

Report No. 158/2559 on community rights in case that construction of Laem Yai Gas Depot and its harbour was claimed to affect the environment and occupations of Klong Noi Community.

Issue of complaint

A complainant submitted a petition to the National Human Rights Commission of Thailand (NHRCT) as in the petition No. 90/2559 dated 9th February 2016 requesting the Commission to investigate a case of which construction of Laem Yai Gas Depot and its harbour was claimed to affect the environment and occupations of Klong Noi Community, Moo 7, in Laem Yai Sub-District, Mueang Samut Songkram District, Samut Songkram Province. An investigation by the NHRCT's Sub-Committee on Community Rights and Resource Bases also found facts that not only a project to construct a harbor, there was also another project to construct a connection road within the area where construction of gas depots and harbor took place. These three projects were interconnected and all were in Don Hoy Lord wetland in Samut Songkram Province which had been declared a wetland of international importance, or Ramsar Site, No. 1099 according to the Ramsar Convention on Wetlands on 5th July 2000.

Actions

The NHRCT took this case into consideration and opined that company A. (the accused no.1) was working on projects to construct a harbour, a gas depot and a road connecting all project areas. A process to consider whether or not to give permission for construction of a harbour for ships of no more than 500 gross ton was conducted by Samut Songkram Branch Regional Office of the Marine Department (the accused no.4) with consent from Samut Songkram Provincial Authority (the accused no.3) and was a violation of human rights in the areas of right to access to information, right to participation, and community right of the complainant and other people who were stakeholders of the projects because of the lack of participation process as provided in Section 57, 66 and 67 of Constitution of the Kingdom of Thailand B.E. 2550 (2007) which were recognized by Article 4 of Constitution of the Kingdom of Thailand B.E. 2557 (2014). A process to give approval for construction of the harbour was also against ministerial regulations that the Principal City Plan of Samut Songkram B.E. 2558 (2015), which was in effect on 12th June 2015, was to be enforced. Consideration taken by Samut Songkram Branch Regional Office of the Marine Department to allow the company to modify structure of the harbour, including dredging of a new channel in the river by Samut Songkram Branch Regional Office of the Marine Department, was not an all-round consideration. In addition, it was found that the process to consider whether or not to extend validity of a permit for construction of the gas depot by Laem Yai Sub-District Administrative Organisation (the accused no.2) did not take into account the company's real use of land and conditions for land use according to the laws on city plan. This action went against ministerial regulations that the Principal City Plan of Samut Songkram B.E. 2558 (2015), which was in effect on 12th June 2015, was to be enforced as well. Measures to solve human rights violation problems were then formulated for related agencies to take actions.

Concerning the Environment Impact Assessment (EIA) of the accused no.1's gas depot, harbour and road construction projects, the NHRCT considered that the gas depot construction project needed no EIA according to the Cabinet's resolution dated 3rd November 2009, "Review of a Cabinet's resolution dated 1st August 2000 on register of Thailand's

wetlands of International Importance and National Importance and Measures for Wetlands Conservation”, because the LPG gas depot was on private land. The project to construct a harbour for LPG container ships, on the other hand, was not within the scope of projects that need EIA according to proclamation of the Ministry of Natural Resources and Environment concerning types and Sizes of Projects or enterprises that need to prepare EIA report, and criteria, methods, regulations and guidelines for preparation of an EIA report dated 24th April 2012 because size of the harbour was smaller than the prescribed standard. The accused no.1’ road construction project was not within the scope of projects or enterprises that need to prepare Environment Impact Assessment (EIA) report according to the same proclamation of the Ministry of Natural Resources and Environment even if the road was constructed through or near wetland of international importance or World Heritage Site in the World Heritage List according to the International Convention in the range of two kilometres as it was a private road, not within the scope of “highway” according to laws on highway. The NHRCT therefore came up with policy recommendations and suggestions for law improvement to the government cabinet as follows:

Measures for solving the problems of human rights

Samut Songkram Provincial Authority (the accused no.1) and Samut Songkram Branch Regional Office of the Marine Department which was authorised by the Director General of the Marine Department (the accused no.4) should consider revoking the permit to construct a harbour for ships of no more 500 gross ton in the area of Moo 7, Laem Yai Sub-District, Mueang Samut Songkram District, Samut Songkram Province, given to company A (the accused no: 1) because the permission was against the ministerial regulation to enforce Samut Songkram Principle City Plan B.E. 2558 (2015) which was in effect on 12th June 2015. In addition, this project lacked public hearing process and participation process of stakeholders, making it not following Section 57, Section 66 and Section 67 of the Constitution of the Kingdom of Thailand B.E. 2550 which are recognized by Section 4 of the constitution of the Kingdom of Thailand (temporary edition) B.E. 2557 (2014).

(2) Laem Yai Sub-District Administrative Organisation (the accused no.2) in the capacity of local officers according to the Building Control Act B.E. 2522 (1979) should revoke the permit given to the accused no.1 to construct gas depot on 26th March 2016 because it was against the ministerial regulations to enforce Samut Songkram Provincial Authority which was in effect on 12th June 2015.

Policy recommendation and suggestions for law improvement

(1) The Cabinet should review its resolution dated 12th May 2015 on a review of a Cabinet’s resolution dated 3rd November 2009 (on a review of a Cabinet’s resolution dated 1st August 2000 on a list of Thailand’s wetlands of international and national importance and measures for wetland conservation) no.10 under a principle that “operation of any private project or enterprise in any area that is in or near wetlands of international importance (Ramsar Site) that affects way of life and livelihood of people in the community and has impacts on natural resources and environment in the area must prepare an environment impact assessment (EIA) report for related agencies to use in their consideration whether or not to approve the project”.

(2) The Cabinet and related agencies should consider amending a proclamation of the Ministry of Natural Resources and Environment on types and sizes of project or

enterprise that have to prepare an environment impact assessment (EIA) report and criteria, regulations and guidelines for preparation of an EIA report dated 24th April 2012 under a principle that “operation of any private project or enterprise in any area that is in or near wetlands of international importance (Ramsar Site) that affects way of life and livelihood of people in the community and has impacts on natural resources and environment in the area must prepare an environment impact assessment (EIA) report for related agencies to use in their consideration whether or not to approve the project”.

(3) The Cabinet and related agencies should consider amending a proclamation of the Ministry of Natural Resources and Environment dated 24th April 2012 no.12 on the part about definition of the word ‘highway or ‘road’ to be constructed and preparation of an environment impact assessment (EIA) report, making them not limited to definition used in the Highway Act B.E. 2535 (1992), but should also take into consideration size and real use of the road.

(4) The Cabinet should consider formulating measures or guidelines for integrating preparation of an initial environment effect (IEE) report or an environment impact assessment (EIA) report of any two or more projects that are connected with each other as in this petition mentioned above into one report in order that impact assessment would be all-round and lead to prescription of effective measures to prevent problems or impacts that would happen.

(5) The Cabinet should consider amending the City Plan Act B.E. 2518 (1975) and/or ministerial regulations to enforce principle city plan, so that these ministerial regulations would be in effect until a new ministerial regulation is proclaimed and enforced in order to prevent a gap occurring in the enforcement of the city plan law.

Successes/progress in human rights protection

Mr. Visanu Krueangarm, a Deputy Prime Minister, issued an order assigning Ministry of Natural Resources and Environment to be a main agency to take this case into consideration together with Ministry of Transport, Ministry of Interior, Office of the Council of State, and related agencies. Later on 28th March 2017, the Cabinet passed a resolution acknowledging results of actions taken by Ministry of Natural Resources and Environment which could be summarized as follows: Ministry of Natural Resources and Environment opined that the Cabinet’s resolution dated 12th May 2015 on a review of a Cabinet’s resolution dated 3rd November 2009 (on a review of a Cabinet’s resolution dated 1st August 2000 on a list of Thailand’s wetlands of international and national importance and measures for wetland conservation) was still clear enough for implementation and also had a short-term three-year plan for improvement of types and sizes of projects or enterprises that have to prepare environment impact assessment (EIA) report. Issues related to wetlands and highway or road as mentioned in the recommendations would be used in improving types and sizes of projects or enterprises that have to prepare EIA report to be more appropriate. As for the recommendation to integrate initial environment effects (IEE) reports or environment impact assessment (EIA) reports of two or more projects that are connected into one report as in the petitioned case, project holder should be the one who consider whether or not it is appropriate to do as recommended on case by case basis. For example, if holders of a petroleum production project and that of a petroleum transport system project are the same and located in the same area, while agencies with authority to approve the projects are also the same, IEE or EIA reports could be prepared in combination as one report. However, if projects are of

different types, having different or separated impacts on the environment, and agencies with authority to approve the projects are different ones, separate preparation of IEE/EIA reports would be more appropriate. Ministry of Interior by Department of Town Plan and Public Works is in the process of proposing City Plan Bill B.E. to improve the City Plan Act B.E. 2518 (1975) as a whole by adjusting forms and methods for planning and producing the whole system of city plans, including making each type of city plan to have no expiry date, but using a system to evaluate city plan every five years.