books, 1982). 281-293.
- Hertogh, Marc & Simon Halliday, "Introduction" in Marc Hertogh & Simon Halliday, eds, *Judicial review and bureaucratic impact: international and interdisciplinary perspectives*, Cambridge studies in law and society (Cambridge, UK ; New York: Cambridge University Press, 2004) 1-11.
- Hirsch, Philip, "The Politics of Environment: Opposition and Legitimacy" in Hewison, Kevin, ed, *Political Change in Thailand: Democracy and Participation* (London: Routledge, 1997), 179-194.
- Hoffmann, Florian F. & Fernando R. N.M. Bentes, "3. Accountability for Social and Economic Rights in Brazil" in Varun Gauri & Daniel M Brinks, eds, *Courting social justice: judicial enforcement of social and economic rights in the developing world* (Cambridge University Press, 2008) 100-145.
- Jariwala, C.M., "13 The Direction of Environmental Justice: An Overview" in S K Verma et al, eds, *Fifty years of the Supreme Court of India: its grasp and reach* (New Delhi ; New York: Oxford University Press, 2000) 469-494.
- Kangwan, Chakkapan, "When the Klity Case Enter the Administrative Court" in Darunee Paisanpanichkul, ed., *Nitithammachat: Essays and Interviews on Environmental Cases Book 2*, (Pappim Printing: 2008) 126-147.
- Kuylenstierna, Johan C, et al, "A perspective on global air pollution problems" in John T Houghton et al, *Global Environmental Change* (Cambridge, UNITED KINGDOM: Royal Society of Chemistry, 2002), 21-56.
- Lazarus-Black, Mindie & Susan F Hirsch, eds, *Contested states: law, hegemony, and resistance, After the law* (New York: Routledge, 1994).
- Leyland, Peter, "The Emerging of Administrative Justice in Thailand under the 1997 Constitution" in Tom Ginsburg & Hongyi Chen, eds, *Administrative law and governance in Asia: comparative perspectives*, *Routledge law in Asia* (Abingdon, Oxon [England]; New York: Routledge, 2008) at 230-256.
- Liebenberg, Sandra, "South Africa: Adjudicating Social Rights Under a Transformative Constitution" in Malcolm Langford, ed, *Social rights jurisprudence: emerging trends in international and comparative law* (Cambridge, UK; New York: Cambridge University Press, 2008) 75-101.
- McCann, Michael W., "How does law matter for social movements?" in Bryant G Garth & Austin Sarat, *How Does Law Matter?* (Northwestern University Press, 1998) 76-108.

McCann, Michael & Helena Silverstein, “Rethinking Law’s “Allurements”: A Relational Analysis of Social Movement Lawyers in the United States” in Austin Sarat & Stuart Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press: New York, 1998) 261-292.

McCargo, Duncan, “Introduction: Understanding Political Reform in Thailand” in Duncan McCargo, ed, *Reforming Thai politics* (Copenhagen S., Denmark: Nias Pub, 2002) 1-18.

Merry, Sally Engle, “The Criminalization of Everyday Life” in Marianne Constable & David Engel, *Everyday Practices and Trouble Cases* (Northwestern University Press, 1998) 14-39

Morag-Levine, Noga, “Transplantation and Transformation in an Israeli Environmental Cause-Lawyering Organization” in Austin Sarat & Stuart Scheingold, eds, *Cause Lawyering and The State in A Global Era* (Oxford University Press: New York, 2001) 334-353.

Munger, Frank, “Cause Lawyers and Other Signs of Progress: Three Thai Narratives” in Scott L Cummings, *The Paradox of Professionalism: Lawyers and the Possibility of Justice* (New York, UNITED STATES: Cambridge University Press, 2011) 243-273.

———, “Mapping law and society”, in Austin Sarat, et al, eds, *Crossing boundaries: traditions and transformations in law and society research* (Evanston, Ill.: Northwestern University Press: American Bar Foundation, 1998) 21-80.

Pangsapa, Piya, “Environmental justice and civil society” in *Routledge Handbook of Environment and Society in Asia*, (accessed April 14, 2019),
online:<<https://www.routledgehandbooks.com/doi/10.4324/9781315774862.ch3>> 36-52.

Piovesan, Flavia, “Brazil: Impact and Challenges of Social Rights in the Court” in Malcolm Langford, ed, *Social rights jurisprudence: emerging trends in international and comparative law* (Cambridge, UK; New York: Cambridge University Press, 2008) 182-191.

Potacs, Michael, “Public Interest in Legal Interpretation” in Luboš Tichý & Michael Potacs, eds, *Public Interest in Law* (Intersentia, 2021) 45-57.

Pongboonjun, Songkrant, “Rule by Law: The NCPO’s Reclaiming Forest Policy in Action” in Somchai Preechasinlapakun, ed., *Juristocracy, Judges, and Coup* (Thai Lawyer For Human Rights: Bangkok, 2018) 234-267.

Prasertcharoensook, Rewadee, et al, “The Action Plan to Mitigate and Eliminate Pollution in Rayong Province B.E. 2550-2554” in Somrudee Nicro & Varakorn Noyphun, eds., *Environmental Governance of Mabtapud Industrial Zone in Rayong Province, Thailand* (Thailand Environmental Institute: Nonthaburi, 2009) 67-179.

Rajagopal, Balakrishnan, “Limit of Law in Counter-Hegimonic Globalization: The Indian Supreme Court and the Narmada Volley Struggle” in Boaventura de Sousa Santos & César A Rodríguez Garavito, eds, *Law and globalization from below: towards a cosmopolitan legality*, Cambridge studies in law and society (Cambridge, UK ; New York: Cambridge University Press, 2005) 183-217.

Rootes, Christopher, “Environmental Movements” in David A Snow, et al., eds, *The Blackwell companion to social movements, Blackwell companions to sociology* (Malden, MA: Blackwell Pub, 2004), at 608-640.

Sarat, Austin & Stuart Scheingold, “The Dynamics of Cause Lawyering: Constraints and Opportunities” in Austin Sarat and Stuart Scheingold, eds, *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (Stanford University Press: Stanford, 2005) 1-34.

———, “Chapter 1 Cause Lawyering and the Reproduction of Professional Authority: An Introduction” in Austin Sarat & Stuart Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (Oxford University Press, 1996) 3-28.

———, “Chapter 1 State Transformation, Globalization, and the Possibilities of Cause Lawyering: An Introduction” in Austin Sarat & Stuart A Scheingold, eds, *Cause lawyering and the state in a global era*, Oxford socio-legal studies (Oxford ; New York: Oxford University Press, 2001), 3-31.

Simpson, Adam, “Democracy and environmental governance in Thailand” in Sacchidananda Mukherjee & Debashis Chakraborty, eds, *Environmental Challenges and Governance: Diverse perspectives from Asia* (Routledge: 2015) 183-200.

Sitthikriengkrai, Malee & Nathan Porath, “Environmental Illness at Klity Creek (Thailand): A Karen Village’s Quest for Justice” in Maguni Charan Behera, ed, *Shifting Perspect Tribal Stud Anthropol Approach Interdiscip Cons* (Singapore: Springer, 2019) 149-165,

Snow, David A, et al, “Introduction” in David A Snow, et al, eds, *The Wiley Blackwell Companion to Social Movements* (John Wiley & Sons, Ltd, 2018).

Sunkin, Maurice, “Conceptual issues in researching the impact of judicial review on government bureaucracies” in Marc Hertogh & Simon Halliday, eds, *Judicial review and bureaucratic impact: international and interdisciplinary perspectives*, Cambridge studies in law and society (Cambridge, UK ; New York: Cambridge University Press, 2004) 43-75.

Sutin Yoosuk, “The Outputs of the Map Ta Phut Monitoring Sub Committee” in Vorawan Chaipaitoon, ed., *Knowledge Forum for Map Ta Phut 1: The State of Pollution, Health and Urban Planning*, (accessed April 15,2019), online:

<<http://www.tei.or.th/publications/2011-download/2011-maptaphut-SENSA-Stage1.pdf>> 9-20.

Teusner, Annabel. “Qualitative Insider Research” in Paul Atkinson, et al, eds, *SAGE Research Methods Foundations*, (London: SAGE Publications Ltd, 2022), SAGE Research Methods, online: <https://doi.org/10.4135/9781526421036845676>> 1-11.

Thabchumpon, Naruemon, “NGOs and Grassroots Participation the Political Reform Process” in Duncan McCargo, ed, *Reforming Thai politics* (Copenhagen S., Denmark: Nias Pub, 2002) 183-199.

Trakansuphakon, Prasert, “Securing rights through legal pluralism: communal land management among the Karen people in Thailand” in Marcus Colchester & Sophie Chao, eds, *Divers Paths To Justice: Legal pluralism and the rights of indigenous peoples in Southeast Asia* (S.T.Film&Plate: Chiang Mai, 2011)133-156.

Trong-ngam, Surachai et al., “Justice Problems and Environmental Dispute Resolution: Case Studies from Legal Aid Experience, in Politic and Environmental Crisis” in *Papers Presented at the 10th King Prajadhipok’s Institute Conference Conference 2007* (Nonthaburi: King Prajadhipok’s Institute, 2008), 241-277.

Wales, Timothy & Rick Levinthal, “Chapter 15: Thailand” in Terri Mottershead, ed, *Environmental law and enforcement in the Asia-Pacific Rim* (Hong Kong: Sweet & Maxwell Asia, 2002) 487-509.

Wannathepsakul, Nopanun, “Network Bureaucracy and Public-Private Firms in Thailand’s Energy Sector” in Pasuk Phongpaichit & Christopher John Baker, eds, *Unequal Thailand: aspects of income, wealth and power* (Singapore: NUS Press, 2016), 97-119.

SECONDARY MATERIALS: ARTICLES

Ainsworth, Janet, “Law in (Case)books, Law (School) in Action: The Case for Casebook Reviews Casebook Review: Preface” (1996) 20:2 Seattle U L Rev 271–276, at 271.

Argyrou, Aikaterini, “Making the Case for Case Studies in Empirical Legal Research Special Issue: Methodology of Legal Research: Challenges and Opportunities” (2017) 13:3 Utrecht L Rev 95–113, at 102.

Assavarak, Passanan, “Constructed Identity and Community Self-Expression to Perceive Human Security; Case Study of Klity Village, Kanchanaburi Province, Thailand” (2012) 3 Mediterr J Soc Sci 239–246.

Banks, Melany, “Individual Responsibility for Climate Change” (2013) 51:1 The Southern Journal of Philosophy 42–66.

Bonine, John E, “Public Interest Environmental Lawyers - Global Examples and Personal Reflections Environmental Citizen Suits at Thirtysomething: A Celebration & Summit: Part II” (2003) 10 *Widener L Rev* 451–474, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlsj10&i=467>>.

Boonyabut, Weerayut, “Legal Development in the Imposition of Mental Injury Damages: A Comparative Study Between Interesting Foreign Law and Thai Law” in “*Dhulpaha Journal Issue 3rd, Year 67th September-December 2020*”, online: <<https://jla.coj.go.th/th/content/category/detail/id/8/cid/1605/iid/226027>> 123-145.

Brannick, Teresa & David Coghlan, “In Defense of Being ‘Native’: The Case for Insider Academic Research” (2007) 10:1 *Organ Res Methods* 59–74.

Bunnag, Chatree, “Struggle History of Local Community for Participation in Map Ta Phut Area Industrialization Process” (accessed April 14, 2019) in *Politics, Administration, and Law Journal*, Year 9th vol. 3, Sep-Dec, 2017, online: <<http://www.polsci-law.buu.ac.th/journal/document/9-4/14.pdf>>.

Cole, Luke W, “Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law” (1992) 19:4 *Ecology LQ* 619–684.

Cummings, Scott L, “Empirical Studies of Law and Social Change: What Is the Field - What Are the Questions Colloquium” (2013) 2013 *Wis L Rev* 171–204, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlr2013&i=175>>.

———, “The Pursuit of Legal Rights - and Beyond” (2012) 59:3 *UCLA L Rev* 506. at 548-549.

Curran, Deborah, “Reflections on Public Interest Environmental Lawyering in British Columbia” (2009) 67 *Advocate (Vancouver)* 183–190, online: <<https://heinonline.org/HOL/P?h=hein.barjournals/advvba0068&i=189>>.

Emond, D Paul, “Are We There Yet - Reflections on the Success of the Environment Law Movement in Ontario” (2008) 46:2 *Osgoode Hall LJ* 219–242, online: <<https://heinonline.org/HOL/P?h=hein.journals/ohlj46&i=229>>.

Eosewong, Nidhi, “The Thai Cultural Constitution | *Kyoto Review of Southeast Asia*”, (15 March 2003), online: <<https://kyotoreview.org/issue-3-nations-and-stories/the-thai-cultural-constitution/>>.

Faure, Michael G & A V Raja, “Effectiveness of Environmental Public Interest Litigation in India: Determining the Key Variables” (2010) 21:2 *Fordham Env'tl L Rev* 239–294, online: <<https://heinonline.org/HOL/P?h=hein.journals/frdmev21&i=243>>.

Forsyth, Tim, “Are Environmental Social Movements Socially Exclusive? An Historical Study from Thailand” (2007) 35:12 *World Development* 2110–2130.

Ginsburg, Tom, "Constitutional afterlife: The continuing impact of Thailand's postpolitical constitution" (2008) 7:1 *International Journal of Constitutional Law* 83–105.

Hassan, Parvez & Azim Azfar, "Securing Environmental Rights through Public Interest Litigation in South Asia Comment" (2003) 22 *Va Env'tl LJ* 215–248, online: <<https://heinonline.org/HOL/P?h=hein.journals/velj22&i=223>>.

Hewison, Kevin, "Constitutions, Regimes and Power in Thailand" (2007) 14 *Democratization* 928–945.

Hirsch, Philip & Larry Lohmann, "Contemporary Politics of Environment in Thailand" (1989) 29:4 *Asian Surv* 439–451.

Hodkinson, Paul, "'Insider Research' in the Study of Youth Cultures" (2005) 8:2 *Journal of Youth Studies* 131–149.

Isariyanon, Methina, "Review and Development Strategy Adjustment of Eastern Seaboard Development Program Toward Asean Country in Chachoengsao Province: The Case of Solid Waste and Industrial Hazardous Waste Management" in *Burapha Journal of Political Economy* Vol. 7 No. 2 (2019).

Jenkins, Sion, "Methodological challenges of conducting 'insider' reflexive research with the miscarriages of justice community" (2013) 16:5 *Int J Soc Res Methodol* 373–387.

Kaboski, Joseph P & Robert M Townsend, "The Impact of Credit on Village Economies" (2012) 4:2 *Am Econ J Appl Econ* 98–133.

Kalra, Harsimran, "Courting Social Change - Lessons from the CNG Case in India, in Giulia Jacovella" *International Law and the (De)Politicisation of Climate Change and Migration: Lessons from the Pacific* (2015) 2:1 *SOAS LJ* 76.

Kanchanachitra, Churnrurtai, et al, eds, "Thai Health 2014: Self-management communities: foundation of national reform" (Nakhon Pathom: Institute for Population and Social Research, Mahidol University, 2014) 67-72.

Kanchanachitra, Churnrurtai et al., eds, "Map Ta Phut: A Hot Economic Issue for the Nation, A Pollution Problem for Local Communities" in *Health 2010: Capitalism in Crisis, Opportunity for Society?*, (accessed April 15, 2019), online: <https://www.hiso.or.th/hiso/picture/reportHealth/ThaiHealth2010/eng2010_16.pdf>

Kanstrup, Niels & Thorsten Johannes Skovbjerg Balsby, "Danish pheasant and mallard hunters comply with the lead shot ban" (2019) 48:9 *Ambio* 1009–1014.

Kititasasorchai, Vipon & Panat Tasneeyanond, "Thai Environmental Law" (2000) 4:1 *Singap J Int Comp Law* 1–35.

Kravchenko, Svitlana, “Citizen Enforcement of Environmental Law in Eastern Europe Environmental Citizen Suits at Thirtysomething: A Celebration & Summit: Part II” (2003) 10:2 *Widener L Rev* 475–502, online: <<https://heinonline.org/HOL/P?h=hein.journals/wlsj10&i=491>>.

Langkarpin, Khettai, “The Right to Healthy Environment in Constitution of Thailand: Comparing Law with Foreign Countries” in *Journal of the Faculty of Law, Naresuan University*, Year 10th Volume 1, (January-June 2017).

Lin, Yanmei, “Environmental and Biodiversity Law Clinic at Southwest Forestry University: A New Environmental Law Clinic Model in China Articles Section I: Part One of a Two Part Series: Innovating the Environmental Law Classroom” (2016) 18 *Vt J Env'tl L* 18–36, online: <<https://heinonline.org/HOL/P?h=hein.journals/vermen18&i=22>>.

Liu, Jingjing, “Environmental Justice with Chinese Characteristics: Recent Developments in Using Environmental Public Interest Litigation to Strengthen Access to Environmental Justice Green Justice for All: International and Comparative Dimensions of Environmental Justice” (2011) 7 *Fla A & M U L Rev* 229–260, online: <<https://heinonline.org/HOL/P?h=hein.journals/floramulr7&i=247>>.

Lohmann, Larry, “Gas, waqf and Barclays Capital: a decade of resistance in southern Thailand” (2008) 50:2 *Race Cl* 89–100.

LoPucki, Lynn M & Walter O Weyrauch, “A Theory of Legal Strategy” (2000) 49:6 *Duke Law Journal* 1405–1486, online: <<https://www.jstor.org/stable/1373051>>.

Lysaght, Rosemary et al, “Participant Recruitment for Studies on Disability and Work: Challenges and Solutions” (2016) 26:2 *J Occup Rehabil* 125–140.

Mach, Václav et al., “Persistent organic pollutants in Thai Polluted Areas” 21, (accessed April 14, 2019), online: ResearchGate <https://www.researchgate.net/publication/330280701_sarmlphistkkhangyawnnanniphunt_himlphiskhxngthiy>.

Molina, Mario, “Air pollution is a global problem with local solutions” (2008) 456: S1 *Nature* 19–19.

Munger, Frank W, “An Alternative Path to Rule of Law: Thailand’s Twenty-First Century Administrative Courts” (2019) 26 *Ind J Global Legal Stud* 133–172, online: <<https://heinonline.org/HOL/P?h=hein.journals/ijgls26&i=143>>.

———, “Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide: Citizen Participation in Legal Decision Making: A Cross-Cultural Perspective” (2007) 40:2 *Cornell Int Law J* 455–476.

———, “Globalization, Investing in Law, and the Careers of Lawyers for Social Causes: Taking on Rights in Thailand” (2008) 53:4 N Y Law Sch Law Rev 745–80.

———, “Constitutional Reform, Legal Consciousness, and Citizen Participation in Thailand The Rising Tide: Citizen Participation in Legal Decision Making: A Cross-Cultural Perspective” (2007) 40:2 Cornell Int Law J 455–476.

Onrak, Suwan et al, “The impact of limestone mining on the tourism potential of Songkhla Province, Thailand” (2020) 9 Tour Leis 9.

Paneangtong, Suda et al., The development of environmental related health surveillance system in Rayong Pollution Control Zone, in *Journal of Medicine and Health Sciences* (Vol.19 No.2 August 2012).

Pongboonjun, Songkrant, “Creating Rights from the Bottom Up: Litigation Against Pollution from Map Ta Phut Industrial Complex” in *The Second National Legal Social Science Academic Conference Proceeding Papers Title: New Imaginative Thai Legal Landscape*, (Faculty of Law CMU: Chiang Mai, 2020).

———, Klity Creek’s Environmental Remediation: Case Victory Reveals Failed System, in “Year 14th Vol. 2 (2021): July - December 2021 | CMU Journal of Law and Social Sciences”, online: <<https://so01.tci-thaijo.org/index.php/CMUJLSS/issue/view/17015>>.

Pothisai, Ariyaporn, People’s Right to Access to Justice, in *Chulalongkorn Law Journal*, Volume 19 September-December 2021, 143-154.

Preechasinlapakun, Somchai, “Dynamics and Institutionalized of Coups in the Thai Constitution” in V.R.F Serie No. 483, July 2013.

Pring, George W, “SLAPPs: Strategic Lawsuits against Public Participation” (1989) 7:1 *Pace Environ Law Rev* 3–22.

Rerkpornpitat, Keurmaetha, “Analysis of Public Policy Process in Solving Pollution Problems from Mining Activities: A Case Study of Lead Contamination at Klity-Lang Village, Kanchanaburi Province” in *Environment and Natural Resources Journal* Vol. 5, No.2, Dec 2007.

Rich, Richard C et al, “Citizen Participation and Empowerment: The Case of Local Environmental Hazards” (1995) 23:5 *American Journal of Community Psychology* 657–676.

Rosenberg, Gerald N, “Positivism, Interpretivism, and the Study of Law Review Section Symposium: Gauging the Impact of Law” (1996) 21 *Law & Soc Inquiry* 435–456, online: <<https://heinonline.org/HOL/P?h=hein.journals/lsociq21&i=453>>.

Simpson, Adam, “Green NGOs and Authoritarian Regimes: The Perils of Environmental Activism in Thaksin’s Thailand” (2005) 1 Griffith J Environ 1–34.

Sitthikriengkrai, Malee & Nathan Porath, “‘Lead-polluted water changed our lives’: A Thai-Karen village’s quest for environmental justice” (2017) 25:2 South East Asia Res 139–156.

Sitthikriengkrai, Malee, Medical Treatment and the Re-creation of Social Suffering, *Social Science Journal*, Vol. 1, 2008, 41-80.

Smith, David Brandon, “The Thai Coup Cycle : Why the National Council for Peace and Order’s Authoritarian Reforms Are Unlikely to Bring Political Stability to Thailand” (2018) *International Program Papers*, online: <https://chicagounbound.uchicago.edu/international_immersion_program_papers/84>.

Somanawat, Kitpatchara, “Legal Consciousness of Resistant Citizens for Environment and Natural Resources Management” (2012), online: <<https://www.tci-thaijo.org/index.php/CMUJLSS/article/view/64590>>.

Soytong, Phattraporn & Ranjith Perera, “Spatial analysis of the environmental conflict between state, society and industry at the Map Ta Phut-Rayong conurbation in Thailand” (2017) 19:3 *Environ Dev Sustain* 839–862, accessed April 14, 2019, online: <<https://doi.org/10.1007/s10668-016-9768-9>>.

———, “Use of GIS Tools for Environmental Conflict Resolution at Map Ta Phut Industrial Zone in Thailand” (2014) 6:5 *Sustainability* 2435–2458, 2440, accessed April 14, 2019, online: <<https://www.mdpi.com/2071-1050/6/5/2435>>.

Stoel, Thomas B Jr, “Environmental Litigation from the Viewpoint of the Environmentalist” (1974) 7 *Nat Resources Law* 547–554, online: <<https://heinonline.org/HOL/P?h=hein.journals/narl7&i=559>>.

Unluer, Sema, “Being an Insider Researcher While Conducting Case Study Research ” (2012) 17:29 *The Qualitative Report* 1–14.

Viwatpanich, Kanvee, “Suffering from Industrial Estate Development A Case Study in Map Ta Phut, Thailand.” (2012), accessed April 14, 2019, online: <https://www.researchgate.net/publication/319622168_Suffering_from_Industrial_Estate_Development_A_Case_Study_in_Map-Ta-Phut_Thailand>.

Whangsani, Usaman et al, “Community Conflict Management Guidelines: Lessons Learn from a Case of Khao Khuha Stone Quarry, Rattaphum District, Songkhla Province” (2022), *Journal of Community Development and Life Quality*, 10(1), 83–93. Retrieved from <https://so02.tci-thaijo.org/index.php/JCDLQ/article/view/252054>.

Zinn, Maxine Baca, “Field Research in Minority Communities: Ethical, Methodological and Political Observations by an Insider Research on and By Chicanos: Three Perspectives” (1979) 27:2 Soc Probs 209–219.

SECONDARY MATERIALS: NEWS ARTICLES

Aiello, Rachel, “Canada shutting the border to most non-citizens due to COVID-19: PM Trudeau”, (16 March 2020), *CTVnews*, online: Coronavirus <<https://www.ctvnews.ca/health/coronavirus/canada-shutting-the-border-to-most-non-citizens-due-to-covid-19-pm-trudeau-1.4854503>>.

Bangkokbiznews, “PCD Travel to Klity Creek to Clean Up Lead Pollution”, (16 June 2020), *Bangkokbiznews*, online: <<https://www.bangkokbiznews.com/social/885260>>.

Bangprapa, Mongkol & Wassana Nanuam “All doors closed to foreigners”, , (26 March 2020), *Bangkok Post*, online: <<https://www.bangkokpost.com/thailand/general/1886395/all-doors-closed-to-foreigners>>.

Beech, Hannah, “Bangkok Is Choking on Air Pollution. The Response? Water Cannons.”, (30 January 2019), *The New York Times*, online: <<https://www.nytimes.com/2019/01/30/world/asia/pollution-thailand-bangkok.html>>.

Chandran, Rina, “Rights in poorer nations must be upheld as Thai firms go abroad, activists say”, (10 April 2018), *Reuters*, online: <<https://www.reuters.com/article/us-thailand-landrights-lawsuit-analysis-idUSKBN1HH02Q>>.

———, “FEATURE- ‘The sea is all we know’: Thai villagers fight industrial zone”, (29 December 2020), *Reuters*, online: <<https://www.reuters.com/article/thailand-landrights-industry-idAFL8N2J20BO>>.

Chankaew, Prapan & Chayut Setboonsarng, “Smog forces Bangkok schools to shut, but respite in doubt due to crop burning”, (21 January 2020), *Reuters*, online: <<https://www.reuters.com/article/us-thailand-environment-pollution-idUKKBN1ZK18E>>.

Chongcharoen, Piyarat, “Klity Creek villagers win 19-year legal battle”, (11 September 2017), *Bangkok Post*, online: <<https://www.bangkokpost.com/thailand/general/1322371/klity-creek-villagers-win-19-year-legal-battle>>.

Ekapol Banlue, “10 Years Conclusion of Map Ta Phut Case: Pollution Control Zone and the Extremely Cost Paid by Society” (in Thai), (18 October 2017), online: *THE STANDARD* <<https://thestandard.co/10-years-of-map-ta-phut-case/>>.

Fuller, Thomas, “In Industrial Thailand, Health and Business Concerns Collide” *New York Time*, (1923-), (December 19, 2009).

Greennews, “Seminar on Lessons Learned from Loei Mining, Company Used Lawsuits to Threaten Villagers and Create Fear”, (11 May 2016), online: *GreenNews* <<https://greennews.agency/?p=9315>>.

Hodal, Kate, “Thai government censured for failure to tackle lead pollution”, *The Guardian* (19 December 2014), online: <<https://www.theguardian.com/global-development/2014/dec/19/thai-government-censured-for-failure-to-tackle-lead-pollution>>.

Ingapattarangkul, Weeratas, “27 years tragedy, Klity Lang Won Court Case-Missed Justice?”, (30 April 2016), online: *GreenNews* <<https://greennews.agency/?p=9206>>.

Isranews, “Turn Crisis to Opportunity, Lawyer Suggests Rights Activists Using Cases for Telling the Truth”, *Isranews*, (9 May 2016), online: <https://www.isranews.org/isranews-news/46828-news_46828.html>.

Kanokrat Sasiroj, “Academics suggest judges to apply community rights in land cases arguing that land tax bill becomes politics”, News Center for Community, *Isranews*, (25 June, 2012), online: <<https://www.isranews.org/content-page/item/7347-2012-06-25-08-57-08.html>>.

Kenmee, Artit, “Wang Saphung Gold Mine, Influence above community rights”, (16 June 2014), online: *Waymagazine.org* | WAY <<https://waymagazine.org/goldmine-loey/>>.

Khampaiboon, Sirote, “Consider 19 September Coup through Rights and Liberty and Political Order” (in Thai), online: *Prachatai* <<https://prachatai.com/journal/2007/05/12847>>.

Khaosodonline, “Civil Court Grants Villagers filing a Lawsuit against Gold Mine as Class Actio” *Khaosodonline*, (11 February 2020), online: <https://www.khaosod.co.th/around-thailand/news_3557919>.

Khueakhan, “Do not discriminate”, (17 May 2016), online: *dailynews* <<https://www.dailynews.co.th/article/397920>>.

Knox, Jack, “Jack Knox: PM’s push for plastics ban rooted at UVic”, online: *Times Colonist* <<https://www.timescolonist.com/news/local/jack-knox-pm-s-push-for-plastics-ban-rooted-at-UVic-1.23853922>>.

Komchadluek, “2552 - 2562 Comparing 10 years Rights Progress-Deterioration for Thai People”, (20 December 2019), *Komchadluek*, online: <<https://www.komchadluek.net/scoop/405671>>.

L.A. Time , “100,000 Angry Thais Destroy Polluting Plant” - *Los Angeles Times*, online: <<https://www.latimes.com/archives/la-xpm-1986-06-23-mn-20088-story.html>>.

M, Anish R, “Villagers in Southern Thailand secure key victory against controversial industrial estate”, (17 December 2021), online: *Peoples Dispatch* <<https://peoplesdispatch.org/2021/12/17/villagers-in-southern-thailand-secure-key-victory-against-controversial-industrial-estate/>>.

Marwaan Macan-Markar, “Songkhla’s ‘birds of fortune’ sing a rich tune”, (4 February, 2016), online: *Nikkei Asia* <<https://asia.nikkei.com/NAR/Articles/Songkhla-s-birds-of-fortune-sing-a-rich-tune2>>.

Mérieau, Eugénie, “How Thailand Became the World’s Last Military Dictatorship”, (20 March 2019), online: *The Atlantic* <<https://www.theatlantic.com/international/archive/2019/03/thailand-military-junta-election-king/585274/>>.

MGRonline, Map Ta Phut Residents Protest Demanding Government to Address Pollution (in Thai), (June 12, 2008), accessed April 14,2019, *MGRonline*, online: <<https://mgronline.com/local/detail/9510000068980>>

———, 11th Year of 'Administrative Court' that Standing Firm Against Politic (in Thai), (14 March 2012), *MGRonline*, online: <<https://mgronline.com/specialscoop/detail/9550000033226>>.

———, “Profess File a Lawsuit against 30 Waste Protest Leaders asking for 531 million baht compensation”, (12 June, 2006), *MGRonline*, online: <<https://mgronline.com/local/detail/9490000076489>>.

———, “17 years after the Dispersion of Thai-Malaysian Pipeline Demonstration, Closing All Cases, Opening Struggling Path to People's Victory”, (20 December, 2019), *MGRonline*, online: <<https://mgronline.com/south/detail/9620000121498>>.

———, “A lawsuit against Padaeng-Tak Mining for polluting cadmium demands more than three billion baths” (in Thai), *MGRonline*, (22 June, 2013), online: <<https://mgronline.com/local/detail/9560000075706>>.

———, “Map Ta Phut Residents Protest Demanding Government to Address Pollution” (in Thai), (June 12, 2008), *MGRonline*, online: <<https://mgronline.com/local/detail/9510000068980>>.

———, “Unpacking the Ombudsman's 'confidential' Report Urging Government to Terminate Khuha Mountain Limestone Mine”, (23 March, 2015), *MGRonline*, online: <<https://mgronline.com/south/detail/9580000034785>>.

———, “Announce Map Ta Phut Pollution Control Zone Impacts Business” (in Thai), (March 3, 2009), *MRGonline*, online: <<https://mgronline.com/daily/detail/9520000024524>>.

Nathapop Sangkate, “The Long Story of Limestone Mine on Andaman Coast: Past Victory and the Beginning of Failure”, (6 May 2022), *Decode*, online: <<https://decode.plus/20220417/>>.

Pearshouse, Richard, “Klity Creek’s neglected toxic lead legacy”, (16 December 2014), *Bangkok Post*, online: <<https://www.bangkokpost.com/opinion/opinion/450120/klity-creek-neglected-toxic-lead-legacy>>.

Peelukna, Napat, “Lessons Learned from Klity Case: Before Historic Judgment”, (11 May, 2013), *Prachati*, online: <<https://prachatai.com/journal/2013/05/46684>>.

Polkla, Sor Rattanamane, “Mekong villagers in fight for their rights”, *Bangkok Post*, (30 November 2015), online: <https://www.bangkokpost.com> <<https://www.bangkokpost.com/opinion/opinion/779937/mekong-villagers-in-fight-for-their-rights>>.

Prachatai, “The Supreme Court decided Karen villagers did not violate the Forest Act because they lived there before an announcement of the Preservation Forest, but must leave the area” (in Thai), | *Prachatai*, (22 March 2017), online: <<https://prachatai.com/journal/2017/03/70691>>.

———, “Administrative Court Revoked 2 Out of 76 Industrial Projects in Map Ta Phut felling in Severe Impact Projects”, (September 3, 2010), *Prachatai*, online: <<https://prachatai.com/journal/2010/09/30948>>.

———, “Prince of Songkla University gives honorary doctorate degree of law to 'Surchai Trong-ngam' a human rights and environmental lawyer” *Prachatai*, (21 September 2021), online: <<https://prachatai.com/journal/2021/09/95094>>.

———, “Mae Sot Villagers Prepare to Appeal the Cadmium Polluted River Case, Lawyer Says the Outcome is Regressive” *Prachatai*, (13 July 2016), online: <<https://prachatai.com/journal/2016/07/66862>>.

———, “Key chronologies of Communal Forest Bill”, *Prachatai*, (3 November 2005), online: <<https://prachatai.com/journal/2005/11/6267>>.

———, “Justice System Reform for the Poor”, (1 May, 2019), *Prachatai*, online: <<https://prachatai.com/journal/2019/05/82278>>.

———, “Chana villagers returned to protest industrial project”, (9 December, 2021), *Prachatai*, online: <<https://prachatai.com/english/node/9602>>.

———, “Human Rights Organizations Rate 10 Progression and Falling Back of Human Rights” (in Thai), (December 10, 2009), *Prachatai*, online: <<https://prachatai.com/journal/2009/12/26947>>.

RYT9, “Systematic Plan to Address Environmental Problems in Map Ta Phut” (June 21, 2012), online: <<https://www.ryt9.com/s/cabt/1429164>>.

Singh, Priyanka, “Thai government fails to tackle lead pollution in Klity Creek”, (22 December, 2014), *Down to Earth*, online: <<https://www.downtoearth.org.in/news/thai-government-fails-to-tackle-lead-pollution-in-klity-creek-47933>>.

Somboonkao, Roongroj, “Researcher-Villagers Ask Pollution Control Department to Pause Phase 2 Klity Clean-Up, Indicating that after Phase 1 Finished, Lead Pollution is still High”, (4 March, 2021), *The Active*, online: <https://theactive.net/news/20210304/>.

Tantivitayapitak, Vanchai, “Mysterious Death of Karen in Klity Village” (in Thai), *Sarakadee*, online: <https://www.sarakadee.com/feature/2002/07/secret_death.htm>.

Thai PBS, “Anti-Global Warming Association Appeals Map Ta Phut Case to Supreme Administrative Court”, (1 October 2010), *Thai PBS*, online <<https://news.thaipbs.or.th/content/217633>>.

———, “Chiang Rai Residents Expect Administrative Court to Revoke Biomass Power Plant Permit” (in Thai), *Thai PBS*, (18 June 2013), online: <<https://news.thaipbs.or.th/content/177803>>.

———, “Thai Royal Police Prepares to Pay Compensation to Villagers who Protest Against Thai-Malaysian Pipeline”, (16 January 2013), online: *Thai PBS* <<https://news.thaipbs.or.th/content/140036>>.

THAIPUBLICA, “Tracking ‘Chevron’ Announced to stop building Tasala deep-sea port, but has started the EHIA process for the permit” (in Thai), (11 August 2013), *THAIPUBLICA*, online: <<https://thaipublica.org/2013/08/thasala-chevron-ehia-2/>>.

———, “EU, Konrad Foundation and ENLAWTHAI Foundation organize legal empowerment project for communities in 18 provinces” (in Thai), *THAIPUBLICA*, (17 May 2015), online: <<https://thaipublica.org/2015/05/enlaw-6/>>.

———, “The awaited 15-years “Klity Lang Community Won Court Case Against PCD: Working Group Asks PCD to Clean Up Lead Toxin”, (12 January, 2013), *THAIPUBLICA*, online: <https://thaipublica.org/2013/01/clity-won-the-case/>.

———, “Lessons from Environmental Cases from Toxin to Workplaces ‘Klity, The Beach, and Santica Plub’”- *THAIPUBLICA*, (3 March 2013), online: <<https://thaipublica.org/2013/03/lesson-environmental-cases/>>.

Thairath, “Announced Map Ta Phut a Pollution Control Zone” (in Thai), (April 30, 2009), *Thairath*, online: <<https://www.thairath.co.th/content/2955>>.

Thano, Phnom, “Too late to save Klity Creek”, *Bangk Post*, (8 March, 2021), *Bangkok Post*, online: <<https://www.bangkokpost.com/thailand/general/2079879/too-late-to-save-klity-creek>>.

Tisantia, Itsarin, “Gold mine should cough up, say locals”, *Bangkok Post*, online: <<https://www.bangkokpost.com/news/general/1550858/gold-mine-should-cough-up-say-locals>>.

The Economist, “Thailand”, (28 February, 2002), online: *The Economist* <<https://www.economist.com/taxonomy/term/%25?page=25>>.

The People, “Chana residents: Wounded History of People who Protect Communities from the State”, (9 December 2021), *The People*, online: thepeople <<https://www.thepeople.co/read/social/39714>>.

The Nation, “Compensation for mining company’s ‘poisoning’ not enough: plaintiffs”, *The Nation Thailand*, (12 July 2016), online: <<http://www.nationmultimedia.com/detail/national/30290434>>.

———, “IEAT creating over 7,400 jobs as it expedites Map Ta Phut Smart Park project”, (25 August 2020), *The Nation Thailand*, online: nationthailand <<https://www.nationthailand.com/business/econ/30393480>>.

———, “Klity Creek case sends strong signal to govt”, (12 January, 2013), *The Nation Thailand*, online: nationthailand <<https://www.nationthailand.com/perspective/30197801>>.

———, “Lower Mekong dam decision to be appealed” *The Nation Thailand*, (23 September 2017), online: <<http://www.nationmultimedia.com/detail/politics/30327501>>.

———, “Klity Creek case sends strong signal to govt”, (12 January 2013), *The Nation Thailand*, online: nationthailand <<https://www.nationthailand.com/perspective/30197801>>.

——— Lead-contaminated villagers awaited justice two decades after verdict, (11 April, 2018), *The Nation Thailand*, online, <<https://www.nationthailand.com/in-focus/30343011>>.

THE STANDARD, “10 Years Conclusion of Map Ta Phut Case: Pollution Control Zone and the Extremely Cost Paid by Society” (in Thai), (18 October 2017), *THE STANDARD* online: <<https://thestandard.co/10-years-of-map-ta-phut-case/>>.

Wachpanich, Nicha, “Klity Creek lead cleanup stumbles”, *Bangkok Post*, (28 February, 2021), online: <<https://www.bangkokpost.com/thailand/special-reports/2075699/klity-creek-lead-cleanup-stumbles>>.

———, “The River is still Polluted and PCD adds 200 million more Budget to continue the Clean-Up”, (19 June 2020), online: *GreenNews* <<https://greennews.agency/?p=21260>>.

Waymagazine, “Failure of the Winner Klity: After Court Judgment River is still Polluted”, (5 January 2021), *waymagazine*, online: <<https://waymagazine.org/klity-after-the-judgment/>>.

Wayne Arnold, “A Gas Pipeline to World Outside; Talk of Modernization and Jobs Unsettles Thai Villagers”, (26 October 2001), *N Y Times*, online: <<https://www.nytimes.com/2001/10/26/business/gas-pipeline-world-outside-talk-modernization-jobs-unsettles-thai-villagers.html>>.

Win, Thin Lei, “Thailand fails to clean poisoned creek despite court order: rights group”, *Reuters* (16 December 2014), online: <<https://www.reuters.com/article/us-thailand-lead-health-idUKKBN0JU11I20141216>>.

Wipatayotin, Apinya, “Land reforms come up short”, *Bangkok Post*, (18 May 2017), online: <<https://www.bangkokpost.com/news/politics/1251578/land-reforms-come-up-short>>.

———, “Lead contamination victims win historic B4m payout”, *Bangkok Post*, (11 January 2013), online: <<https://www.bangkokpost.com/thailand/politics/330247/lead-contamination-victims-win-historic-b4m-payout>>.

Wongpanya, Tanakorn, “Fight to Protect Rights...But Received Lawsuits? New Strategies Using Lawsuits to Stop Villagers to Speak Out” *THE STANDARD*, (7 August 2017), online: <<https://thestandard.co/news-thailand-legal-mechanisms/>>.

SECONDARY MATERIALS: REPORTS

The Administrative Court, *the Administrative Court and the Office of Administrative Court Performance Report 2002*, (Office of Administrative Court: 2002).

———, *the Administrative Court and the Office of Administrative Court Performance Report 2003*, (Office of Administrative Court: 2003).

———, *the Administrative Court and the Office of Administrative Court Performance Report 2004*, (Office of Administrative Court: 2004).

———, *the Administrative Court and the Office of Administrative Court Performance Report 2006*, (Office of Administrative Court: 2006).

———, *the Administrative Court and the Office of Administrative Court Performance Report 2017*, (Office of Administrative Court: 2017).

———, *the Administrative Court and the Office of Administrative Court Performance Report 2018*, (Office of Administrative Court: 2018).

———, *the Administrative Court and the Office of Administrative Court Performance Report 2019*, (Office of Administrative Court: 2019).

Carole Excell & Elizabeth Moses, *Thirsting for Justice (2017)*, accessed April 14, 2019, online: <<https://files.wri.org/s3fs-public/thirsting-for-justice.pdf>>.

European Chemical Agency, *ANNEX XV INVESTIGATION REPORT: A review of the available information on lead in shot used in terrestrial environments, in ammunition and in fishing tackle*, (ECHA: Helsinki, 2020).

Human Rights Watch, *World Report 2019: Rights Trends in Thailand*, (28 December 2018), online: Human Rights Watch <<https://www.hrw.org/world-report/2019/country-chapters/thailand>>.

———, *Toxic Water, Tainted Justice: Thailand's Delays in Cleaning Up Klity Creek*, online: <http://features.hrw.org/features/HRW_2014_reports/Toxic_Water_Tainted_Justice/index.html>.

Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis, Summary for Policy Makers, 2021*, online, <https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf>.

Office of the National Economic and Social Development Council, *Gross Regional and Provincial Product: Chain Volume Measures 2018 Edition*, (Office of the National Economic and Social Development Council: 2018).

Secretary-General to Security Council, *The rule of law and transitional justice in conflict and post-conflict societies, United Nation, S/2004/616**, 23 August 2004, online <<https://www.un.org/ruleoflaw/files/2004%20report.pdf>>.

Special Rapporteur on Human Rights and Environment, *The Right to Clean, Healthy and Sustainable Environment: non-toxic environment, Annex 2 to A/HRC/49/53*, (United Nations Human Rights Special Procedures: 2022).

The Academic Committee on Environmental Law, *Administrative Court, Guideline for Environmental Administrative Case Adjudication*, (The Academic Committee on Environmental Law, 2012).

The National Human Rights Commission, *the National Human Rights Commission Performance Report 2002*, (the Office of Human Rights Commission, 2002).

———, *the National Human Rights Commission Performance Report 2019*, (the Office of Human Rights Commission, 2019).

———, *Investigation Report No. 436/2556 (2013), June 12, 2013, Community Rights: Khuha Communities Affected from Limestone Mine in Rattaphum District, Songkhla Province*, (National Human Rights Commission: 2013)

———, *Report on the Investigation of Human Rights Violation: The Case of Violence Related to the Thai-Malaysia Gas Pipeline Projects, Hat Yai district, Songkhla province*, (Office of National Human Rights Commission: 2003).

The National Reform Council, *Special Reform Agenda 6: Establishment of Environmental Court*, 20-21, (accessed April 15, 2019)
online: <https://www.parliament.go.th/ewtadmin/ewt/parliament_parcy/download/parcy/09.pdf>.

United Nations, General Assembly, *The Rights to Clean, Healthy, and Sustainable Environment: non-toxic environment, Report of Special Rapporteur on the issues of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, (United Nations, General Assembly: 2022)

SECONDARY MATERIALS: WEBSITES

Administrative Court, “The Central Administrative Court Issued an Injunction to Halt 76 Projects for Protecting Map Ta Phut Communities” (in Thai), 4-5, (accessed April 15, 2019), online:
<http://admincourt.go.th/admincourt/upload/webcms/Oldnews/attach/news_attach/2009/09/hotnews908-52.pdf>

Amnesty International Thailand, “20 years of Universal Declaration on Human Rights Defenders: The protection yet to be available in Thailand”, (accessed April 15, 2019), online: <<http://www.amnesty.or.th/en/latest/news/9898/>>.

Ashoka, “Surachai Trongngam”, (accessed April 15, 2019), online: Ashoka Everyone Chang <<https://www.ashoka.org/en-CA/fellow/surachai-trongngam>>.

Asia Foundation, “Transboundary Pollution in Northern Thailand Causes Dangerous Levels of Smog”, (27 March 2014), online: The Asia Foundation
<<https://asiafoundation.org/2014/03/26/transboundary-pollution-in-northern-thailand-causes-dangerous-levels-of-smog/>>.

EARTH, “Stench from Profess Land Field, Sa Kaeo Pronvince” (accessed April 25, 2019) online: <<https://www.earththailand.org/th/pollution/38>>.

ENLAWTHAI Foundation, “Lessons Learned from Klity Case: Before Historic Judgment” (in Thai), (accessed April 15, 2019), online: ENLAWTHAI Foundation - EnLAW <<https://enlawfoundation.org/newweb/?p=792>>.

———, “Environmental Judgment” (in Thai), ENLAWTHAI Foundation, (accessed April 15, 2019), online, <https://enlawfoundation.org/newweb/?page_id=860>.

Emmett Environmental Law and Policy Clinic, (accessed March 15, 2019)online: <<https://hls.harvard.edu/dept/clinical/clinics/emmett-environmental-law-and-policy-clinic/>>.

Environmental Law Centre, “2018-19 Annual Report – Environmental Law Centre”, (accessed April 15, 2020), online: <<http://www.elc.UVic.ca/publications/2018-19-annual-report/?hilite=%27annual%27%2C%27report%27>>.

Fortifyrights, “Thailand: Stop Judicial Harassment of Human Rights Defenders”, (9 May 2016), online: Fortify Rights <<https://www.fortifyrights.org/tha-inv-2016-05-09/>>.

Gibbons, Sandra & Chris Lalonde, “UVic Human Research Ethics Covid-19 Bulletin # 1” (University of Victoria: Victoria, 2020), (accessed on January 1, 2022), online: <[covid-19_human_research_ethics_bulletin_no.1-march_23.pdf](https://www.uvic.ca/human-research-ethics-bulletin-no.1-march_23.pdf)>.

———, “UVic Human Research Ethics Covid-19 Bulletin # 2” (University of Victoria: Victoria, 2020), (accessed on January 1, 2022), online: <[covid-19_human_research_ethics_bulletin_2-june_02.pdf](https://www.uvic.ca/human-research-ethics-bulletin_2-june_02.pdf)>.

Gibbons, Sandra & Matt Murphy, “UVic Human Research Ethics Covid-19 Bulletin # 3” (University of Victoria: Victoria, 2020), (accessed on January 1, 2022), online: <[covid-19_human_research_ethics_bulletin_3-jul_16.pdf](https://www.uvic.ca/human-research-ethics-bulletin_3-jul_16.pdf)>.

———, “UVic Human Research Ethics Covid-19 Bulletin # 4” (University of Victoria: Victoria, 2020), (accessed on January 1, 2022), online: <[covid-19_human_research_ethics_bulletin_4-nov-26.pdf](https://www.uvic.ca/human-research-ethics-bulletin_4-nov-26.pdf)>.

———, “UVic Human Research Ethics Covid-19 Bulletin # 5” (University of Victoria: Victoria, 2021), (accessed on January 1, 2022), online: <[covid-19_human_research_ethics_bulletin_5-feb_25.pdf](https://www.uvic.ca/human-research-ethics-bulletin_5-feb_25.pdf)>.

———, “UVic Human Research Ethics Covid-19 Bulletin # 6” (University of Victoria: Victoria, 2021), (accessed on January 1, 2022), online: <[covid-19_human_research_ethics_bulletin_6-jul_21.pdf](https://www.uvic.ca/human-research-ethics-bulletin_6-jul_21.pdf)>.

Hassarungsee, Ranee & Suntaree Kiatiprajuk “Time to rethink industrial development”, online: <<https://www.socialwatch.org/book/export/html/12114>>.

HydrocarbonsTechnology, “Thai-Malaysian Pipeline and Gas Separation Plant - ar”, online: <<https://www.hydrocarbons-technology.com/projects/thaimalaysia/>>.

House of Common, Canada, House Publication, online: <<https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-228/order-notice/page-11>>.

Human Rights Watch, “Thailand Coup Threatens Human Rights”, (19 September 2006), online: Human Rights Watch <<https://www.hrw.org/news/2006/09/19/thailand-coup-threatens-human-rights>>.

———, “World Report 2019: Rights Trends in Thailand”, (28 December 2018), online: Human Rights Watch <<https://www.hrw.org/world-report/2019/country-chapters/thailand>>.

———, “Klity Creek’s neglected toxic lead legacy”, (16 December 2014), online: Human Rights Watch <<https://www.hrw.org/news/2014/12/16/klity-creeks-neglected-toxic-lead-legacy>>.

ICJ, “Thailand: Abusive lawsuits targeting journalists (SLAPPs) must be curtailed”, (18 March 2022), online: Int Comm Jurists <<https://www.icj.org/thailand-abusive-lawsuits-targeting-journalists-slapps-must-be-curtailed/>>.

Network of Indigenous Peoples in Thailand, “Indigenous Peoples of Thailand ヒューライツ大阪”, (December 2010), online: <<https://www.hurights.or.jp/archives/focus/section2/2010/12/indigenous-peoples-of-thailand.html>>.

Office of Research Services, “In-person Research with Human Participants Under COVID-19 Restrictions Community (off-campus) Research1 - Instructions for Human Research Ethics” (University of Victoria, 2021), (accessed on January 1, 2022), online: <[covid-19_hre_community_in-person_research_instructions.pdf](https://www.ors.uvic.ca/covid-19_hre_community_in-person_research_instructions.pdf)>.

Pectcharath Kongvichienchep, “A discussion on the impacts of the Hin Son power plant project”, online: <<https://en.nationalhealth.or.th/a-discussion-on-the-impacts-of-the-hin-son-power-plant-project/>>.

Pollution Control Department, “Map Ta Phut Pollution Control Zone” (accessed April 15, 2019), online: <http://www.pcd.go.th/info_serv/pczs/pczDetail.cfm?id=13>.

———, “PCD Finished First Phase Klity Creek Clean-Up, Plan to Continue the Second Phase – Pollution Control Department”, (23 March, 2021), online: <https://www.pcd.go.th/pcd_news/12311/>.

Seub Nakhasathien Foundation, “State of Thailand Forest Report 2019-2020”, (27 August 2020), online: <<https://www.seub.or.th/document/สถานการณ์ป่าไม้ไทย/รายงานสถานการณ์ป่าไม้1-6/>>.

Tilleke Gibbins, “An Overview of the Legal Profession in Thailand”, (accessed April 15, 2021)online: <<https://www.tilleke.com/insights/overview-legal-profession-thailand/>>.

TLHR, “5 Years NCPO, Is It Enough? Proposal to Handle Coup’s Consequences” (in Thai), (22 May 2019), online: <<https://www.tlhr2014.com/?p=12492>>.

Transnational Environmental Law and Policy Clinic, (accessed April 25, 2019), online: <<http://www.uwindsor.ca/law/1587/transnational-environmental-law-clinic>>.

The Community Organizations Development Institute, “Ethnic Groups Push for Community Land Title to Solve Land Problems on Highland”, CODI, (10 June 2009), online: <<https://ref.codi.or.th/2015-08-04-11-01-52/11641-2010-09-14-04-26-58>>.

The Administrative Court, “Seminar on Rights of Access to Environmental Justice” (27 February, 2013), online, <<http://www.admincourt.go.th/admincourt/site/04activitydetail-1197.html>>;

The UN Working Group on Business and Human Rights, “Corporate accountability: Lessons from recent legal cases” (25 November 2019), online: <<https://2019unforumbhr.sched.com/event/U98I/corporate-accountability-lessons-from-recent-legal-cases>>.

UN Environment, “Lead and cadmium”, (13 September 2017), online: UNEP - UN Environ Programme <<http://www.unep.org/explore-topics/chemicals-waste/what-we-do/emerging-issues/lead-and-cadmium>>.

World Health Organization, “Archived: WHO Timeline - COVID-19”, WHO, (27 April 2020), online: <<https://www.who.int/news/item/27-04-2020-who-timeline---covid-19>>.

World Health Organization “WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March 2020”, (11 March 2020), online: <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>>.