

Recommendation No. 4/2561: Recommendations on measures or guidelines for promotion and protection of human rights and recommendations on amendment/improvement of laws to solve the problem of issuing public land certificate overlapping the people's land for residence and land to make a living

Between 2001 and 2017, National Human Rights Commission of Thailand had received a total of 178 petitions in case of problems related to public land certificate from people in many areas. Most of the issues in these petitions were cases of which the people were made to suffer and claimed that they had been damaged by government agencies whose mission was related to land and had authority and responsibilities to take care of the land that was public domain of state, the so-called 'public interest land', for citizens to use together. These agencies conducted erroneous surveys and thus issued public land certificate that were not responding to public land registration, survey accounts, declarations or evidence of reservation, resulting in those public land certificate were issued overlapping with land the people had used for residence or to make a living and has possessed to utilize them before these public land certificate were issued. These actions created problems for people who lived in the affected areas as they were expelled from the land they had resided and made a living, their produces and even properties damaged or destroyed. They were arrested and prosecuted for trespassing state land. This issue of conflict has resulted in disputes between the state and the people for a long time. Although processes had been adopted to solve this problem, it is a fact that issuing public land certificate is still a problem and related government agencies still could not solve the problem for people who suffered from the impact of this problem on their right to have adequate residence and to make a living for decent livelihood which is a basic human right. The National Human Rights Commission of Thailand sees as appropriate to consider to conduct studies, gather factual information and analyse cases of which public land certificate were issued overlapping the people's land for residence and land to make a living in order to promote and protect human rights.

The National Human Rights Commission of Thailand had considered this petition together with legal provisions, regulations, orders, Cabinet resolutions, research works, related human rights principle, including views of experts and specialist witnesses, and saw that one of the basic human rights is the right to have residence and right to make a living for livelihood. These are the rights that each state should protect for the people who reside in that state. These basic rights are recognized in the Constitution of the Kingdom of Thailand. Thai citizens therefore could use these rights as protected by the Constitution in a way that does not affect or endanger the security of the state and does not violate the rights and liberties of other people. These basic rights have a status of *jus in rem* or real right according to the Constitution over state property and public domain of state. Individual persons and communities thus have the right to use and benefit from them as protected by the Constitution. State officials, therefore, are obliged to use their legal power consistently with basic rights of persons and communities according to the Constitution.

In the ancient time, humans did not know about ownership over land; land therefore was considered to be a common property, not belonging to anyone. Later when human united, land became common ownership of family. Head of a family was the person who possessed land on behalf of family members, but had no right to transfer that land to other people because that land was still a property of the group. As for Thailand, there is a principle that the king is the owner of all land in the kingdom; inhabitants who possess land are not real owners of land.

When Thailand enacted the Civil and Commercial Code, a principle of property becoming public domain of state was prescribed in Section 1304 which laid down a principle that public domain of state has a characteristic of being state property, whether it is a movable property or immovable property, that would be used for public benefits or reserved for common benefits. In order to preserve this type of land, the law therefore designs that an important document must be issued for that land, that is 'public land certificate'.

To issue a public land certificate, a principle for consideration is that the land must be a public land, which is considered to be the land of the state that citizens commonly use, such as river banks, waterway, highway, lake, grazing field, graveyard and cemetery, for example. The status of being public land could be terminated only by power of a specific law or Royal Decree. Therefore even if the people or the authority stop utilizing or cease to have the necessity of reservation, but no Royal Decree is enacted to withdraw its status, a public interest land would continue to have the status of public domain of state for citizens to commonly use. Being public domain of state, the people cannot use prescription to fight against the state no matter how long they have possessed the land. To preserve and protect land which is public domain of state, Section 122 of Local Administration Affairs Act B.E. 2457 (1914) amended by Local Administration Affairs Act (No.11) B.E. 2008 designates District Chief together with local administrative organisations are the authority with responsibility to preserve and protect land that is public domain of state and performing this responsibility resulted in conflicts between government agencies and the people that can be summarized as follows:

1.1 Causes of public land trespass problem

1) Discontinuity of policy implementation because the responsible officials are frequently moved, resulting in a lack of continuity in preventive actions, monitoring or controlling, and lack of clarity in policy implementation and negligence of actions when trespass occurred.

2) Evidence in the registration of public land is not clear about its location, size of the land and boundaries; there is no evidence specifying permanent land borders, and there is no evidence showing declaration of reservation or evidence showing that the state of being public land has gone.

3) Some groups of people claimed that they did not know that actions would be taken to issue public land certificate for the plot of land in dispute because there was no evidence showing that it was a public land or because persons who were tasked to point out the boundaries of the land did not inform the affected people that the public land certificate would be issued.

1.2 Actions taken when dispute occurred

When dispute occurred about boundary lines of public land, conflicts emerged between government officials and people in the area. Properties of people who resided or utilised the land in dispute. These people were also expelled with violent methods, being intimidated, threatened and prosecuted. These actions taken by government officials may lead to violation of human rights of people in the affected area.

1.3 Measures of the government to help poor people who trespassed on public land

To solve problems that the whole plot of public land was trespassed to an extent that the people could not utilize the land together, the government had measures to

help the people by coming up with a project to manage the utilization of the trespassed public land and revocation of public land status.

Even if there already are legal provisions and various guidelines for issuing public land certificate and measures to solve problems for affected people, the problem of public land trespass has been in existence for a long time and has a tendency to continue coming back again and again in the future. The state sector should concretely solve this problem in order to preserve public domain of state, and fairly protect and maintain people's right to legally reside or make a living in this area.

Recommendations in measures or guidelines for human rights promotion and protection, and recommendations on improvement of laws

The National Human Rights Commission of Thailand see that it is appropriate to come up with recommendations on measurements or guidelines for human rights promotion and protection, including recommendations on improvement of any laws, rules, regulations or orders related to issuing of public land certificate in a way that is consistent with human rights principles and propose to the Ministry of Interior and the Cabinet according to Section 247 (3) of the Constitution of the Kingdom of Thailand B.E. 2560 (2017) and Section 26 (3) and Section 42 of the National Human Rights Commission of Thailand Act B.E. 2560 (2017) as follows:

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

Ministry of Interior should consider taking actions to make officials and government agencies that have responsibilities to preserve and protect public land, that are District Chiefs and local administrative organisations, to act as follows:

1.1 Conduct survey to check boundaries of public land, making them consistent with realities, taking into consideration with the way of life, culture and land use of communities in the local area in order to clearly define the boundaries of public land and create complete and correct registration of public land, and the boundaries are to be surveyed in order to gain clear knowledge about the size of the land together with people in the area. If the survey shows that the registration of public land was not correct, not complete, or erroneous, this problem should be reported to the provincial governor without delay in order to propose to Ministry of Interior to issue an order to correct or dispose. People in the area should be made to understand boundaries of public land and produce evidence to show permanent boundaries, such as construction of road around the plot of land to indicate boundaries and prevent a problem that would emerge when signs indicating public land or boundary stones were lost. People in the area who are affected by issuance of public land certificate should also be informed that public land certificate have been issued and explained guidelines for solving problems that may emerge.

1.2 Areas under preservation responsibility should be regularly surveyed and checked by counting the number of public land trespassers to prevent more trespassing over existing residents and prevent trespassing by new trespassers. Survey of trespassers also result in problems being solved quickly and up-to-date.

1.3 Surveying of land to issue public land certificate, title document or document to show right to making a living should use a scale of 1:4,000 in order to be in the same standards as guidelines for improvement of the integrated maps that show boundaries of

state land (the One Map) of which the Cabinet approved in a resolution dated 22nd September 2015.

1.4 Maintaining public land should use the principle of participation by people in the area as the Constitution of the Kingdom of Thailand B.E. 2560 (2017) protects the rights of persons and communities in the conservation, management, maintenance of natural resources, and to propose to government agencies to take actions that are beneficial to people or communities in order to define measures for prevention of trespassing and seizure of land by capitalists or influential persons in the area.

1.5 In case that there is any argument about the boundary, the agency with authority and responsibility to take care should take actions to completely prove land right of people in the area who claim that they have right over the land above the state first before taking actions according to the administrative measures with the people, and these actions must be taken with fairness, non-discrimination, and there should be respite measure as appropriate for people who honestly used their right to residence and right to make a living. As for people who covertly utilize public land for profit, they should be prosecuted by law to the end to prevent repeated wrongdoing.

1.6 Before prosecuting the people, officials and government agencies should consider the actions of the people whether there are serious violation of law or whether there is an intentional violation of law. If they are serious violation of law, administrative process should be applied first because officials and government agencies should consider applying measures carefully to prevent any actions that may cause violation of the rights of the people.

1.7 In case that there must be compensation to remedy the damages caused to the affected persons, it should be quickly done by taking into consideration by using the principle of appropriateness and fairness.

1.8 In case that the official authority wants to change the way to utilize land that is public domain of state of the type that citizens use together from using for a kind of public benefit to another, related regulations must be observed first before taking actions to change utilization, and people involved should be allowed to participate in making decision whether or not it is appropriate to change utilization of the land.

2. Recommendations on improvement of laws, rules, regulations or orders

2.1 The Cabinet should consider amending No. 2 of ministerial regulation No. 26 issued according to an Act promulgating the Land Code B.E. 2497 (1954) which was further amended by ministerial regulation No. 45 B.E. 2537 (1994) issued according to an Act promulgating the Land Code B.E. 2497 (1954). The Cabinet should consider assigning Minister of Interior in the position of commander of the Land Department to amend No. 12 of the Land Department's regulations on issuing public land certificate B.E. 2517 by adding another place to post the announcement of public land certificate. The office of the village headman and the village's stage should be the place in the community meeting of the people in the area of public land that document was declared, so that the issuing of this public land certificate is known all over and the meeting would become public hearing of people in the area as well. Since No. 2 of ministerial regulation No.26 B.E. 2516 (1973) is issued according to an Act promulgating the Land Code B.E. 2497 (1954) which was further amended by ministerial regulation No. 45 B.E. 2537 (1994), issued according to an Act promulgating the Land Code B.E. 2497 (1954), and No. 12 of regulation of the Land Department on issuing

public land v are connected and consistent with one another, they should be amended to make their wordings go on in the same direction in order that issuing public land certificate has clear guidelines and is not conflicting with each other.

2.2 Minister of Interior should consider amending regulations of the Interior Minister on assigning Sub-District Council or local administrative organization to help issuing public land certificate B.E. 2543 (2000) in No. 9 by adding period of time for Sub-District Council or local administrative organization to take actions and adjust wordings to be as follows:

“...When a District Chief requests Sub-District Council or local administrative Organisations to call a meeting to take into consideration, they should give their opinions within 30 days by allowing the people, community leaders, religious leaders, and government agencies to take part together with Sub-District Council or other local council as well and quickly send the results of the meeting to the District Chief to take further actions”