

Recommendation No. 3/2561: Recommendations on measures or guidelines for promotion and protection of human rights, including recommendations for improvement of laws, rules, regulations or orders in case of determination of areas to make a living, to reside and to carry on the way of life of Karen ethnic group and local traditional communities in national forest reserve areas and national park areas.

The National Human Rights Commission of Thailand received many petitions which claimed that Karen ethnic groups and local traditional communities that had been located on many highlands of Thailand, especially in Northern Region and Central Region, had their traditional way of life that had been passed down till the present affected. They also faced a problem of lack of land to make a living because national reserve forest areas and national park areas were declared overlapping with these communities' residential areas and land to make a living, leading to arrests, eviction, destruction of properties and prosecution in court according to Forestry Act B.E. 2484 (1941), National Reserved Forest Act B.E. 2507 (1963) and National Park Act B.E. 2504 (1961). In these cases, officials had taken actions not consistent with a cabinet resolution dated 3rd August 2010 on policy and guidelines of actions for recovery of Karen people's way of life, which was a policy to guarantee the rights of these traditional local communities. Moreover, concerned officials had not taken any action to prove right to land ownership as well.

The National Human Rights Commission of Thailand took these petitions into consideration and saw that determination of areas to make a living, to reside and to carry on the way of life of Karen ethnic group and traditional local communities in national reserved forest areas and national park areas may affect the rights of a person and community in order to conserve, revive or promote wisdom, culture, tradition and good customs at local level and right to manage, maintain and utilise natural resources, environment and biodiversity in a balanced and sustainable manner according to Section 43 of the Constitution of the Kingdom of Thailand B.E. 2560 (2017). The Commission thus came up with recommendations on measures or guidelines for promotion and protection of human rights, including improvement of any laws, rules, regulations or orders related to the cases of which national reserved forest areas and national park areas were declared overlapping with residential areas and areas to make a living of Karen ethnic groups and traditional local communities that had existed there before in order to make them consistent with human rights principle to submit to the Cabinet's and related agencies 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 Act B.E. 2560 (2017).

Views of the National Human Rights Commission of Thailand

The National Human Rights Commission of Thailand took into consideration cases in petitions related to legal provisions, human rights principle, related research and views of experts and specialist witnesses and find that there are contents and issues of problems that the Commission should consider giving recommendations on measures or guidelines for promotion and protection of human rights of Karen ethnic groups and local traditional communities which are protected according to Section 43 (2) the Constitution of the Kingdom of Thailand B.E. 2560 (2017) on management, maintenance and utilisation of natural resources, environment

and biodiversity in a balanced and sustainable manner related to (1) implementation of state policy on forest resource management, (2) guidelines for government agencies to solve problems in a way that is consistent with way of living of communities that had existed in the areas before they were declared as forest zones and conservation areas, guaranteeing that there are enough means to prove their right to land possession and they are protected while a process to prove their right is not yet completed, and focus is mainly given to preventive policy for conservation of the area and promotion of participation of people and communities in all stages of management and utilization of forest resource, (3) enforcement of a Cabinet resolution dated 3rd August 2010 on policy and code of practice for recovery of Karen people's way of life in case that they make a living on their traditional areas

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

The National Human Rights Commission of Thailand sees as appropriate to issue recommendations on measures or guidelines for promotion and protection of human rights, including recommendations on amendment/improvement of any laws, rules, regulations or orders related to declaration of National Reserved Forest areas and National Park areas overlapping land that Karen ethnic groups use for residence and to make a living and traditional local communities had been located before, making them consistent with human rights principles, to the Cabinet, Ministry of Natural Resources and Environment, Ministry of Interior, Ministry of Agriculture and Cooperatives, Ministry of Culture, and Ministry of Social Development and Human Security 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 Act B.E. 2560 (2017) as follows:

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

1.1 Government agencies by Order No. 64/2557 of the National Council for Peace and Order on suppression and staunching of forest resource encroachment and destruction dated 14th June 2014 and Order No. 66/2557 on adding agencies for suppression and staunching of forest resource encroachment and destruction, and a policy on temporary work in current situation dated 17th June 2014 should stop arresting people from Karen ethnic group and traditional local communities who still wish to have a prove that they had been living there before the areas were declared as National Reserved Forest area and National Park area and stop using harsh methods by expelling, burning and destroying produces or properties; government agencies would be able to expel or evict trespassers only when actions were taken to prove their right and the case has gone completely through the justice system till the end.

1.2 Ministry of Natural Resources and Environment should consider reviewing and improving stages to be done before declaring any National Park area or National Reserved Forest area, and prioritize guidelines for dealing with conflicts in area utilization or possession between Karen ethnic groups, traditional local communities, and government agencies with constructive dialogue by setting up a committee or a mechanism/process with participation of the communities that are direct stakeholders as follows:

1) Land used to make a living at present should be surveyed. Areas in conflict should be counted, their boundaries gauged, and their real occupiers' names recorded.

Criteria, both in terms of time and related academic criteria, should be considered to obtain initial information for proving rights of Karen ethnic groups and traditional local communities by having a committee or mechanism at provincial level consisting of representatives of communities in the area that are direct stakeholders, representatives of the Department of National Parks, Wildlife and Plant Conservation, representative of Provincial Cultural Office, representatives of Local Administrative Department, representatives of local administrative organisations, and academics who are specialist and work in the field of culture, human rights, sociology and anthropology.

2) If it is agreed to determine areas to make a living, to reside and to carry out their way of life according to their culture by a Cabinet resolution dated 3rd August 2010 on policy and code of conduct for recovering Karen people's way of life, these areas should be declared and recognized in the map attached at the end of National Park declaring decree or in the map attached at the end of National Reserved Forest declaring ministerial order to create unity and holistic approach for government agencies to perform their duties to systematically deal with protected areas or conserve forest resources.

1.3 Ministry of Natural Resources and Environment should focus on preventive policy for area conservation and promote people's participation by capacity building, increasing impacts of knowledge gained from implementation of Joint Management of Protected Areas Project (JoMPA) and making Protected Area Committee (PAC) a main mechanism for management of reserved forest and protected forest in all areas. This line of policy and actions would promote and protect the rights of the people and communities to utilize and benefit from natural resources and environment in a balanced and sustainable manner according to the Constitution of the Kingdom of Thailand B.E. 2560 (2017).

1.4 The Cabinet should push for integration of work carried out by agencies with authority and responsibilities according to a Cabinet's resolution dated 3rd August 2010 on Policy and Code of Conduct for recovering Karen people's way of life in order to reduce gaps in the works between different agencies, making them go in the same direction as follows:

1) Opportunities to work together between different agencies in an area should be increased by setting measures and action plans and informing them to agencies in each level thoroughly and continuously. In addition, a provincial-level committee in the areas conflicts according to 1) of 5.1.2 of these recommendations.

2) Basic information in the areas should be gathered and used to create a database. This information should be regularly updated in order that agencies with authority and responsibilities receive the same correct information that could be used in assessment of the area, analyzing trends of changes in area development and used to determine methods for recovery and conservation of natural resources in order to appropriately promote living of Karen ethnic group and local traditional communities in the forest areas as conservationists.

3) Methods and mechanisms for systematic, continuous and concrete monitoring and evaluation should be developed in order to get to know the problems and obstacles that have emerged and be able to promptly improve implementation of the policy by setting indicators that are consistent with indicators of strategy, policy and other work plans of those agencies with authority and responsibilities.

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

2.1 The Cabinet should consider reviewing legal status of policy guidelines according to Cabinet's resolution dated 3rd August 2010 on policy guidelines and code of conducts in recovering Karen people's way of life in the issue of resource management in order to enhance them to be process standards for proving and protecting the rights of traditional local communities by inserting provisions or making additional correction in Act-level laws that are enforced in areas designated for preservation, protection and conservation of forest resources or other protected areas.

2.2 The Cabinet should recognise group rights of Karen ethnic groups and local traditional communities in order that the people would have land to make a living, land for residence and land to carry on cultural way of life which is consistent with the rights of the people and communities to utilize and benefit from natural resources and environment according to the Constitution of the Kingdom of Thailand B.E. 2560 (2017) instead of being lenient, giving permission to each family to possess and utilize land temporarily as follows:

1) The Cabinet should speed up pushing for improvement of Act-level laws related to area for preservation, protection and conservation of forest resources by considering to set methods for utilizing and benefitting from natural resources and environment in a balanced and sustainable manner.

2) The Cabinet should enhance legal status of the forest community project implementation by speeding up an enactment of law on the forest community to be an important tool for promotion and protection of the rights of Karen ethnic groups and traditional local communities, and also giving recognition to traditional local communities to be able to manage forest areas together in a way that is sustainable and appropriate for utilization according to capacity of each area.

2.3 The Cabinet should consider adopting the principle of Free, Prior and Informed Consent (FPIC) to use in stages before implementing activities, work plans and projects of the state that may result in changes, relocation or loss of land to make a living, utilization of land, or other resources to an extent that could have severe impacts on way of life, standards of living, and access to enough food of Karen ethnic groups and local traditional communities that are direct stakeholders.

2.4 The Cabinet should take actions to amend the National Park Act B.E. 2504 (1961) by adding principles of participation of communities in the determination of land to be national park and consider conducting feasibility study for zoning protected areas, especially zoning for traditional and indigenous users to utilize land with traditional way of living or for special use. This can be done by adding texts at the end of Section 6, Paragraph 2, of the National Park Bill B.E. ... as follows:

“Section 6, Paragraph 2: Land that would be set as (a part of) national park must be land that no person holds ownership or possessory right rightly according to the Land Code or possess rightly with other law, which is not administrative department, and must give opportunities to local administrative organisations and local communities located in that area to participate in the expression of opinions concerning setting land as (a part of) national park as well from the stage of survey and determining boundary line of conservation area and classification of protected area management.”