



**REGIONAL CAPACITY DEVELOPMENT TECHNICAL
ASSISTANCE
STRENGTHENING CAPACITY FOR ENVIRONMENTAL
LAW IN THE ASIA-PACIFIC: DEVELOPING
ENVIRONMENTAL CHAMPIONS
TRAIN-THE-TRAINERS PROGRAM
19-23 June, 2017
Chiangmai, Thailand**



**ALTERNATIVE APPROACHES
IN ENVIRONMENTAL DISPUTE RESOLUTION**

Role Play Exercise: Mediation

**Session 7, Tuesday 20 June 2017
and Session 12, Wednesday 21 June 2017**

Introduction

Role playing allows students to practice legal representation of different interest groups concerning the same facts. Role plays can be designed for dispute resolution within formal settings such as courts and tribunals, as well as situations where alternative dispute resolution mechanisms are employed.

Role plays can be based on a fictitious scenario, with roles allocated according to assumed interest groups. They can also be based on actual cases. Further, they can be based on a mixture of fact combined with fiction. Professors can choose between these types of situations, depending on what they are trying to achieve and whatever is most appropriate in the circumstances.

The chosen fact situation here is a hypothetical scenario, though based on actual events. The role play exercise has been designed to encourage students to examine different aspects of the same fact situation, applying the law from the perspective of the particular role they are performing, and then to engage in a process of mediation as an exercise in alternative dispute resolution.

This role play exercise will be conducted in two parts. The first part is an introduction with respect to the role-play scenario, together with instructions on how to conduct the exercise.



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This part will be conducted during session 7 on Day 2, Tuesday 20 June between 2.30-3.15pm. In this session, the participants will be divided into groups representing the different parties involved in the role-play, and given time to read and discuss the fact situation. In this session, they are asked to prepare their negotiating positions and options.

The second part of the exercise is the role-play mediation itself. This will be conducted during session 12 on Day 3, Wednesday 21 June between 3.30 and 4.30pm.

After the role play, there will be an opportunity for reflection and feedback on the role play and a discussion on whether and how the participants might incorporate a role play into an environmental law course.

Instructions

1. The participants will be divided into 6 groups.
2. Each group should choose a reporter who will take notes on behalf of the group, and be prepared to summarize discussions on a white board or on a computer.
3. Each group should choose two participants to lead the discussions and represent them in the mediation.
4. Each participant is expected to take some part in the discussions and negotiations.
5. The trainers will be available to provide any necessary clarification or input during the preparation of the arguments.
6. Two mediators will be appointed to lead the mediation.

HYPOTHETICAL CASE

Samet Island is a resort island situated off the coast of Rayong, about 200km south-east of Bangkok. The island is one of the most popular destinations among tourists coming to Thailand. Its residents depend heavily for their income on the tourism industry and also the fisheries in the waters around the island.

On 27 March 2017, a pipeline owned by PTT Global Chemical, Plc (PTTGC), a flagship company of the Thai state-owned oil company Petroleum Authority of Thailand, Plc (PTT), ruptured and caused an oil spillage while transferring crude oil from an undersea reservoir to a tanker. The spillage occurred in the Gulf of Thailand, around 35km from Coconut Bay on Samet Island. Whilst PTTGC took measures to shut down the pipeline within several hours after the rupture occurred, nevertheless a substantial amount of oil was spilled during this period.

PTTGC and members of the Royal Thai Navy took measures within 24 hours of the spill to try to minimise its impact. At sea, with the permission of the Pollution Control Department (PCD), dispersants were added by them to the spilled oil to try to prevent it from spreading further. Containment booms were also deployed in an effort to contain the spillage within the area. However, due to bad weather, the containment booms did not work very well, and the oil slick was not able to be contained to the vicinity of spillage.

On the night of 28 March 2017, the oil slick from the spillage reached Coconut Bay, causing large deposits of a tarry nature to be washed up onto the beach, together with considerable numbers of dead fish. As a result, the PCD decided to close Coconut Bay and other nearby beaches due to concerns about water toxicity and its threat to human health. This involved the closure of all tourist facilities in the Bay area and the evacuation of all tourists visiting these facilities.

Despite these actions by the PCD, both PTTGC and its parent company, PTT, have refused to respond to media and community enquiries concerning the incident and have tried to play down the effects of the spillage. A week after the spill, PTTGC issued a

statement saying that it was safe to go to the beaches as they were clean. However, the PCD insisted that public health risks required the closure orders to remain in place for a period of four weeks after the spill first reached Coconut Bay. The Fishery Department also considered it necessary to ban all fishing activities in the Bay and adjacent ocean waters for the same period.

After the orders were lifted in late April, it proved necessary for these authorities to issue warnings to tourists and local residents to use caution if going swimming in the Bay area, and to be cautious about eating seafood as well. There have been many complaints by local residents and some tourists of stomach illnesses experienced after either swimming in the Bay waters or eating local seafood caught in the adjoining marine waters.

As a result, the number of tourists visiting Coconut Bay and the adjacent Rayong coastal beaches has decreased substantially, causing severe financial impacts on local tourist operators. Local fishers have also suffered serious financial loss through the ban on fishing for four weeks and the ongoing decline in consumption of seafood caught locally since the pollution incident occurred.

There continue to be substantial conflicts of opinion concerning the size of the oil spillage. It was reported in the local media that the spillage discharged approximately 50,000L(litres) or (310bbl) (barrels) of crude oil into the adjacent coastal waters. However, there have been suggestions that the spillage might have been much larger than reported. A report produced by a scientist from Prince of Songkhla University, which was supported by a scientist at the National Institute of Development Administration, estimated the spillage could have ranged from 108,000L (680bbl) to as high as 190,000L (1,200bbl). A difficulty in estimating the size of the spillage is that PTTGC and PPT have declined to provide details concerning the length of time it required to halt the flow of oil from the ruptured pipeline or the rate of flow of oil through the pipeline and to insist that only a relatively small amount of oil was spilled.

The concerns about possible health impacts on residents and tourists from the spillage have been complicated by the fact that there may be other explanations for some of

these impacts. Samet Island is located near Map Ta Phut Industrial Estate, Rayong. Map Ta Phut Industrial Estate has had a long history of environmental problems since its opening in 1990. There are about 25,000 people who live in the Map Ta Phut Municipality. In 2015, the pollution problems came to public attention when some 1,000 pupils and teachers at a local school became ill after inhaling toxic emissions and had to be hospitalised. An independent test carried out in 2016 demonstrated that airborne toxic chemicals released by industries at Map Ta Phut Industrial Estate exceeded the health safety standards for developed nations by 60 to 3,000 times. There are also concerns that industrial waste water from the Estate is being discharged by pipelines directly into the waters of Coconut Bay. There are 15 different companies located at the Industrial Estate, including PTTGC, which operates an oil refinery there. It has been reported that there is almost no enforcement of air or water pollution controls within the area at all.

However, a contrary view linking recent reported illnesses to the oil spill has been expressed by the non-government organisation, Greenpeace Thailand. It has indicated its concern that the heavy use of dispersants at the time of the spillage caused some of the crude oil to sink to the ocean bottom and that the full effects of the spillage on local fisheries and other marine life have yet to be understood. It also has been reported in the local media that a scientific study found that Corexit, the dispersant used in the incident, increases the toxicity of oil by 52 times. It can remain in the ecological food chain for many years and can cause widespread and long-lasting health impacts, including cancers, liver and brain problems. The Director-General of the Fishery Department also has advised that recent laboratory tests on seafood have revealed mercury contamination in samples from fish markets on Samet Island. Crude oil from particularly sources is scientifically known to contain significant amounts of mercury.

The tourism operators, fishers and residents of Samet Island have complained to PTTGC and to various government agencies and local governments, including the PCD and Samet Sub-District Administration, about the health and economic impacts they believe have resulted from the oil spillage. The tourist operators and fishers have sought compensation for their income losses due to the declining number of tourists in the area and the decreasing demands of fishery products from the area from PTTGC and PCD.

The residents are concerned for the long-term health of themselves and their children. In addition, Greenpeace Thailand has decided to wage a political campaign in support of these parties by calling for the closure of PTTGC's offshore oil operations in the locality.

The tourism operators, fishers and residents of Samet Island, together with Greenpeace Thailand staff, would like to meet with PTTGC, PCD and the Samet Sub-District Administration to address these matters. All parties have agreed to come to a meditation to try to resolve this dispute.

The six (6) parties are:

- 1) Samet Sub-District Administration
- 2) Pollution Control Department
- 3) Greenpeace Thailand
- 4) The tourism operators and fishers of Samet Island
- 5) The Samet Island Residents' Environmental Action Group; and
- 6) PTTGC/PPT