

No 0001 /49



National Human Rights Commission of Thailand,
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17 December B.E.2556 (2013)

**Investigative Report for Proposing Policy or Legal Recommendations on
Community Rights: Investigating the Consistency Between Regulation
Concerning Projects' Types that Possibly and Highly Affecting
Communities' Environment-Related Health and Natural Resources Including Community
Rights Guaranteed by Constitution of Kingdom of Thailand B.E. 2550 (2007), Article 67,
Paragraph 2 and Monitoring the Progress in Solving Problems Related to the Effect from
Industrial Development in Map Ta Phut Sub-District, Rayong Province.**

Attachment :

1. The 100 copies of Investigative report for proposing policy or legal recommendations no. 683 – 684/2556, 25 September B.E. 2556 (2013).
2. The 100 books named National Human Rights Commission's Policy Proposal Report on People Network from Eastern Part's complain

Dear Prime Minister;

National Human Rights Commission of Thailand (NHRCT) would like to propose legal recommendations on policies and law amendment (the detail is in enclosure 1 and 2) which could be summarized as the followings:

1. Background

NHRCT received People Network from Eastern Part's complain explained that Ministry of National Resource and Environment's regulation on the categories of types and sizes of and procedures for projects and enterprises that might highly affect the quality of environment-related health issues and natural resources, for submitting environmental impact assessment papers B.E. 2553 (2010), is rapidly enacted, announced in Government Gazette and submitted to Central Administrative Court. The regulation reduces the list of projects and enterprises that might highly affect the quality of environment-related health issues and natural resources on,y into 11 categories. It consequently set some industrial groups which were under the Central Administrative Court's ruling on temporarily legal protection for communities, free from the ruling. Thus, the regulation neither recognizes community rights which are guaranteed under the Constitution B.E. 2550, article 67, paragraph 2, nor protects people's interest according to the Constitution and good governance principles. Meanwhile, based on the numbers of public hearings involving people, academic persons and experts, Committee for Solving Problems Complying with Constitution of Kingdom of Thailand, Article 67, and Paragraph 2 previously suggested that projects and enterprises that possibly and highly affect the quality of environment-related issues and natural resources should be divided into 18 types. This widens the conflict between investments and communities in many

places. Moreover, National Health Act B.E. 2550 (2007), article 5, guarantees that a person shall enjoy the right to live in healthy environment and environmental condition. The government has an obligation to supervise, provide and facilitate services for people to have a good quality of life and to live with security and healthy. However, due to the relevant studies and competent authorities' information, although many people living in Mab Ta Phut Sub-District, Mueang District, Rayong Province have health problem reducing their quality and security of life, the Government hasn't immediately solved the problems. This will lead to health tragedy in the area.

The complainant asked NHRCT, based on its authority, to bring fairness conforming to the propose of the Constitution B.E. 2550, article 67 and paragraph 2, to end the feasible conflict and to investigate and accelerate the Government including the relevant authorities to solve the problems appropriately and in time. To achieve the above mentioned, NHRCT should:

(1) Advice the Government to review and revise types of projects or enterprises highly affecting communities' environment-related health and natural resources.

(2) Monitor the implementation for solving problems occurring to the sufferers from industrial development in Mab Ta Phut and Rayong Province by comparing to the suggestions the Government received from several organizations including National Economic and Social Advisory Council, National Health Commission and Committee for Solving Problems Complying with Constitution of Kingdom of Thailand, Article 67, and Paragraph 2.

(3) Comprehensively investigate causes of people's health problems regarding people's right to live in health environment

2. Reasons for Proposing the Council of Ministers policies

NHRCT considered that People Network from Eastern Part's complain explained the problems related to the implementation of Ministry of National Resource and Environment's regulation in general, the difference between the regulation and the Constitution B.E. 2550, article 67 and paragraph 2 and the negative effect on quality of environment-related health and natural resources resulting from industrial development and the Government's development projects. Similarly, such effects might occur to communities in other industrial areas across the country. Thus, the Government is obligated to provide the remedy for the sufferers while implementing the long-term preventive policies and measures particularly the enactment of laws and regulations including their enforcement in comply with the Constitution, B.E. 2550, article 67 and paragraph 2. Therefore, due to the Constitution B.E. 2550, article 257, paragraph one (5) and National Human Rights Commission Act, B.E. 2542 (1999), section 15 (3), NHRCT would like to propose the National Assembly and the Council of Ministers Policies, the recommendations with regard to the revision of laws and regulation for the propose of promoting and protecting human rights.

3. Proposal's Priority

The Council of Ministers policies should consider the priority of the NHRCT's proposals and recommendations with regard to the revision of laws and regulation for the propose of promoting and protecting human rights no. 683-684/2556 and assign relevant authorities to implement those recommendations

4. Abstract

People Network from Eastern Part's complain reflected industrial development effect on communities' and people's rights guaranteed in Constitution of Kingdom of Thailand B.E. 2550, Universal Declaration on Human Rights, Human Rights Conventions and other relevant international principles and measures. These include both procedural rights and substantive rights. The former are right of access to information, right to public participation and right to environmental justice. The roles of the kinds of these rights significantly link to the substantive rights including right to good health, right of access to natural resources, right to healthy environment and right to development. NHRCT has the role to promote and protect these rights to

comply with the intention stated in the Constitution and human rights principles. In principle, the competent authorities have the obligation to respect, protect and fulfill human rights. The Government, on the contrary, rapidly enacted Ministry of National Resource and Environment's regulation on the categories of types and sizes of and procedures for projects and enterprises that might highly affect the quality of environment-related health issues and natural resource, for submitting environmental impact assessment papers B.E. 2553 (2010) which didn't aim to practically protect community rights. Previously, the Government had established Committee for Solving Problems Complying with Constitution of Kingdom of Thailand, Article 67, and Paragraph 2 or "Four- Parties Committee" aiming to find the solutions of problems in Mab Ta Phut. Through reviewing relevant documents and organizing many platforms for hearing people's and stakeholders' opinions, the Committee submitted the Government, the paper suggesting that types of projects and enterprises which possibly and highly affecting communities' environment-related health and natural resources should be divided into 18 items. Without clear explanation and instead of following the Committee's study, the Government, by making a decision based on the comment of National Environment Committee under National Environmental Promotion and Conservation Act B.E. 2535 (1992), rapidly promulgated the Ministry's regulation which reduced types of the projects and enterprises into 11 items. Thus, many types of projects and enterprises which possibly and highly affect the quality of environment-related health issues and natural resource are automatically excluded from the item's list. Consequently, these types of projects and enterprises don't have to submit EIA paper to the independently Environmental and Health organization. Obviously, the decision process of this matter hadn't been done transparently and didn't comply with good governance principles.

Moreover, since enacting the Constitution of Kingdom of Thailand B.E. 2550 (2007) on 24th August B.E. 2550, the (drafted) Independently Environmental and Health Organization Bill under the Constitution, article 67 and paragraph 2 has not been passed yet. Additionally, the Government has desired to achieve industrial development and national economic growth. This has affected Mab Ta Phut communities in various aspects such as the increased pollution without being properly controlled, the risk from factory and trade waste, the disastrous effect on agriculture and fishery etc. These result from procedural factors related to environmental impact assessment (EIA) and health impact assessment (HIA) which insufficiently ensures the protection of communities' rights, for example many manufacturers don't desire to hire academic persons to study EIA/HIA. Additionally, people in general don't understand techniques and contents of EIA/HIA as well as the EIA/HIA papers themselves don't clearly explain about remedy and compensation. Nonetheless, EIA/HIA is used to be a condition to receive the licenses for implementing projects or enterprises highly affecting communities. Obviously, the Government ignores its obligation to respect and protect communities' rights to comply with the Constitution, article 67 and paragraph 2.

Therefore, NHRCT would like to propose recommendations aiming to protect community rights to comply with the Constitution, article 66 and 67 as the followings

(1) the Government has an obligation to respect communities' rights by:

(1.1) review and amend Ministry of National Resource and Environment's regulation on the categories of types and sizes of and procedures for projects and enterprises that might highly affect the quality of environment-related health issues and natural resource, for submitting environmental impact assessment papers B.E. 2553 (2010) by expanding its content to cover all types of projects potentially and highly affecting communities' environment. It should also include projects' and enterprises' sites as well as the sites' carrying capacity. The list of Projects and/or enterprises that are excluded from the regulation, but are located in places where investments are forbidden, for example UNESCO's World Heritage areas, Historic sites, Ancient remains, legal Historic sites, reserved forests and national parks etc., for protecting public interest, should be added in the list of types and sized of and procedures for projects and enterprises that might highly

affect the quality of environment-related health issues and natural resource. Thus, any projects and/or enterprises located in these areas have to follow the procedures complying with the Constitution, article 67 and paragraph 2. Also the Government should specify in the Ministry of National Resource and Environment's regulation that types of projects and enterprises will be reviewed every two years.

(1.2) rapidly study all aspect of Mab Ta Phut's Carrying Capacity and inform the finding to the public within 6 months. Industrial investment which might cause pollution in the area should be temporarily held back, until the study is finished and proves that the area's carrying capacity is met at least the accepted minimum standard.

(1.3) review the procedures for specifying types of projects in Ministry of National Resource and Environment's regulation as mentioned in (1.1) and assign the independently Environmental and Health organization, the responsibility for specifying types of projects and enterprises related to the Constitution, article 67 and paragraph 2. For conforming to the Constitution, the organization should be also responsible for examining EIA/HIA papers and consulting about the assessment.

(2) the Government has an obligation to protect communities' rights by

(2.1) For the purpose of optimizing the effectiveness, transparency and accuracy of a community's land use, the Government has to perform its obligation and responsibility for developing and adjusting all levels of town planning which include the planning's systems, mechanisms and monitoring processes. Thus, communities will be saved from the investment of projects and enterprises potentially and highly affecting their environment. Conserved areas mentioned in the town planning law should be classified as the areas forbidden from investing projects and enterprises highly affecting communities' environment. Any projects and enterprises that are needed to invest in the above areas should follow the procedures complying with the Constitution, article 67 and paragraph 2.

(2.2) the Government has to perform and be responsible for assisting in enhancing the quality of EIA/HIA paper by:

1) Improving systems, mechanisms and procedures for effectively, transparently and accurately monitoring EIA/HIA, particularly measures for examining health and social impacts. The finding from the monitoring should be informed to the public.

2) Specifying a penalty for any industries that violate conditions under EIV/HIA regulation, as well as the measures for remedy and compensation from such violation. Moreover, the Government should be responsible for effectively implementing analytical processes for environmental impacts.

3) Administrating and supervising EIA/HIA study processes based on good governance principles. Government agencies should be responsible for hiring consultant firms to study EIA/HIA while the project owners will pay for the fees. To prevent problems related to the use of EIA/HIA papers for serving project owners' propose, after projects are invested, the operation of Government agencies responsible for authorizing and supervising should be integrated. The monitoring mechanisms should be improved as well as providing annual report to the public to inform that which projects don't follow EIA/HIA. The independently Environmental and Health organization should employ academic persons to educate and consult about EIA/HIA processes and regularly review the list of academic persons. Moreover, remedy and compensation measures for damaging natural resources, environment, health and quality of people's life should clearly be specified. Thus, the detail of remedy and compensation should be added in the appendix of Ministry of National Resource and Environment's regulation relating to methods, procedures and guideline for preparing EIA report, 29th December B.E. 2552 (2009)

(2.3) the Government should standardize the tool for making decision on categoring industrial areas focusing on balancing between economic development and environmental conservation. This tool should be based on evaluating the areas' carrying capacity which is the result of strategic environment assessment (SEA). It should also be regularly and effectively improved.

(2.4) the Government should provide clear policies, guidelines and measures conforming to international standard for protecting, supervising, monitoring and investigating business enterprises' and industries' activities with regard to respect for human rights and community rights. The effective mechanisms for supervising, monitoring and investigating the conformity of those activities with the above policies, guidelines and measures, should be established as well as establishing appropriately remedy mechanisms for individuals or communities affected by business enterprises' and industries' activities

(3) the Government has an obligation to fulfill community rights by

(3.1) seriously promote and support people participation as being guaranteed by Directive Principle of State Policies in relation to Public Participation in Constitution of Kingdom of Thailand, B.E. 2550 (2007), Article 87. Public participation should be promoted at all levels since forming public policies, designing the national and local economic and social plans and monitoring the implementation of national and local Governments. Persons are supported to unit and form all forms of association to express their own and communities' opinions and desires. People should have an opportunity to participate in deciding targets and forms of public participation in every stage of EIA/HIA. Moreover, the Government should assist Mab Ta Phut Network or People Network from Eastern Part in forming issued/areal assemblies aiming to involve all sectors in participatory processes including forming public platforms for cooperatively solving problems and monitoring Mab Ta Phut's pollution reduction plan. Additionally, each stage of its progress should be consistently informed to the public.

(3.2) rapidly adopt Regulatory Impact Assessment (RIA) in Thailand. This is useful for examining the Government's law enactment particularly the enactment of ministerial regulations, orders or rules similarly to Ministry of National Resource and Environment's regulation on 31 August B.E. 2553 (2010)

(3.3) rapidly initiate or amend the current laws related to promote and protect community rights in regard to Constitution of Kingdom of Thailand B.E. 2550 (2007), article 66 and 67. This includes laws relevant to independently Environmental and Health organization (the Constitution, article 67 and paragraph two), and financial measures based on Polluter Pays Principle (PPP). Moreover, National Environmental Protection and Conservation Act should be amended in accordance with the Constitution, article 67 and paragraph two.

(3.4) review the prioritization of the national development which usually measures Gross Domestic Product (GDP) based on economic revenue. The direction of national development should be reconsidered in order to achieve stable and sustainable development. The environmental conservation should be integrated with economic development in order to prevent the negative effect on people's health, security or quality of life.

5. Suggestions

Please submit the Council of Ministers Policies to consider the proposals and recommendations with regard to the revision of laws and regulation for the propose of promoting and protecting human rights and assign relevant authorities to implement the give recommendations for promoting and protecting community rights in accordance with the propose of Constitution of Kingdom of Thailand B.E. 2550 (2007).

For your consideration and please inform us the progress. Thank you in advance.

Your Sincerely

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