

Report No. 674/2560 on community right in case of a claim that the Navigation in Thai Waters (17th Edition) B.E. 2560 (2017) affects coastal and riverside communities

1. Background

The National Human Rights Commission received a petition from many people claiming that Section 18 of the Navigation in Thai Waters (17th Edition) B.E. 2560 (2017) requires owners or occupiers of buildings that are trespassing over a water body to inform the accused, or a Regional Marine Office, or a branch of Regional Marine Office, where the buildings are located within 120 days from the day this Act was in effect, that is to inform the authority within 22nd June 2017 and also have to submit a form to request for a permit and pay fines at a rate of no less than 500 Baht per square meter but not more than 10,000 Baht per square meter. As for the permit, when permission is given, fees have to be paid annually. The complainant saw that the provisions have impacts and creates burden for people who reside in coastal and riverside communities. Some of these communities are original ones and their residents had settled and lived there continuously for a long time. Most people in these communities are poor. In addition, it is not clear what are criteria for considering whether anything is trespassing over the water or not.

The National Human Rights Commission took this petition into consideration and saw that it was an issue related to community right. The Constitution of the Kingdom of Thailand B.E. 2560 (2017) guarantees community right to participate in the balanced and sustainable management, maintenance and utilization of natural resources, the environment and biological diversity. These communities could use their rights to give suggestions to government agencies when any of their actions affects peaceful living of people in these communities (Section 43). Moreover, if it was seen that any law was inconsistent with circumstances or was an obstacle to their livelihood or the way they make a living, the state could consider abolishing or amending it without delay in order to prevent it from being a burden to the people (Section 37) which is in the scope and authority of the National Human Rights Commission in accordance to the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and Section 15 of the National Human Rights Commission Act B.E. 2542 (1999). The commission therefore conducted an investigation and came up with recommendations on appropriate measures or guidelines for prevention or solving the problem of human rights violation and proposed them to the government cabinet.

2. Results of the consideration taken by the National Human Rights Commission

The National Human Rights Commission saw that the process to draft the Navigation in Thai Waters Bill (17th Edition) B.E. 2560 (2017) focused on measures to solve the problem of illegal fishing, public hearing process was therefore to conduct hearings mostly among members of the private sector that involved in shipping and fishing industries. Moreover, enforcement of this law would overlap in terms of both area and authorities of several other laws. If measures to deal with things that trespass over water bodies were carried out without integration with actions of other related government agencies, they could create burden for affected people. In addition, the Department of Marine was still discussing criteria for considering things that trespassed over the water during 1972 to 1994, it was worried that when the time has come for the measures to be implemented, that was 22nd June 2017, there would be conflicts and unclear burden would be created for affected people. Because of these reasons, the National Human Rights Commission reached a resolution that the Department of Marine's proposal of this Navigation in Thai Waters (...Edition) B.E. ... for enactment as a law without organizing public hearings to cover all related issues and

stakeholders would result in impacts which restrict rights and liberties of the people than necessary and thus violate human rights when the law was in effect.

The National Human Rights Commission thus came up with recommended measures or guidelines that were appropriate to prevent or solve human rights violation problems according to Section 247 (1) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and proposed them to the government cabinet as follows:

(1) The Navigation in Thai Waters Act (17th Edition) B.E. 2560 (2017) should be amended to extend the period of time for giving notices about violation according to Section 18 for at least one year from the day the Navigation in Thai Waters Act (17th Edition) B.E. 2560 came into effect or until amendment of ministerial orders according to Section 17 is completed.

(2) Responsible agencies should be assigned to conduct assessment of impacts from the Navigation in Thai Waters Act (17th Edition) B.E. 2560 (2017) to be in line with Section 37 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), using the Regulatory Impact Assessment (RIA) as a tool for assessment or analysis.

3. Results of actions

The National Human Rights Commission submitted a most urgent letter no. Sor Mor 0009/56 dated 15th June 2017 to the Prime Minister to present this case to the government cabinet to consider taking actions in line with Section 247 Paragraph 2 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017), a most urgent letter no. Sor Mor 0009/57 dated 15th June 2017 to the Head of the National Peace Keeping Council, and a most urgent letter no. 0009/58 dated 15th June 2017 to the President of the National Legislative Assembly in the role of the Speaker of the Parliament to consider taking actions.

The National Human Rights commission submitted a most urgent letter no. 0009/1526 dated 15th June 2017 to Ministry of Transport to consider taking actions according to its authority.