

Recommendations No. 1/2560: Recommendations on measures or guidelines and suggestions on improvement of law to solve the problem of national forest reserves and national parks overlapping private lands and the people are troubled because of the measure to take back forest lands according to the National Peace Keeping Council's Order No. 64/2557 dated 14th June 2014 and No. 66/2557 dated 17th June 2014

1. Background

The National Human Rights Commission of Thailand (NHRCT) received a large number of petitions from people in many areas between 2012 to March 2017, claiming that they were damaged and troubled from being evicted from lands they used to make a living, arrested and litigated for offences according to laws on forest, law on national forest reserve and/or law on national park because these protected forest areas overlap with land occupied by the people to make a living. Particularly since 2015 officials from several agencies took actions according to the "Taking Back Forests" policy stated in the National Peace Keeping Council's Order No. 64/2557 dated 14th June 2014 and No. 66/2557 dated 17th June 2014, resulting in many people being in trouble from such action. They claimed that their life and liberties were threatened by officials and their products were seized or destroyed without proving that they had done anything wrong.

The NHRCT took this case into consideration and saw that it was an issue concerning implementation of laws by the state on management of land and forest resources that could affect living of the people. There have been several disputes, including disputes about right to land and forest resource management being restricted by laws enacted to protect natural resources and environment, disputes related to implementation of government policies or resolutions concerning state management of forest land, natural forest reserve land and natural park land, and disputes related to officials' use of administrative power, especially making arrest and enforcement of legal provisions with criminal penalty. Therefore, to solve the problems systematically and with the same standards that are fair to every party, the commission came up with recommendations on measures or guidelines and suggestions for promotion and protection of human rights, including recommendations on amendment of laws on protected land in the issues that disputes occurred as mentioned above and proposed to the government cabinet.

2. Results of considerations by the NHRCT

The NHRCT considered legal provisions, principles, international obligations, research works and other related documents and saw that in the view of Thai laws, "land" and "natural resources" in principle are designed to belong to the state who could use them to gain benefits or utilize for public service. The state could give ownership right or possessory right according to the ownership system to citizens under specifically enacted laws and allow citizens to benefit from land without giving ownership right or possessory right, resulting in land becoming a merchandise of high economic value in the market. This, on the other hand, results in those who occupy or seize land for themselves without the right given by the state could become trespassers on state land. As for forest-type prohibited reserve land, not only citizens could not occupy or seize, but the state also enact laws with criminal penalty to control which is a starting point of arguments on forest trespass in the view of the state and is a problem that the government has continuously tried to design measures to solve related problems. There are also a lot of cabinet resolutions related to forest conservation. When population has increased, trespassing to settle and make a living on forest areas zealously guarded by the state has become evidence leading to development of measures to solve these problems by the state in many occasions until the National Peace Keeping Council issued Order No. 64/2557 and Order No. 66/2557 demanding state officials to strictly implement the

laws against trespassers who are not low-income persons and create a “Master plan to solve problems of forest resource destruction, trespass on state land and sustainable natural resource management”, and a strategy to stop trespassing and destruction of natural resources has been driven forward since 2015. Although the NHRCT recognized the government’s concern on preservation of forest areas which has impacts on resource base of the country and forest areas being a significant factor related to Climate Change which affects economy as a whole and people’s way of life in all areas of the world, making it an important issue that international community is now paying attention to measures that would mitigate it, measures created to solve various problems in Thailand may not be effective at all if the state neglected to recognize a reality that these problems have roots not only partially from some groups of people’s disrespect of rules created for public interest, but also actions by the government themselves. The NHRCT therefore came up with recommendations on measures or guidelines for promotion and protection of human rights and suggestions on improvement of laws, rules, regulations or orders, making them consistent with human rights principle, and proposed them to the government cabinet as follows:

2.1 Recommendations on measures or guidelines for promotion and protection of human rights

Because the government policy on land management has affected status of people’s rights and public interests, especially protected area designation restricts ownership or possessory right of the people as in Section 2 of the Land Code and Section 1304 of the Civil Code, and is restriction of right to liberty in movement and settlement of citizens in the kingdom according to the International Covenant on Civil and Political Rights (ICCPR), the NHRCT has recommendations as follows:

1) The government cabinet shall come up with guidelines for actions and support government agencies related to management of state land in forms of national reserved forest land, national park land and other protected land as follows:

(1.1) The government shall provide supports in forms of budget or modern technology related to management of state land and forest resources to agencies in the field for mapping and physical area survey.

(1.2) To declare a new protected area and expansion of existing protected areas, consideration shall be taken whether or not it is necessary for protection of water sources; protected areas should not be created only to fulfill the quota of protected areas according to the National Forest Policy. Promotion and development of forest on private land should be adopted instead. In case that it is necessary to declare new national forest reserve or protected area, the people should know the government’s action plan and be allowed to participate in its determination, including being given opportunities to argue and oppose in the process and there should be real survey of the area, using technology of aerial survey or satellite, within two years and make physical maps for areas that have already been declared as protected forest area. Real concerned areas should be surveyed and checked with the technologies every two years.

(1.3) Minimum standards for proving the right according to the government cabinet’s resolution dated 30th June 1998 should be fixed and such proving process should be conducted before taking legal actions as follows:

First stage: The right shall be proved by comparing aerial maps or satellite maps of the present time with those from the past that are provided by government agencies, such as photograph from 2005 (scale 1:4000). If it is found that the land had been utilized before the photograph was taken in that year, right to the concerned land of the people who utilized it should be officially recognized in a document which describes location and size of the area on map with satellite coordinates given to the people,

so that they could continue utilizing their land. If it is proved that the land was utilized first in the year after the year that is used as the base for consideration, or when protected land was expanded, officials then would be sent to conduct land survey in the field and to compile a list of trespassers at present. In case that there is no aerial photograph in the year that is used as the base for examination, opportunities should be given to use other methods, such as witnesses or historical evidence.

In the following stage, objectives of trespassing found should be checked. If it was trespassing to use land for residence and to make a living on not so large piece of land, or nature of the settlement was a traditional community or land that a group of ethnic people has been living continuously for many years without affecting local ecosystem, these 'trespassers' should be given and recognized to continue living peacefully there without issuing land title document that would allow the land to pass hands. If trespassing occurred on national park land, the trespassers could be allowed to continue utilizing the land as co-conservationist according to Section 19 of the National Park Act B.E. 2504 (1961). If it was trespassing on national reserved forest land, local government agencies could make an administrative agreement with trespassing people, allowing them to utilize land and maintain forest at the same time. Supports should be given to diverse uses of land, development of products, reduction of large-scale monoculture cultivation, such as cash crops or rubber trees. However, if trespassing was only for utilization, before any action was taken, their economic status should be found whether they were poor people or not. Criteria for this consideration should be designed together between the public and private sector and are then clearly announced in order to provide scope for officials to use their judgment and to prevent wrongful claims by dishonest persons. Database should be developed in order to provide assistance in term of welfare and to check again in the future. If the trespassers are qualified to be poor people who trespassed in the beginning because of economic necessity, the government should consider giving them assistance according to existing criteria and measures and may have to remedy damages by providing new living place with enough area to make a living to them or their community according to policy of the National Land Arrangement Committee.

Giving new concession or extending lifetime of existing concessions to big private operators should be limited in case that proof of right over the land involved is not finished, or if a dispute was taken to court and the court has not issued a final judgment. In case there was survey on foot to issue land title document, allocation of land in land reform for agriculture area, or state land was rent out, right to utilize the land should be given first to persons who had not trespassed state land before and then given to trespassers who agree to follow the rules.

(1.4) Land ownership shall be distributed, such as property tax, should be improved to make it more effective and there should aerial survey of land in the country regularly every five years and improve Section 6 of the Land Code, including guidelines for actions according to this provision, making them more effective to prevent private sector from occupying land and leaving it idle without making use of it for any benefits.

(1.5) The public shall be allowed to take part in determining public policies related to forest conservation.

(1.6) Joint right of the community shall be supported in order that natural resources would be most effectively used. Community joint rights by giving rights and duties to people in the area to manage resources in specified area according to group needs under various conditions and requirements would make community members consider their individual rights and right of their community to forest resource management together. In order to do so, the government must change its role from being practitioner to

the one who supervise, monitor and evaluate. In addition, guidelines for solving problems concerning communities locating in forest areas are to be based on principle of community right and participation of the people by making forest land demarcation a matter that local people, community or administrative organization decide by themselves without having to adhere to forest area limits as originally declared in the law.

(1.7) Development of the country shall be aimed to achieve the UN Sustainable Development Goals (SDGs) in order to sustainably prevent and solve the problems. For this issue, it could be achieved by development of the people's life quality, promotion of sustainable agriculture, development of agricultural technology to increase productivity in limited area, processing farm products instead of producing and selling them just as primary products, and sustainable utilization of land ecosystems to mitigate impacts of Climate Change on all people in the country and to reduce loss of natural habitats of wildlife and biological diversity. Recovered lands should be allocated to create a balance between "protected forests" which are the sources of water, gases and food, "economic forests" where rotation of trees absorb greenhouse gases at high rates, and "community forests" where local people must be allowed to participate in forest management along with their traditional way of living.

2) The government cabinet shall direct the Royal Forestry Department and Department of National Parks, Wildlife and Plant Conservation to come up with guidelines for officials' use of authority according to laws under their responsibilities, that they shall consider circumstances together with actions before using their authority to arrest or expel people. The guidelines shall dictate that firstly administrative order should be issued to inform concerned people to leave the area or act legally and give opportunities to the people to use their right to oppose orders according to the law on official administrative procedure.

3) The government cabinet shall give a pledge to the people and provide guidelines for officials that they would arrest and expel or evict new trespassers who are not qualified to receive assistance only when their right to land is proved with criteria recommended by the NHRCT and legal case has gone through the justice process till the end in order to prevent violation of civil rights according to the ICCPR and to guarantee that forced evictions is used as the last resort according to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Moreover, officials who make an arrest should not act in any way that is contempt against human dignity, threat, harassment, use of force to coerce or unfairly act.

2.2 Suggestions for amendments to improve laws, rules, regulations or orders

Because laws for protection of natural resources and environment that are in effect at present have provisions that unfairly restrict right over land and forest resources by setting aside all land that no one has right over it according to the Land Code to be "forest" according to the Forest Act B.E. 2484 (1941) and force the people to vacate occupation of untidy and deserted land with effect of the mouth-shutting law according to Section 12 of the National Reserved Forest Act B.E. 2507 (1964), including exclusion of right to oppose in the National Park Act B.E. 2504 (1961) and Wildlife Preservation and Protection Act B.E. 2535 (1992), the National Human Rights Commission then came up with suggestion for amendments to improve laws as follows:

1) The Forest Act B.E. 2484 (1941) shall be amended to change the definition of "forest" to be consistent with its physical characters and geographical conditions and only refer to large-sized area with humidity, plant diversity and rather rich ecosystems, including areas under law that local people take part in defining them as forest.

2) The National Reserved Forest Act B.E. 2507 (1964) shall be amended as follows:

(2.1) Section 12 shall be amended as follows:

(1) Period for submitting petition shall be extended from the original 120 days to one full year from the date that ministerial order is in effect.

(2) Last part of Section 12 shall be amended from "...if a petition was not submitted within the stated period of time, it is considered that the right to petition or any benefit to be gained is surrendered..." to be "...if a petition was not submitted within the stated period of time, it is to be primarily presumed that the right to petition or any benefit to be gained is surrendered. However, this does not affect community right to manage and utilize natural resources, environment and biological diversity in a balanced and sustainable way".

(2.2) For Section 13, wordings in the first clause shall be deleted and replaced with the following wordings:

"When a Provincial National Reserved Forest Control and Preservation Committee has received a petition according to Section 12, it is to proceed to investigate the matter with aerial photographs and other evidence. If it is appeared that the petitioner had occupied and utilized the area before the date when a ministerial order defining that forest area as a national reserved forest was in effect, the committee is to consider submitting its opinions to the government cabinet to quash the ministerial order for specific area that had been occupied before, except in case that this quashing would damage balance and sustainability of natural resources, environment and biological diversity in its gravamen and the committee should consider paying affected people an appropriate bote", and

(2.3) In order to make content of Section 14 consistent with Section 12, the following wordings should be added in (3) of the section as follows: "(3) "... could be proved that the area had been occupied and utilized before the date that the ministerial order defining that forest area as a national reserved forest was in effect and this action did not damage balance and sustainability of natural resources".

3) As for national park areas, wildlife protection areas and other protected areas, provisions of law shall be amended to give right to petition and oppose similar to Section 12 and Section 13 of the National Reserved Forest Act B.E. 2507 (1964) as proposed above.

3. Results of actions

Office of the Cabinet Secretariat sent the most urgent letter No. Nor Ror 0506/16904 dated 17th May 2017 to inform the NHRCT that Mr. Visanu Kruangarm, a Deputy Prime Minister, acting to give order and perform official duties on behalf of the Prime Minister, had an order assigning Ministry of Natural Resources and Environment to be the main agency to take this case into consideration together with Ministry of Defense, Ministry of Agriculture and Co-operatives, Ministry of Interior, Royal Thai Police, Office of the Council of State, Internal Security Operation Command, and other related agencies to study directions and appropriateness of the recommendations, and assign Ministry of Natural Resources and Environment to summarize results of the consideration or actions taken on this matter as a whole and send them to Office of Cabinet Secretariat within 30 days to present to the cabinet.