



*Reclaiming the Area of the Yala Mountain Prehistoric Painting  
Archaeological Site in Yala Province*

The complainant submitted a complaint for a case where the Fine Arts Department had issued the Announcement on the Reduction of the Area of Yala Mountain Prehistoric Painting Archaeological Site in Lidol Subdistrict and Yala Subdistrict, Mueang Yala District, Yala Province. The complainant claimed that the Notification was illegitimate and gave favour to rock mining entrepreneurs and construction industry. The Notification resulted in the reduction of the area of the archaeological site by 25% of its original area. The area surrounding Yala Mountain is an archaeological site where the prehistoric colour paintings from the period of Srivijaya empire dated around 30,000 years old have been found. Thus, it is a significant heritage to the history of Yala province. Previously, four paintings were found in the area of Yala Mountain, but some were destroyed or damaged, due to rock-blasting activity that had been going on for many years near the archaeological site by entrepreneurs permitted by concession for rock-mining operation. The complainant also stated that the rationale cited in the Announcement claimed that Yala Province and its surroundings were experiencing problems with security issues, thus it was necessary to harvest rock from the aforementioned area. Nevertheless, the complainant was of the opinion that Yala Province and its surrounding areas did not lack rock resource as cited in the Announcement. Also, the process of issuing the Announcement did not provide an opportunity for the people or those whose interests are at stake, to be involved in providing recommendations or critiques, in accordance with Section 77 Paragraph 2 of the Constitution, which states that “Prior to the enactment of every law, the State should conduct consultation with stakeholders, analyse any impacts that may occur from the law thoroughly and systematically, and should also disclose the results of the consultation and analysis to the public, and take them into consideration at every stage of the legislative process...”. This malfeasance of the Fine Arts Department (FAD)’s action was inconsistent with its missions, roles and duties of caring, safeguarding, protecting, conserving, nurturing, restoring, supporting, creating, publishing, studying, researching, developing and inheriting arts and cultural heritage of the nation. Therefore, the complainant believed the Announcement of FAD caused grievance or unfairness or imposed an unnecessary or undue burden on the people, and requested that the law or rule be amended, or the Announcement be withdrawn.



The Office of the Ombudsman requested the Director-General of FAD to provide facts and send documents as evidence. From the gathered information, it was found that Yala Mountain Prehistoric Painting Archaeological Site is located in the vicinity of Yala Mountain, which is a limestone mountain where rock-mining operations for construction industry take place. In the past, FAD conducted an archaeological survey and discovered fragments of pottery shards and pre-historic paintings. It is presumed that the area around Yala Mountain was a pre-historic residence, as the location is close to Pattani River and the mountain has rock shelters and bluff shelters suitable for habitation. FAD issued a notification to register and set the boundary for the archaeological site in 2001. Nevertheless, the concession for industrial rock-mining operations was already granted for the area around Yala Mountain before FAD had conducted an archaeological survey and registered it as an archaeological site. Therefore, such registration of an archaeological site resulted in overlap with the rock-mining concession area. Ever since then, entrepreneurs were constantly requesting FAD for a permission to continue their rock-mining operations in the area, as granted by the concession. FAD leniently granted their request under the condition that entrepreneurs must study the effects of the tremor and air pressure from rock-blasting on the archaeological site, along with requesting Yala Province to consider not extending the permit for rock-mining operations to entrepreneurs when the said permit expires. After the permit expired, the entrepreneurs sent a letter to the FAD Director-General requesting for a consideration to set apart the area of archaeological site out of the permitted rock mining area. They cited the economic necessity of doing this rock-mining business in the area, as well as repercussion that might lead to the insurgency in the southernmost provinces. FAD considered the requests of various government agencies and took the peace and economy of the southernmost provinces into account. In this regard, keeping the internal peace and building a good economic system for the people are missions that each and every governmental agency, regardless of branch or level, must keep in mind and put emphasize on, even if those agencies do not have directly related missions. Moreover, FAD considered the results of the evaluation and analyse of the tremor and air pressure from rock-blasting; which had no effect, due to a 775-metre distance of the operations away from the archaeological site.



Furthermore, it was found that the residents of Lido Subdistrict and Yala Subdistrict, along with civil society organisations and the Committee of the House of Representatives, had discontentedly expressed their opposite viewpoints to the FAD's Announcement. This was in violation of the principle of good public governance, which stated that there shall be duty of public servant to gather comment and pleasure of public and individual whose service is provided so as to improve or recommend the superior to improve the administrative procedure as appropriate. Moreover, the Yala Mountain Prehistoric Painting Archaeological Site is a public domain of the state. As such, people from any part of society can use their constitutional rights to conserve, nourish and restore this national heritage. Additionally, the Announcement on the Reduction of the Area of Archaeological Site is an administrative by-law. Even if it was issued lawfully by the FAD Director-General, there are no benefits given by this administrative by-law. As a result, after having been coordinated with the Office of the Ombudsman, FAD exercised their power under the Administrative Procedure Act, B.E. 2539 (1996), which states that "A lawful administrative act which does not give rise to an advantage to a person for whom it is intended (a lawful non-beneficial administrative act) may be revoked, whether in whole or in part, with immediate effect or effect for the future as prescribed...." to revoke its Announcement on the Reduction of the Area of Yala Mountain Prehistoric Painting Archaeological Site, proclaimed in the Royal Gazette on February 2020.

Based on the aforementioned circumstance, the Ombudsman is of the opinion that the complaint of the misfeasance of the Fine Arts Department to issue the Announcement on the Reduction of the Area of Yala Mountain Prehistoric Painting Archaeological Site, favoring the rock mining entrepreneur and construction industry, is a case where the complainant has been received a proper redress or fairness. Per this complaint, it can be recognized that the people and the civil society can, together, become the ears and eyes and a mouthpiece to safeguard the property and historical heritage of the nation, to preserve it for later generations. Finally, the Office of the Ombudsman has a strong will to coordinate with related government agencies in fact-finding to solve the problem that occurred.