

Case Study Report - Bangkok, Thailand

Problems and Possible Solutions for Stall Sellers and Street Vendors

The Case of Stall Sellers and Street Vendors in front of Chulalongkorn Hospital^[1]

The study has been initiated in response to an order to prohibit street vendors from selling in front of Chulalongkorn Hospital, both on both Rama IV road and Lumpini Park. The issue began with the reporting of ITV that exposed the scandalous extortion of money by the officers of the Bangkok Metropolitan Administration (BMA) from the vendors. The researchers have been commissioned by the National Human Rights Commission to conduct this preliminary study and to propose possible solutions.

1. Methodology

The research team conducted their study using the following methods:

- 1.1 Conduct fact-finding and analyze input from interviews with the vendors selling in front of Chulalongkorn Hospital, academics and concerned organizations.
- 1.2 Identify and collect information from relevant research, legal documents, regulations, directives, ordinances, orders, and statistics as well as commentaries and opinions expressed through various media toward the issue of street vendors.

2. The research team which developed preliminary solutions is composed of;

2.1 Mr. Komsan Bodhikong, lecturer of the Faculty of Law, Sukhothai Dhammathirat University.

2.2 Mr. Boonyarit Moongjongklang, lecturer of the Department of Agricultural Promotion, Sukhothai Dhammathirat University.

3. The Findings

3.1 Facts about the regulations of street vendors

[1] Case Study Report "Problems and Solutions for Stall Sellers and Street Vendors: The Case of Stall Sellers and Street Vendors in front of Chulalongkorn Hospital" was carried out by Mr. Komsan Bodhikong, lecturer of the Faculty of Law, Sukhothai Dhammathirat University and Mr. Boonyarit Moongjongklang, lecturer of the Department of Agricultural Promotion, Sukhothai Dhammathirat University, and was first presented at the progress report session for the study and identification of solutions for street vendors in front of Chulalongkorn Hospital, held on 17 November 2003, from 13.30-16.00 at Room 101, the Office of National Human Rights Commission.

Based on review of documents, publications and statistics as well as commentaries and opinions expressed by numerous personalities through various media toward the issue of street vendors during the time that BMA was putting efforts to regulate street vendor trading (between 2000-2003), a chronology of the events can be summarized as follows:

15 August 2000

The Governor of Bangkok issued a notification on street vendor trading to bar vendors from the street on Wednesdays and to declare the following guidelines for selling products in public spaces (BMA's notification, online).

- 1) Vendors can sell at the spots arranged by the BMA everyday without having to pay any fees, but for cleaning services of the footpath on which they put their stalls, as provided by the BMA Municipality Statute on Fees B.E. 2543.
- 2) Should any vendor be required to pay fees besides the cleaning service, they should notify the Governor, or the Office of Municipality, or the BMA's Complaint Center.
- 3) All vendors must strictly observe regulations issued by the BMA including selling and adjourning at the times approved by the BMA, cleaning and putting away stalls after they sell, do not infringe on traffic spaces and outside specified areas.

As for the BMA's procedure to regulate the vendors, it can be laid out as follows;

- 1) Survey and regulate the vendors, only those who have been practicing this trade are allowed to continue their occupation.
- 2) Color spray is used to draw the lines for specified areas, each of which is numbered.
- 3) Create ID cards for vendors.
- 4) Put up signs that specify durations of street vending.

1 August 2001

BMA started to enforce the BMA regulation regarding the collection of fees for cleaning footpaths used by street vendors. Officers from the Department of Sanitation and Environment of each District were assigned to collect the cleaning fee. Every 15 days, the fee is collected for 150 baht per one square meter per month with a receipt given to vendor. (*Daily News Online*, 2001)

18 February 2002

Police Second Lieutenant Kriangsak Lohachala, the then City Clerk, appointed a committee to investigate severe disciplinary violation of Mr. Pithan Huadupat, a municipal officer of Suanluang District. He was accused of taking bribes from a local food vendor (a pork grill shop) and the picture of his taking the money was aired by ITV in February 2002. The Committee has

found Mr. Pithan Huadupat guilty. A directive was made on 15 August 2002 to penalize Mr. Sangob Tangchitsomboon, the Director of Suanluang District and Mr. Surathep Yukhunthorn, the Chief of the Municipal Department of the District, as the commanding officers, whereby Mr. Pithan Huadupat, who was found to have extorted 20,000 baht from the food vendor, was exonerated. Mr. Pithan was simply penalized by having his salary cut by one step. Another directive was made on 23 September 2002 to penalize Mr. Niphon Sitthipaiwan, a C6 municipal officer and Mr. Narongsak Chuensawat, a C6 municipal officer, by having their salary cut for 5% for one month. Ms. Yuphin Yongka-aksorn, the fiscal chief, was penalized and was to have her salary reduced by 5% for one month for colluding to conceal the wrongdoing of Mr. Pithan Huadupat, but was put on probation as her testimony had aided the investigation.

As for the severe disciplinary violation accused for Mr. Pithan Huadupat, the investigation committee led by Mr. Pichit Ob-om, a C9 general inspector, has found him guilty for committing severe disciplinary violation. But instead of penalizing him at once, the Subcommittee of the BMA's Officer has requested for examination of other two important witnesses including the person who brought money to Mr. Pithan Huadupat and the ITV's reporter or cameraman who recorded the event, as they were not convinced by the existing evidence and wanted to collect more information (*Daily News Online*, 2002 A)

25 March 2002

The BMA launched a campaign for a clean city by encouraging city residents to abide by the Clean and Order Act B.E. 2535 which required people to refrain from littering public spaces. Municipal officers are sent to patrol in different communities to ensure the compliance for clean and peaceful environment and to receive complaints from people. In conjunction with the office of each district, the patrol boat troupe was set up for water rescue work. (*Daily News Online*, 2002 B)

1 May 2002

The BMA invoked the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 and allowed the vendors to sell on specified footpaths and public spaces. The BMA and the Metropolitan Constabulary issued an order to allow 15,289 vendors to sell in 268 spots. Another 11,409 vendors were being considered for the permission to sell on another 353 spots. Altogether, 26,698 vendors were going to be allowed to sell on specified public spaces. The permission was to be renewed every year based on how well each vendor complies with the BMA's notification on cleaning and selling in specified area (*Daily News Online*, 2002 C)

1 July 2002

The BMA ordered the rotation of municipal officers of all districts to avoid possible misuse of their power. However, the District Director may ask for retaining 20% of the workforce in each district to ensure continuity of work (*Daily News Online*, 2002 D)

3.2 Facts about the vendors in front of Chulalongkorn Hospital

3.2.1 Background of the vendors

During the survey, we have found altogether 97 vendors who earned their living from selling at stalls in front of the hospital. 29 of them sold in the morning. Based on our survey of 43 vendors, we have found that all of them principally rely on income from street vending to feed their families. 81% of them were domiciled in different provinces. 58% have been practicing as street vendors for more than 10 years, the rest, 42%, have been in the business for more than five years. Each of them earned about 200-500 baht per day. We have found that the average number of family members of each vendor was 5.67 persons per family. As for educational background, most of them were low educated – 14% without any formal education, 67% with primary education, 12% with high school education, and only 7% with pre-university education.

Based on the above survey, we could surmise that most of the vendors in the case study of vendors in front of Chulalongkorn Hospital come from upcountry and have been practicing as street vendor in Bangkok to earn their living for a long time. In addition, most of the vendors are without formal education, or with low educational background, which may impede their opportunities to pursue other occupations other than street vending.

3.2.2 Information on money extortion by the officers

The street vendors told us that they had been affected by the extortion of money by the municipal officers, even before the BMA had launched the attempts to register the vendors. According to them, before the registration of vendors, the extortion rates were as follows;

- 1) Small cart: 30 baht/week
- 2) Big cart: 50 baht/week
- 3) Food stall with two seats: 100 baht/week
- 4) Food stall with five seats: 200 baht/week
- 5) Food stall with ten seats: 300 baht/week

After the BMA launched the campaign to regulate and register the vendors, as well as declare the permitted areas for street vending, the street vendors lodged their complaints to ITV and the ITV crew came to record the event secretly. The video tape showed that each vendor for morning round was extorted for 100-300 baht, and 20 baht for those selling in the afternoon.

On 21 July 2003, the “Decoding” (*Thod Rahat*) program of ITV broadcast the video that showed the picture of a municipal officer from Pathumwan district taking bribes from vendors in front of Chulalongkorn Hospital. The video was taken on 14, 21, and 28 May 2003, between 11.00-12.00 AM. The video contained contents that made audible the officer's collection of money. On 3 July 2003, the crew also took the picture of the municipal officers from Pathumwan district when they were evicting vendors who sold beyond specified times and the extortion of money from the vendors. In general, one vendor was assigned to collect money and give it to the officers on

every Wednesday around 11.00-12.00 AM in order to be allowed to extend their selling time from 05.30-11.00 to 05.30-13.00. The most affected vendors were those selling in the morning, as during 10.00-13.00 was peak time and many of their customers came to them for food during that time. The TV crew went to interview the commanding officers of BMA and they confirmed that the officers collected money from the vendors and they believed that the money was the fee for cleaning the footpaths and it would be given to the cleaning staff as a token of appreciation, not a bribe. The vendors also wanted to have the places cleaned up and gave the money partly also for the purchase of caustic soda and the water bill.

The vendors told us that they paid fees for footpath cleaning and received receipts for that. The money was supposed to be used for the purchase of cleaning tools. Every 15 days, the officers came to collect the fee for 150 baht per square meter from each of the vendors.

After the broadcast by ITV, on 28 July 2003, the BMA issued an order banning food vendors and others from putting up their stalls and selling next to the fence of Chulalongkorn Hospital. The order was enforced without any explanations. There was further inquiry and efforts to collect information and evidence. And the BMA's fact-finding committee had not reached a conclusion yet. However, some high ranking BMA officers gave their opinions and categorically denied any bribe taking. According to them, the money collected from the vendors was given voluntarily as part of their contribution toward the purchase of caustic soda and tools for cleaning the footpaths. They deemed that the corruption charge was the result of a conspiracy between ITV and the vendors. Therefore, the BMA ordered the District of Pathumwan to ban vendors from the area. They gave their reasons in a popular political debate TV program, "*Tueng Luke Tueng Khon*" that if there were no longer the vendors, there would be no collection of such fees, too.

In addition, the Pathumwan District was ordered to renovate the pavements along the hospital. On 28 July 2003, the pavement on which the vendor stalls used to be put up was dismantled, some trees and flowers were planted about six meters from the fence in front of the hospital, in an apparent effort to permanently bar these vendors from selling in the area.

After the vendors lodged their complaints to different agencies, the District office provided them an option to sell on Sarasin Road. However, that area had been occupied by another group of vendors already, and due to its distance from communities, there were not so many customers.

3.3 Petitioning and complaints lodged by the vendors so far

The vendors in front of Chulalongkorn Hospital have lodged their complaints to numerous agencies based on the following demands:

- 1) That they are allowed to sell in the same area;
- 2) That they are allowed to sell at a longer period - morning: from 05.30-10.00 to 05.30-14.00; and the afternoon: from 17.00-03.00-15.00-03.00;

- 3) That the BMA officers who had been accused of taking bribes from the vendors be promptly investigated;
- 4) That the area in front of the hospital be declared an area for vendors;
- 5) That the cleaning fee should be paid directly to the Department of the Sanitation and Environment of the BMA, without having to pay through the municipal officers again.

The vendors approached several agencies for help including:

- On 28 July 2003, they submitted their petition to the Office of the Prime Minister;
- On 29 July 2003, they submitted their petition to the Parliament;
- On 30 July 2003, they sought advice from the Faculty of Social Work, Thammasat University and went to lodge their complaints with the Office of National Human Rights Commission;
- On 31 July 2003, they sought legal advice from the Law Society of Thailand;
- On 4 August 2003, they lodged their complaints with the National Advisory Council of Economic and Social Development;
- On 6 August 2003, they lodged their complaints with the Upper House Committee on Public Participation.

4. The Problems

4.1 Facts

The research team has identified related facts about this issue and come to the following conclusions.

1) Selling periods

We have found the duration of morning selling time, from 05.00-10.00 inappropriate as the high time when people come for lunch is around 11.00-13.00. This provides a loophole for which the municipal officers can extort money from the vendors who want to be allowed to sell during the extended time.

2) Treatment of the officers

The officers have not stringently enforced the municipal laws, and thus have discriminately chosen to arrest certain vendors. Without taking into force the BMA's regulations, some vendors sell their vending rights to others. Those whose names are not the list of the officers are allowed

to sell there (as they buy the rights from other vendors). Due to the lack of transparency, the enforcement of regulations by the municipal officers is inconsistent.

3) The lack of livelihood security for vendors

The vendors have not been provided with any assurance that they can sell in the pending areas, even though they want to abide by any necessary rules. It seems the whole matter rests in the hand of the municipal officers who make apparently personal judgements.

4.2 Juristic aspects

As to legal efforts to handle the issue of vendors by the BMA, the research team has found that BMA invokes laws and regulations related to vendor business including the BMA Administrative Functions Procedures Act B.E. 2528, the Public Health Act B.E.2535, the Cleaning and Orderliness of Public Spaces Act B.E. 2535, and the other four major ordinances to control vendors including:

(1) The BMA Ordinance of Vendor Regulation B.E. 2519

In principle, this ordinance aims to regulate food and ice vendors in public places in Bangkok^{1[2]}. Each vendor is required to apply for a license and pay a fee to the Bangkok Governor^{1[3]} and is allowed to sell from 04.00-24.00. An exemption to selling time can be made during festival seasons^{1[4]}. Their utensils must be clean, no littering is allowed and proper garbage disposal must be put in place^{1[5]}. In addition, a person suffering from communicable diseases as provided in the law is barred from being vendor^{1[6]}.

(2) The BMA Ordinance of Stall Seller Regulation B.E.2519

In principle, the ordinance seeks to control the installing of stalls on public pathways or in public places in Bangkok. Each person who wants to set up a stall has to seek permission and pay a fee to the Bangkok Governor^{1[7]}. The Governor may specify the products which are permitted for each license. There are two kinds of stall sellers specified in the law. One is permanent stall seller whose license is renewed every year. Another is temporary stall seller permitted during festival seasons, and whose license lasts only for 90 days from the issuance date.^{1[8]} Both of them are allowed to operate from 04.00-24.00.^{1[9]} The law provides also clauses on how to set up and maintain the stalls and utensils. For stall sellers who sell, cook and store food, they are even subject to many more regulations.^{1[10]} In addition, sellers suffering from communicable diseases provided in the law are barred from selling.^{1[11]} Any violation of the law may result in the temporary suspension of the license by the order of the Governor for 15 days. Two suspensions of the license may result in the Governor orders the revocation of the license^{1[12]}

(3) The BMA Ordinance on Selling in Public Places and Footpaths B.E.2545

In essence this ordinance bears almost the same contents with the BMA Ordinance of Vendor Regulation B.E. 2519 and the BMA Ordinance of Stall Seller Regulation B.E. 2519. It specifies how a person can set up a stall on pavements or public spaces, whether the stall is kept

permanent in one place, or shifted around. Each of them has to seek permission from the authorized local officer, specified as the Bangkok Governor in this law. The seller and his or her assistants must have Thai nationality, do not suffer and are not carriers of communicable or severe diseases as provided in the law. During trading, the license must be made visible at all times along with the attachment of seller cards on their chests, and they have to abide by the selling times specified by the BMA. The license lasts for one year from the issuance date. However, there is no provision on revocation of the license in this ordinance.

(4) The BMA Ordinance on Service Fees B.E.2543, and the amendments made by the virtue of BMA Ordinance (No.2) B.E.2545

In essence, the law specifies fees for cleaning the pavements on which the vendors set up their stalls. Each vendor with less than one square meter space is required to pay 300 baht per month. Each additional 0.50 square meter costs 300 baht per month.

Based on our fact-finding of the enforcement of the law, two rounds of selling are permitted, from 05.30-10.00 for the morning round and from 17.00-03.00 for the afternoon round. However, in reality, the most popular time for customers to come for lunch is from 11.00-13.00. Therefore, one vendor is assigned to collect money from the other vendors and bring it to the municipal officers around 11.00-12.00 every Wednesday in order that they are allowed to sell from 05.00-13.00. This bribe taking was the root cause of all controversies. Based on the actual and juristic facts, the practice of the officers to extort the money from the vendors can be construed as a violation of Section 148 of the Criminal Code, which bars civil servants from requesting for bribes.^{1[13]} As the crime was against public interest, concerned authorities should see to it that legal prosecution is carried out to the offenders. However, such due legal actions have so far not been put in place – the BMA failed to initiate any litigation against the offending officials. Instead, citing their geographical improvement plan of the area in front of Chulalongkorn Hospital, BMA started to rearrange the footpath and bar all vendors from the area. Apparently, the renovation plan was simply cooked up for the purpose and had not been mentioned by BMA before. In fact, it was by the BMA's operative guideline dated 15 August 2000 itself that paved the way for the permission of the vendors to sell in the area without having to pay any charge. It can be construed that based on the BMA Ordinance concerning vendors and stall sellers and other relevant laws, it was BMA itself that initiated the permission for vendors to sell in front of the Hospital.

According to our findings, three BMA Ordinances were invoked for the permission of vendors and stall sellers to sell in public places or footpath including the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545, the BMA Ordinance of Vendor Regulation B.E. 2519, and the BMA Ordinance of Stall Seller Regulation B.E. 2519. The BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 was apparently issued in line with the two latter laws. However, there was no apparent clause in the 2545 Ordinance that revokes the two previous laws (even though some contents are overlapped).

The rationale section of the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 states succinctly that^{1[14]} the law is issued for the control of stall and vendor selling, which is similar to the provisions as appeared in the two previous BMA's Ordinances issued in B.E. 2519.

The enforcement of article 3 of the 2545 Ordinance^[15] should result in the revocation of certain sections in the two previous Ordinances in particular concerning the permission, renewal of the permit and the issuance of substitute permit stipulated in the BMA Ordinance of Vendor Regulation B.E. 2519, and the BMA Ordinance of Stall Seller Regulation B.E. 2519. This is consistent with the principle that new provisions shall result in the cease of the old provisions, except for the circumstances that have yet been covered by other newer laws, then the existing provisions should continue to apply.

According to our interview with vendors in front of the Hospital, the research team has found that none of them has obtained any kind of permit to sell in the area and none of them could establish any kind of permit stipulated in the BMA Ordinance of Vendor Regulation B.E. 2519, and the BMA Ordinance of Stall Seller Regulation B.E. 2519 or the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545. However, certain sellers could produce receipts for cleaning service of the BMA. We have also found from the interview that the BMA has collected information about them and keyed it into its database system, but has failed to issue any selling permit. Therefore, it is obvious that there was no effort to legalize the vendors in compliance with the said BMA's Ordinances.

Based on the above facts, BMA, District of Pathumwan, has collected fees for cleaning footpaths from the vendors in the area for a long time and has allowed selling in the area for two periods in the morning and the afternoon. In addition, the Guideline Notification issued by Bangkok Governor on 15 August 2003 and the Notification of the BMA and Office of Metropolitan Police issued on 1 May 2002 both allow vendors to sell in the exempted area and the pending area everyday free of charge. All these testify to the fact that BMA by the District of Pathumwan virtually permits the selling and the vendors themselves are made to believe that they are authorized by BMA to sell there.

The dispute in fact arose from failure on the part of the BMA to issue selling permits to vendors in front of the Hospital in compliance with the BMA Ordinance of Vendor Regulation B.E. 2519 and the BMA Ordinance of Stall Seller Regulation B.E. 2519 or even the BMA's Ordinance on Selling in Public Places and Footpaths B.E.2545. The problem did not stem from the vendors but the BMA that has acted or failed to act in compliance with the BMA Ordinances. On the other hand, their operation so far can be construed as their virtual acceptance of the vendors to sell as they have gone so far as collect cleaning fees from the vendors. Had the vendors not been authorized by BMA to sell in the area, then the BMA would not act at its discretion to collect fees for cleaning the footpaths from the vendors. In that case, the BMA could have carried out the provisions stipulated in the Public Health B.E. 2535 (and expelled the vendors). As there has been no attempt to issue permit as stipulated by the BMA Ordinances, the vendors should therefore be able to ask the BMA to issue them the permit to sell in public places and footpaths as stipulated in the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545.

In pursuance of the above juristic inquiry concerning the exercise of power and implementation of the BMA, another questionable fact is that as the BMA later prohibited selling in the area, could the act be considered a legal termination of the permit of the vendors or not? The research team is of the opinion that the implementation of geographical improvement of the area in front of the Hospital could be considered as the cancellation of the permit of the vendors. As the BMA

Ordinance on Selling in Public Places and Footpaths B.E.2545 stipulates, all selling in public places and footpaths shall be allowed upon the issuance of selling permit by the authorized officer, which is the Bangkok Governor in this case. The Governor has to make clear in the permit the kinds of products, the location of the permitted area and its duration. That the BMA barred selling in the area and ordered the removal of these stalls sellers and vendors to other areas can be understood as an issuance of an administrative order that annuls rights of every party to vend in the area. Then the BMA is supposed to issue a new administrative order to establish a new permit for vendors to sell in the area. Instead, the BMA simply put on the prohibition without obtaining any consent or any attempts to solicit opinions from the permitted vendors.

As to the question concerning whether the administrative order to annul the rights to selling in the area is in compliance with the laws and ordinances of the BMA or not, the research team has found that the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 cites no specific reasons for the cancellation of the permit to sell in public places and footpaths. However, the BMA Ordinance of Stall Seller Regulation B.E. 2519 does specify reasons for the cancellation of the permit as follows:

- (1) If the permittee or his or her assistants acts in violation of any regulations set by the BMA, and that his or her permit has been suspended by the Bangkok Governor for at least two times, but more breach of the regulation is still pursued, then the Bangkok Governor may order the revocation of the permit.
- (2) If the permittee has failed to act in compliance with the second clause of article six and the Bangkok Governor has issued a warning to persuade the permittee to reverse the action within a set period of time, but he or she still fails to implement that, then the Bangkok Governor may order the revocation of the permit.
- (3) If any permittees suffer communicable diseases or are carriers of such diseases as provided in article 13, and the health officer deems that the continuation of the operation of the permittees may result in deterioration of public health, then the Bangkok Governor may order the revocation of the permit.

As the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 specifies no particular reasons for the revocation of the permit, but the BMA Ordinance of Stall Seller Regulation B.E. 2519 and the BMA Ordinance of Vendor Regulation B.E. 2519 do provide reasons for the revocation of the permit, then such reasons should be applied. This fact is confirmed by article three of the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 which states that any legal provisions which are not covered in the Ordinance should be provided as per the previous laws.

Therefore, in light of the BMA Ordinance of Stall Seller Regulation B.E. 2519, the initiation of the geographical improvement plan of the area in front of the Hospital could not be cited as a reason for revoking the permit that the vendors had had to sell in the area. Though the research team deems that it is in the capacity and authority of the BMA to implement such a geographical improvement plan, however, as the plan can virtually result in the cancellation of the permit to

sell in the area and can be construed as an administrative order, it therefore should have been conducted in compliance with Section 30 of the Procedure of Administrative Functions Act B.E. 25391^[16]. Section 30 in effect requires that the vendors be informed in advance and that they be given an opportunity to submit contesting evidence and witnesses. However, in implementation, the BMA failed to allow such an opportunity. Therefore, the cancellation of the permit constitutes a breach of the Procedure of Administrative Functions Act. The research team is of the opinion that the case can be filed for adjudication of the Administrative Court.

In conclusion, it is in the view of the study team that all problems are related and primarily result from the exercise of power by the authority.

5. Conclusions and Suggested Solutions for the Issue of Street Vendors

Based on the findings above concerning the facts and juristic consideration, the study team has come to a few conclusions as to the characteristics of the problem as follows:

- (1) The authority's negligence and omission to implement laws concerning the issues of stall sellers and street vendors have resulted in condition beyond remedy. Had the laws been implemented, the rights of people to enjoy equal protection under the law as provided by Section 301^[17] of the Constitution of the Kingdom of Thailand would not be violated. However, the authority has let this negligence and omission prevail for successive periods of time, and as a result it paved the way for corrupt officers to abuse their power and seek illegal personal gain to the extent that the problem cannot be healed by existing laws and regulations.
- (2) There is a lack of consistency and clarity as to the regulations and laws concerning the control of stall sellers and street vendors, as well as their implementation. The concerned authority has failed to act in compliance with the terms and methods as provided in the laws, and to inform public of their rights under these laws.
- (3) The article 11(3) of the BMA Ordinance on Selling in Public Places and Footpaths B.E.2545 allows local BMA officers to have immense power to set out rules and guidelines at their own discretion, which might infringe on the rights and freedom of the public. A lack of proper judgment results in the extensive restrictions of public rights and freedom. For example, the selling durations set out by the officers do not fit the realities. The morning period, which is specified from 05.30-10.00, should have been set from 05.00-13.00 (as normal lunch time ranges from 11.00-12.00). This misjudgment gives rise to extortion of money from the vendors by the officers.
- (4) The denial of people's liberties to engage in a legal occupation on a fair basis as provided by Section 501^[18] of the Constitution of the Kingdom of Thailand has occurred, despite that the stall selling and street vending may not be an act in compliance with the authority's rules and regulations for orderliness and the protection of consumers. This issue has to be considered in light of the fact that there are several tens of thousands of stall sellers and street vendors, and the occupation generates a lot of income in the economy and mitigates the problems of unemployment.

(5) Public rights to receive information, explanation and reason from the BMA, as there was going to be an implementation of a project which affects or may affect rights and liberties, have not been upheld as provided by Section 591^[19] of the Constitution of the Kingdom of Thailand. In addition, there was no effort to ensure the rights of people to participate in the decision-making process of State officials in the performance of administrative functions, as provided by Section 601^[20] of the Constitution of the Kingdom of Thailand and there was no attempt to keep the vendors informed in advance as to the Procedure of Administrative Functions Act B.E. 2539.

(6) The state lacks short-term and long-term measures to deal with the issues of stall sellers and street vendors that may lead to concrete and consistent solutions. Despite that it is one of the main policies of the present administration to solve impoverishment by allowing street vendors and stall sellers to loan from state banks to invest in their occupation, the concerned officers act in deviation from the policy. In addition, the state fails to address the issue of economic concentration in the capital city, which is the root cause of the vendor problems.

(7) Even though the BMA and other authorities concerned with street vendors issues show their good intentions to regulate the vending trade in accordance with social realities, a lack of stringent measures to deal with state officers who do not act in compliance with laws and regulations of the BMA has affected people's rights and liberties.

The research team deems that the issue of street vendors in this particular case reflects the broader problems shared by suffering vendors and stall sellers in other places. The problems have been left unaddressed for so long. Therefore, we would like to present a few concrete solutions to address the issues of street vendors and stall sellers to the National Human Rights Commission and other concerned authorities as follows:

(1) The attitude of concerned officers in the implementation of regulations and laws concerning stall sellers and street vendors should be adjusted. They should deem that even though these vendors may act in violation of regulations concerning public sanitation and orderliness, but they are compelled by economic reasons to do so, and they are not criminals. Their occupation contributes to the economic growth of the nation and the capital flow in the economy. The present use of force ought to be replaced by other more appropriate measures.

(2) The BMA should issue clear and succinct regulations as to the control of stall sellers and street vendors and see to it that they are implemented stringently to regulate the permission and prohibition of trading in particular areas in order to avoid the problems discussed here.

(3) Efforts should be made to expedite the registration of stall sellers and street vendors in order to appropriately regulate trading and for the sake of complete implementation of relevant regulations and laws.

(4) The BMA should tackle the problems based on proper and systematic study and enable vendors to be part of the community. The vendors should be allowed to be part of the efforts to improve the geographical setting of the city, instead of being removed.

(5) The BMA should stringently and seriously pursue due legal actions for disciplinary, civil and criminal offense against corrupt governmental officers who misappropriate money from the vendors.

(6) The National Human Rights Commission should submit the results of this inquiry to concerned authorities including the BMA, the Ministry of Interior and the Ministry of Social Development and Human Security in order to collectively identify long-term solutions to the problem. NHRC should file a complaint with the Office of Ombudsmen to initiate an inquiry into the alleged violation of people's rights and liberties by the exercise of power of the governmental officers, and submits the report to the National Police Office and the National Counter Corruption Commission to pursue due legal actions.

References

Online edition of the *Daily News*, 1 October 2001,
<http://search.dailynews.co.th/search.php?page=1&act=qsearch&keyword=เทศกิจ>

Online edition of the *Daily News*, 20 August 2002 (a),
<http://search.dailynews.co.th/search.php?page=1&act=qsearch&keyword=เทศกิจ>

Online edition of the *Daily News*, 26 March 2002 (b),
<http://search.dailynews.co.th/search.php?page=1&act=qsearch&keyword=เทศกิจ>

Online edition of the *Daily News*, 18 April 2002 (c),
<http://search.dailynews.co.th/search.php?page=1&act=qsearch&keyword=เทศกิจ>

Online edition of the *Daily News*, 28 June 2002 (d),
<http://search.dailynews.co.th/search.php?page=1&act=qsearch&keyword=เทศกิจ>

BMA's Notifications and brochures obtained online at
<http://www.sanook.to/bangnoi/info/harblea.html>

A video tape of the "Decoding" (*Thod Rahat*) program on "Bribes of the BMA officers" broadcast on 21 July 2003 and 3 July 2003

A video tape of the "Thunk Luke Thunk Khon" TV debate

A video tape of the "Si Yaek ITV"

2[2] The City Ordinance of Vendor Regulation B.E. 2519, Article 4

3[3] The City Ordinance of Vendor Regulation B.E. 2519, Article 5

4[4] The City Ordinance of Vendor Regulation B.E. 2519, Article 13

5[5] The City Ordinance of Vendor Regulation B.E. 2519, Article 9 and 10

6[6] The City Ordinance of Vendor Regulation B.E. 2519, Article 11 and 16

7[7] The City Ordinance of Stall Seller Regulation B.E. 2519, Article 5

8[8] The City Ordinance of Stall Seller Regulation B.E. 2519, Article 7

9[9] The City Ordinance of Stall Seller Regulation B.E. 2519, Article 14

10[10] The City Ordinance of Stall Seller Regulation B.E. 2519, Article 11

11[11] The City Ordinance of Stall Seller Regulation B.E. 2519, Article 13

12[12] The City Ordinance of Stall Seller Regulation B.E. 2519, Article 16 and 17

13[13] Section 148 states "A civil servant who misuses power, forces or lures others in order that they give or bring monies and other benefits to himself, is subject to imprisonment for five to 20 years, or for life with a fine from 2,000 to 40,000 baht, or execution."

1[14] The rationale for the implementation of this Ordinance is that it is deemed expedient to issue regulations for individual sanitation of sellers and assistant sellers, sanitation in production, distribution, cooking, storage, or accumulation of food and other products, and the cleanliness of utensils, water and other equipment of the stall sellers and vendors. It shall stipulate permit time for selling and other due regulations to ensure public sanitation and the prevention of public disruptions and the spread of communicable diseases for public interest. And the issuance of regulations to control food selling in public areas or footpaths, as well as procedures, criteria and conditions on the application for the selling permit, its issuance, its renewal, application for substitute permit, issuance of substitute permit in public places and footpaths. The Ordinance is issued by the virtue of section 43, 54, 55 and 58 of the Public Health Act B.E. 2535 that places certain restrictions on rights and freedom of individuals permissible under section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand and by the virtue of provisions in section 97 of the Bangkok Metropolitan Administration Act B.E. 2528.

14[15] All other ordinances, city regulations, regulations, directives and orders which are covered in or are in conflict with the Ordinance shall be forsaken.

15[16] Section 30 states that as an administrative order may affect rights of another party, the in charge officer shall allow the involved party to be fully informed in advance and to be able to submit contesting evidence and witnesses to defend his or her rights.

The provision in the first clause shall not be applicable, otherwise deemed appropriate by the in charge officer, in the following situations:

- (1) If there is an urgency and the delay of such implementation may result in grave danger to individuals or public as a whole;
- (2) If it may delay the enforcement of the administrative order beyond the duration permitted by general laws and the law by the virtue of which the order has been issued;
- (3) If the act complies with the essence of the agreement made between the two parties;
- (4) If from the intrinsic nature of the case, such an action can be deemed absolutely impossible;
- (5) If it is an administrative directive;
- (6) If provided otherwise by the Ministerial Regulations;

the officer is prohibited from giving such an opportunity as stated in the first clause.

16[17] Section 30 All persons are equal before the law and shall enjoy equal protection under the law. Men and women shall enjoy equal rights.

Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Measures determined by the State in order to eliminate obstacle to or to promote persons' ability to exercise their rights and liberties as other persons shall not be deemed as unjust discrimination under paragraph three.

17[18] Section 50: A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

18[19] Section 59: A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

19[20] Section 60: A person shall have the right to participate in the decision-making process of State officials in the performance of administrative functions which affect or may affect his or her rights and liberties, as provided by law.
