

Complaint No. 572/2555: Community Right – A case of which the people asked the NHRCT to check issuance of permit allowing Eastern TPK Capital Company Limited’s six pier-type constructions to be built intruding into Bangpakong River in Sanamchan Sub-District, Baan Pho District, Chachoengsao Province

The people in the name of ‘Samatcha Paed Riew Mueng Yangyuen’ (Paed Riew Sustainable City Assembly) complained to the NHRCT that the Marine Department through the Director of Regional Marine Office 6 issued a permit allowing the Eastern TPK Capital Company Limited to build six piers on the banks of Bangpakong River in Sanamchan Sub-District, Baan Pho District, Chachoengsao Province. The permit was issued without consideration of essential fact about the area. In addition, the meeting of a Provincial Committee tasked with a duty to issue permit for construction of buildings or any other things intruding into waterway was not participated by representatives of Tambon (sub-district) Administrative Organizations in the project area to express their views. The complainant saw that the proposed construction of piers would have impacts on environment of the communities.

The NHRCT considered facts obtained from an investigation and related laws, and found results of the investigation to be as follows:

Issue No.1: Project for construction of six piers and warehouses of Eastern TPK Capital Company Limited is considered to be a project or activity that may have impacts on natural resources, environment and community right. It is also because the project is located on the banks of Bangpakong River, which are river plain and coastal plain rich of biological diversity and mangrove forests. Bangpakong River is therefore important for way of life and vocations of local people. The river is also a national wetland of which a Cabinet Resolution requires any development project that is likely to change ecosystems of Bangpakong River area to produce an Environmental Impact Assessment (EIA) report. Representatives from Chachoengsao Provincial Natural Resources and Environment Office also explained to the NHRCT that “By intention of law, it assumes that a 1,000-meter-long pier would have

impacts on the environment. So there are 6 piers in this Project located in nearby area, of which 4 piers are 995 metre-long each and 2 piers are 831metre-long each. The Project states that about 4,000-5,000 tons of goods can be transported and delivered into ships in a day. Therefore while construction work is going on and after it is completed, the project could have impacts on the environment because several sectors commonly utilize Bangpakong River.

The NHRCT therefore saw that the project to construct six piers and project to construct warehouses are connected to each other and thus can be considered as a project that may create serious impacts on community which requires the company where is project holder to produce an Environmental Impact Assessment report before starting the project as an attached document for applying for permit. As the Company did not produce an Environmental Impact Assessment report, there was no measure for preventing and solving problems that may emerge and thus is violation of human rights.

Issue No.2: The process to issue a permit allowing pier-type constructions to intrude waterway is unlawful and not in line with the Principles of Right to Participation of People and Principles of Community Rights stipulated under Constitution of the Kingdom of Thailand B.E. 2550 (2007), that was Government agencies, local administrative organizations and the project holding Company did not give information, news, details of the Project and its impacts to the people and did not organize public hearings or participation process for people in the area before permitting the Project to be operated. Moreover, agencies involved in taking consideration to issue permit to the pier project on the banks of Bangpakong River did not consider importance of Bangpakong River which is a national wetland, and there was no clear examination whether or not the project area was located in mangrove forest area according to relevant government cabinet resolution.

As the permit issuing process was not in line with the Principle of Protection of Rights and Liberties of People under Constitution of the Kingdom of Thailand B.E. 2550 (2007) and other relevant laws, and consideration taken to issue a permit was proved with lack of

substantive facts and was rushed to do in short time by agencies involved, it is viewed by the NHRCT therefore that issuance of the permit to Eastern TPK Capital Company limited was unlawful.

The NHRCT therefore deems expedient to come up with measures to solve the problem and to give policy recommendations to related agencies as follows:

Measures to solve the problem

The Marine Department should consider revoking the Permit to Construct Buildings or Other Structures Intruding Into Waterway No. 1/2555 to the Permit No. 6/2555 dated 9th August 2012 given to the Eastern TPK Capital Company Limited because the permit-issuing process was not in line with related laws and was inconsistent with the Principle of Rights and Liberties Protection under Constitution of the Kingdom of Thailand B.E. 2550 (2007).

Policy Recommendations

1. Office of the Natural Resources and Environmental Policy and Planning shall have measures in place to check any projects that may need to conduct Environmental Impact Assessment in accordance with other laws, and if the Office receives complaints from people or letters asking for consulting from private sectors or other government agencies, it shall quickly examine and give recommendations to prevent negative impacts from the project operation and damages to the private sectors in case that a permit is revoked after the construction work has already started.

2. The Department of Public Works and Town and Country Planning should act as follows:

1. send a letter to Government agencies that have authorities to issue permits for construction work in various projects, including local administrative organizations all over the country for providing of substantive information and regulations for using of Town and Country Plans come into force and Town and Country Plans that are waiting to be proclaimed which have provisions for land use and prohibitions concerning land use activities, so that those Government agencies or

local administrative organizations can use in their consideration. This would help protect communities' natural resources and environment and is consistent with the people's intention of which their views were expressed in the draft town and country plans, and to fill in gaps in areas where no town and country plan is enforced or a town and country plan is in the process to be proclaimed.

2. Use its authority according to Section 15 (3) of the Town and Country Planning Act B.E. 2518 (1975) which have provisions for utilizing properties in the areas of which a town and country plan is waiting to be proclaimed, so that the areas are protected from activities that have negative effects on communities' natural resources are utilized in accordance with provisions in a town and country plan that is going to be proclaimed.
3. Sanamchan Tambon Administrative Organization should organize a process to provide information and hear views from people in the area when there is any project that would have impacts on natural resources, environment and way of life of people in Sanamchan Sub-District area and use the people's views in its consideration whether or not to issue a permit or to express their views to related agencies to use when they are considering whether to issue a permit.

Office of the NHRCT shall monitor results of actions within 30 days after it receives this report.