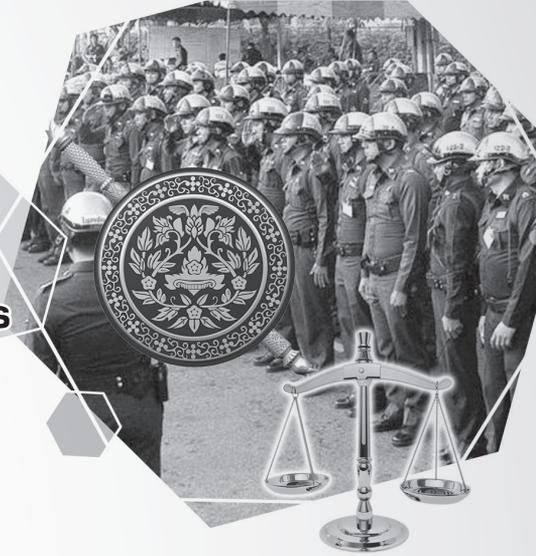


Police Reform of the Criminal Justice Process and Regulations*

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■ Abstract

The aim of this research is to analyse situations, problems, obstacles and limitations in police law enforcement in the criminal justice process. The research focused on five important areas: coordination, legal matters, information technology, training and police ethics. It also proposes a guideline for the direction and goals of the development of the justice process and the Royal Thai Police's regulations for appropriate law enforcement in response to the expectations of people and society.

Research Methodology: The research combined quantitative and qualitative methodologies. Quantitatively, the research gathered data by surveying a sample group of 1,276 police officers at inspector level and above. Qualitatively, the data collection methods were in-depth interviews, seven focus-group discussions, four workshops and documentary analysis. The qualitative data analysis employed a content

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analysis technique. The quantitative research conducted an analysis of percentages, means of index numbers and a SWOT analysis.

Findings: It was found that police officers had encountered a high number of problems in their work relating to coordination and legislation; in particular as a result of an amendment to the Criminal Procedure Code (No. 26), B.E. 2547 (2004). The police officers also encountered numerous problems relating to IT and training. In regard to ethics, the police force had the second highest number of complaints filed against it with the Ombudsman. For the years 2004, 2005 and 2006, a total of 514, 378 and 425 complaints, respectively, were filed. As a result, The Royal Thai Police issued a code of ethics as guidelines for its officers' conduct in performing their duties.

The research proposes a guideline to reform and develop the justice process and the Royal Thai Police's laws aiming to enhance the efficiency of its law enforcement in the aforementioned five areas. This will create an efficient training system and

develop a quality arrangement to enhance the status and prestige of the police profession, so as to gain greater public support and acceptance and to ensure that the police perform their duties efficiently and to a high standard.

In addition, the research has formulated an action plan, designated responsible agencies at policy and operational levels, as well as their monitoring, assessment and reporting tasks within the framework of the study. A recommendation was made that the Royal Thai Police's policy and operational levels should take concerted roles to ensure that the activities and projects are feasible and effective.

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■ Introduction

The Royal Thai Police's structure currently consists of 30 bureaus and may be divided into 4 categories, namely, (i) Operations, (ii) Functions, (iii) Technical and Support and (iv)

Administrative and Strategy (Sophon Srivorapoj, et al, 2007). The present structure of the Royal Thai Police has been improved on the basis of the law, i.e. the Royal Thai Police Act of 2004, which aimed to delegate powers to agencies at the bureau and divisional levels. The main purpose is to increase the efficiency of police officers in the provision of services to the people. Another purpose is to restructure the process in a manner which will streamline the chain of command so as to resolve problems of inter-agency coordination in a timely manner.

The duties and powers of the Royal Thai Police as prescribed in the Royal Thai Police Act of 2004, section 6 are as follows: (1) safeguard the King, the Queen, the Royal Heir, the Regent, the royal family, the king's representative and royal visitors; (2) conduct the control and supervision of police officers performing duties under the Criminal Procedure Code; (3) prevent and suppress criminal offenses; (4) maintain public peace, order and security and security of the Kingdom; (5) perform any other acts as prescribed by law to be the

responsibility of police officers or the Royal Thai Police; (6) provide such support to national development as assigned by the prime minister; (7) perform any other acts in support of and to promote for the performance of duties under (1) (2) (3) (4) or (5) in an efficient manner (Royal Thai Police Act of 2004, 2004).

The government has set the policy on police reform and appointed the Police Affairs Development Committee with the responsibility of studying and improving the police force. This work is now underway. However, to ensure that the police reform, which is a very important policy, is conducted prudently, accurately and can be translated into practice, the Royal Thai Police has deemed it important to conduct a study in parallel concentrating primarily on the compilation of information from the executives and operational officers. The research will look at operational problems and identify development approaches to enhance efficiency, effectiveness and public confidence. In the police reform of the criminal justice process and regulations of the

Royal Thai Police, a framework that lays a foundation for the study on the Royal Thai Police's working system is divided into 5 prime areas: coordination, legal matters, information technology, training and police ethics with the following reasons.

The underlying reason for the study on coordination is that it is necessary for the Royal Thai Police to coordinate with several other agencies related to the justice process such as the courts, the Office of the Attorney General and the Corrections Department, etc. In addition, coordination is at all times an important element of organizational management. When management is mentioned, the matter is always associated with coordination. According to the system theories proposed by Talcott Parson (1960), Thomas A. Petit (1967), James D. Thompson (1967), working procedures can be classified into 3 levels: operation, coordination and strategic planning. Coordination is in between the operational and strategic planning levels by which the executives

play the role of mediator between the two levels as an indispensable element in the performance of duties. Coordination is thus an important part of organizational management, making it necessary to study and find out any operational problems that may stem from coordination with other agencies.

The underlying reason for the study on legal matters is that in the police reform of the criminal justice process and regulations of the Royal Thai Police, a key factor for the success of the reform is improving the legislation suitable for the actual functioning of duties. This is because the core mission of the police is enforcing law. If the law fails to facilitate the efficient performance of police duties, it is hard for police operations to be successful. This research therefore aims to examine those problems related to law enforcement performed by the Royal Thai Police. It will specifically determine the matters relating to the amendment to the Criminal Procedure Code (No. 22) B.E. 2547 (2004) as well as the principle of the amendment to find

out how law enforcement by virtue of the amended law causes problems for the police officers performing their duties.

The underlying reason for the study on information technology is that the internal information technology framework of the Royal Thai Police is based on the Information and Communication Technology Master Plan, the Royal Thai Police, 2002 – 2006. This master plan was formulated to serve the National Information and Communication Technology Plan (ICT Plan) No. 1, 2002 – 2006, which was approved by the cabinet on September 25, 2002. With the National Information and Communication Technology Plan No. 2 currently being drafted, computer technology and interconnection is utilized to increase efficiency of the public sector and improve the provision of its services to the people. Under the Information and Communication Technology Master Plan, the Royal Thai Police, 2002 – 2006, there is a proposal to set up an information center in each police station which has the responsibility to compile data and

information concerning the station's provision of services as well as other statistics which will be used for the formulation of its service plan. These are, for instance, (1) the use of a Geographic Information System in the analysis and planning for crime prevention by which the features of crimes in each area can be identified and hence appropriate resources allocated in line with the problems in the locality; (2) the interconnection of the information center of each police station with the database located at the Royal Thai Police Headquarters and at other agencies; (3) the establishment of the Royal Thai Police's electronic information exchange center with other agencies in the criminal justice process with an appropriate security system, etc.

The underlying reason for the study on personnel is because the Royal Thai Police has placed importance on personnel development. Tailor-made training courses consist of 2 parts: (1) Training courses for personnel having been recruited to work in several police units, i.e. training

courses for police officers and personnel who have been recruited or transferred to work as commissioned police officers, training courses for police sergeants who will be appointed as commissioned-rank police officers, and police cadet courses, etc.; (2) Training courses for police officers under preparation for promotion, i.e. senior police affairs management courses, courses for superintendents, courses for inspectors, courses for interrogators holding inspector position, etc. It is thus necessary to examine the conditions of problems in personnel capacity enhancement so as to formulate a suitable personnel development plan in due course.

The underlying reason for the study on police ethics is that the Royal Thai Police must address Thai police disciplinary offenses as stipulated in the Royal Thai Police Act of 2004. The provisions are classified as minor disciplinary offenses under section 78 and serious disciplinary offenses under section 79. Moreover the Constitution of the Kingdom of Thailand B.E. 2550 (2007), section 244,

stipulates that the Ombudsman has the powers and duties to conduct the proceeding in relation to ethics of persons holding political positions and State officials under section 279 and section 280. Therefore the Office of the Ombudsman has set standards for all state agencies to have a code of ethics in place. As the Office of the Ombudsman is responsible for the supervision of the proceeding in relation to ethics of state agencies, the Royal Thai Police which is now drafting a code of ethics may use this opportunity to speed the issuance of the code of ethics and put it into practice.

Importantly, the behavior of police officers, more often than not, has been subject to public criticism. According to information gathered by the Office of the Ombudsman, of all the complaints lodged, in 2004, 2005 and 2006, there were 514, 378 and 425 complaints respectively against the Royal Thai Police, which ranked second as an agency against which complaints were filed with the Ombudsman (Office of the Ombudsman, 2004 - 2006).

Thus the research entitled “Police Reform of the Criminal Justice Process and Regulations” has identified the aforementioned 5 key issues as its research framework: coordination, legal matters, information technology, training and police ethics. These major issues are used as the pilot of the study on operational and working system problems faced by the Royal Thai Police. It is aimed at identifying problem conditions of the said five key areas and approaches to solve these problems by setting forth a work plan as a guideline to increase the potential and efficiency of police officers in performing their duties in the justice process and to enable them to protect the peoples’ rights and liberty effectively with a view to adequately meeting the needs of the public and thereby increasing public confidence.

The objectives are to analyze situations, problems, obstacles and limitations concerning five important areas, i.e. coordination, legal matters, information technology, training and police ethics; and to identify goals and directions for the development of legislations and the justice process

so that the Royal Thai Police’s law enforcement function is appropriate and responsive to the expectations of people and society. The scope of research identified definitions for the setting of a research framework which is divided into five prime areas: coordination, legal matters, information technology, training and police ethics.

■ Research Methodology

The research combined quantitative and qualitative methodologies. Quantitatively, the research gathered data by surveying a sample group of 1,276 police officers at inspector level and above posted in every police station in the provinces of Nontaburi, Cholburi, Khon Kaen, Chiangmai, Surat Thani, and the 5th Section of the Metropolitan Police Division. Qualitatively, the research gathered information from documents on police affairs both in the cases of Thailand and abroad; conducted in-depth interviews with a total of 25 officers from the executive level and the General Staff Offices of the Provincial Police, provincial public prosecutors, district chief judges and

provincial chief judges. Seven focus-group meetings and four workshops were held. The qualitative data analysis employed a content analysis technique. The quantitative research conducted an analysis of percentages, means of index numbers and a SWOT analysis.

■ Research Findings

The research has the following findings;

■ Operational Problems

In summary, the three national problems have had a major impact on police work: First, the narcotic drug issue has been on the national agenda since 2003. Four approaches under the Palang Pan Din (Power of Land) Strategy launched on February 1st, 2003 were drug control, control of drug users/ the addicts, area control and community-based, integrated sustainable eradication of problems (National Administrative Center for Victory over Drugs, 2003). The government policy to suppress illicit drugs caused impacts on local police officers' performance of duties.

Second, the political demonstrations in protest against the then prime minister Pol.Lt.Col. Thaksin Shinawatra started in mid-2004 in attempts to force him to resign. The protest intensified in late 2005 leading to the coup d'état on September 19th, 2006. The protesters continued to press the government under Samak Sundaravej's leadership since May 25th, 2008. As the political unrest continued, the Royal Thai Police was tasked to deploy police officers to control those protesters. This phenomenon thus affected their core duties which should have primarily been dealing with crime prevention.

Third, the government introduced its downsizing policy according to a Cabinet resolution on April 28th, 1998 in relation to the measure for the reform of public sector manpower. This measure prohibited government agencies from increasing new positions starting from the fiscal year 1998. The agencies were also required to revoke any positions being vacant due to retirement for not less than 80%; the remaining 20% would be under consideration of the Committee on

Public Sector Manpower and Target Setting whose task was to re-allocate the vacant positions to agencies in needs of personnel. Any remaining would be cancelled (Office of the Civil Service Commission, 1998). This resulted in insufficient police officers despite the fact that the number of criminal cases had continued to increase. The ratio between police officer per 100,000 people was 348, 347 and 330 in 2006, 2007 and 2008 respectively.

Using the five study framework, i.e. coordination, legal matters, information technology, personnel and ethics, the following problems were found.

1. Coordination: Police officers encounter coordination problems in enforcing the laws.

1) Coordination problems have resulted from the lack of flexibility in performing duties and inadequate equipment. There were cases, for instance, where the interrogators found it difficult to gather evidence for

filing the cases with the public prosecutor due to the lack of tools for use in the evidence gathering process. The police officers also found practical problems as they have not been supplied with sufficient guidelines as to how to present the evidence convincingly enough for the Court to believe and grant a search or an arrest warrant. Due to the fact that any arrest must be made with an arrest warrant or court order, police officers in remote areas away from a court are faced with coordination problems and a lack of ease in performing their work. This is exacerbated by such constraints to coordination as telephone, fax, electronic media or other types of information technology.

2) Joint interrogation with other agencies has not only become a constraint but also a threat to efficiency as this may prolong the work process. Cases relating to natural resources, for instance, could be affected if the local administration fails to join the investigation or is not available. Another case relates to an offense against a child for which several parties, i.e. public prosecutor,

psychologist and social worker, must be involved. As these persons are burdened with a heavy workload and may be unable to join the inquiry, the process is usually prolonged.

3) Inter-agency coordination of information systems is not smooth: inter-agency exchange of information using one selected system causes delays in information linkages and inefficient usage of information technology.

2. Legal matters: This research concentrated only on the changes to legislation as a result of the amendment to the Criminal Procedure Code (No. 22), B.E. 2547 (2004) as follows.

1) Amendment was made to the Criteria on the Search, Criteria on the Arrest, Criteria on Detention and Control, Criteria on Inquiry, Criteria on Temporary Release which caused problems to police officers' performing their duties. For instance, the provision of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section

237, stipulates that an arrest shall be made only with an arrest warrant or a court order. Hence, in the case where the accused has reported to the interrogator, this is not deemed an arrest because of an absence of an arrest warrant. Once it is determined that the person being interrogated is not being arrested, there is no detention of that person except in the case where there is probable cause to issue a detention warrant in accordance with the Criminal Procedure Code, section 134, last paragraph which stipulates that although the accused is not under arrest and an arrest warrant is not issued, the interrogator may deem that there is probable cause to issue a detention warrant under section 71, he shall have the power to order that the accused be present in court for the issuance of a detention warrant without delay.

2) Insufficient interrogators because police officers are burdened with duties and powers in relation to many criminal laws, such as the Fire Prevention and Extinguishment Act B.E. 2495, the Harm Prevention from Entertainment Act B.E.2464, the

Postal Service Act B.E. 2477, the Opium Act B.E. 2472, the Card Act B.E. 2486, the Liquor Tax Act B.E.2495, the Land and House Tax Act B.E. 2475, the Film Act B.E. 2473, the Measurement Act B.E. 2466, the Motor Vehicle Act B.E. 2473, the Probation Act B.E. 2479, etc. Although these laws are directly enforced under the jurisdiction of related authorities, police officers are authorized to enforce the laws as well.

3) Problems in the gathering of evidence at the investigation stage: Operational police officers found a lack of efficient measures to help access fast and accurate information in support of gathering evidence. For example, police officers are not empowered to use interception measure whereas some other agencies such as the ONCB and the Special Investigation Department are not restricted.

3. Problems relating to the information system of the Royal Thai Police are as follows:

1) The Royal Thai Police has placed its focus on the use of the POLIS system. The system provides linkages from the Royal Thai Police to the Provincial Police and from the Provincial Police to each province and to all police stations accordingly. Nevertheless, police stations have problems in using the information and the network interconnection, forcing several Provincial Police to develop their own information technology system. The problem is caused by a lack of operators to key information into the system. Most importantly, information exchanged between police stations and other branches of the Royal Thai Police countrywide through the electronic system has been undermined by the absence of operational levels' participation at the planning stage. Lastly, the examination of criminal records is not supported by the information system, causing the operation to be slow and complicated because any request for information must be made in writing.

2) Government Management System (GMS) assisted by Australia to develop a national network

interconnection has become problematic. This duplication of database unnecessarily increases the officers' work in filing and updating information. This system develops a Provincial Police network interconnection, i.e. at the Provincial Police level, while the POLIS system is at police station level.

3) The current five-year development plan (2007-2011) of the Royal Thai Police set out three development approaches, i.e. development plan of police officers and families; organizational development plan and operational system development plan. It is notable that there is no specific information technology development plan. Few information technology projects have been included in the operational system development plan for management, crime investigation and suppression, interrogation and legal purposes. It can be seen that information technology development for the Royal Thai Police has not yet been adopted as an urgent or high priority project.

4. Training problems: This research found that there are inadequate resources to arrange training courses for inspectors, training courses for superintendents, a senior police affairs management course, and a training course in information system. There is also a shortage of budget allocated to enhance police officers' tactical skills, for example, a martial arts course, shooting, and training for investigators and specialists. Importantly, the training centers attached to the Provincial Police are not supplied with adequate facilities to sufficiently respond to the needs of each region.

5. Police ethical problems: The 2007 Constitution empowers the Ombudsman to address matters relating to ethics of persons in political positions and state officials. According to a Cabinet resolution, the Cabinet and government agencies are obliged to function under the Constitution. As the Royal Thai Police is a state agency not under the supervision of the administrative wing, it thus must inform the Ombudsman of its ethical matters. Police officers have been

frequently criticized. Of all the complaints lodged in 2004 – 2006, the police ranked second as an agency against which complaints were filed with the Ombudsman. Thus it is necessary to draw up a code of conduct for the police as a guideline in the performance of their duties.

Conditions of the Royal Thai Police in general could undermine the smooth flow of its operations. Police officers are tasked to enforce several criminal laws and this has become a burden. Currently, the ratio between police officer and population is 1:300. There is a tendency that a police officer would be responsible for an even larger population due to the government downsizing policy and measures to reduce the size of public sector manpower since 1998 that prohibited any increase in public sector manpower. In addition, government agencies were required to revoke not less than 80% of vacant positions after retirement. This resulted in an insufficient police force to handle the increasing number of crimes. Moreover, under this current political unrest, the Royal Thai Police needs to allocate its police officers to

safeguard demonstrators thus affecting its core function in crime prevention.

■ Discussions

The guideline was divided into five areas, i.e. coordination, legal matters, information technology, training and ethics. The analysis was then made to propose policies and strategies in accordance with the guideline in which was summarized the linkages in line with the policies/targets relating to the policies and service provisions and organizational strategies under the national administration plan. The analysis also took into consideration the policies contained in the national administration plan that relate to the Royal Thai Police's strategies. These are the policies to restore confidence, social and quality of life policies, economic policies, national security policies and good government policies. Strategic issues have been linked with the government policies and the national administration plan. These are also related with the work plans aiming to reform and develop the Royal Thai Police's legislation and justice system

in areas of coordination, legal matters, information technology, training and ethics.

From the findings of the research, there are operational problems faced by the Royal Thai Police concerning coordination, legal matters, information technology, training and ethics. The main issues are summarized as follows.

Problems relating to Coordination: Police officers still encounter problems in coordination for enforcing the laws. The problems are owing to the lack of flexibility in performing duties and inadequacy of equipment. There were cases, for instance, where the interrogators found it difficult to gather evidence for filing the cases with the public prosecutor due to the lack of tools for use in the evidence gathering process. The police officers also found practical problems as they have not been supplied with sufficient guidelines as to how to present those evidences convincingly enough for the Court to believe and grant a search or arrest warrant. Due to the fact that any arrest must be made with an arrest warrant or court order, police officers in remote

areas away from court would be faced with coordination problems and a lack of ease in performing the work. This is exacerbated by such constraints to coordination as telephone, fax, electronic media or other types of information technology.

Legal matters: This research concentrated only on operational problems owing to the amendment to the Criminal Procedure Code (No. 22), B.E. 2547 (2004) in particular the amendment to the Criteria on the Search, Criteria on the Arrest, Criteria on Detention and Control, Criteria on Inquiry, Criteria on Temporary Release which directly and immensely affect police officers' performing of their duties. For instance, the provision of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 237, stipulates that an arrest shall be made only with arrest warrant or court order. Hence, in the case where the accused has reported to the interrogator, this is not deemed as an arrest because of the absence of an arrest warrant. Once it is not an arrest, there is no detention of that person except in the case where there is

probable cause to issue a detention warrant in accordance with the Criminal Procedure Code, section 134, last paragraph which stipulates that although the accused is not under arrest and an arrest warrant is not issued, the interrogator may deem that there is probable cause to issue a detention warrant under section 71, he shall have the power to order that the accused be present in court for the issuance of a detention warrant without delay.

Problems relating to the information system of the Royal Thai Police are primarily owing to the focus on the use of the POLIS system. The system provides linkages from the Royal Thai Police to the Provincial Police and from the Provincial Police to each province and to all police stations accordingly. Nevertheless, police stations have problems in using the information; while the use of information based on the POLIS system of each Provincial Police is obstructed by interconnection problems, forcing several Provincial Police to develop their own information technology system. The problem is

caused by the lack of operators to key the information into the system. Most importantly, the information exchanged between police stations and other branches of the Royal Thai Police countrywide through the electronic system has been undermined by the absence of operational levels' participation at the planning stage. Lastly, the examination of criminal records is not supported by the information system, causing the operation to be slow and complicated because any request for information must be made in writing.

Training problems: This research found that there are inadequate resources to arrange training courses to meet the needs, i.e. training courses in information system, and training courses for interrogators and specialists. Importantly, the training centers attached to the Provincial Police are not supplied with adequate facilities to sufficiently respond to the needs of each Region. There are also inadequate training courses which can be used to prepare the police before getting promotion, i.e. courses for inspectors, courses for superintendents,

and a senior police affairs management course. The relatively serious problems are the lack of training to cope with emerging crises owing to budget constraints, making it difficult to enhance police officers' tactical skills on a continuing basis, for example, a martial arts course, shooting and crowd control, etc.

Police ethical problems: The 2007 Constitution empowers the Ombudsman to address matters relating to ethics violations of persons holding political positions as well as state officials. According to Cabinet resolution, the Cabinet and government agencies are obliged to function under the Constitution. As the Royal Thai Police is a state agency not under the supervision of the administrative wing, it thus must inform the Ombudsman of its ethical matters. Police officers' behaviors have been frequently criticized. The Royal Thai Police ranked second in terms of the number of complaints filed against it with the Ombudsman. Thus it is necessary to draw up a code of conduct for the police as a guideline in the performance of their duties.

Conditions of the Royal Thai Police in general could undermine the smooth flow of its operations. Police officers are tasked to enforce several criminal laws and these have become a burden. Currently, the ratio between police officer and total population is 1:300. There is a tendency that a police officer would be responsible for more population due to the government downsizing policy since 1998 that prohibited an increase in public sector manpower and government agencies were required to revoke not less than 80% of vacant positions after retirement. This resulted in an insufficient number of police officers to handle the increasing incidence of crime. Moreover, under the current political unrest, the Royal Thai Police needs to allocate its police officers to ensure that demonstrators do not break the law thus affecting its core function in crime prevention.

■ **Recommendations on Policy implications**

Policy level of the Royal Thai Police has roles to play in promoting, supporting and assigning core agencies

responsible for pushing forward the guideline. The agency as owner of a respective task will then be assigned to formulate appropriate work plans. Although the recommendations contained in the guideline which are based on the research undertaken in a short period of time, i.e. for less than a year, the recommendations for resolving those problems take into account the agency's strategic issues and government policy, national administration plan and strategies of the Royal Thai Police.

Importantly, the formulation of the guideline derived from the research is relatively comprehensive. It suggests core agencies, activities to be undertaken in the priority activities, result-oriented and clearly set targets. Focus is placed on activities that can be used as pilot projects aiming to solve the existing serious problems identified by the operational officers. Resolving these problems to a certain extent would thus ease the constraints being pressed on the operational personnel. If these are left unattended, the working efficiency could be undermined. If these problems

intensify to critical level, detrimental impacts would impinge on the organization in the long term.

In addition, the key to the success in implementing the executive policy in accordance with the strategic framework is the driving mechanism so as to translate the policy or plan into action. Therefore, in implementing the guideline, apart from the support from the policy level, there must be concerted efforts to turn the activities/projects into practical and materialized results. To this end, the core agencies responsible for the work plans should enhance cooperation and understanding with all operating agencies so as to undertake those activities/projects as planned for each period.

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