

Complaint No.151/2554: Rights in judicial process and community rights – A request to investigate violation of human rights in case of a conflict between a cockle-raising capitalist and local fishermen

The complainant complained to the NHRCT that a capitalist laid claim to an area in Pattani Bay which was a public space for cockle raising. The claim affected local people around Pattani Bay who had made a living with cockle raising for more than 20 years. The capitalist cockle-raiser put up bamboo poles to mark his area and prevent local people from fishing in the area where he had released young cockles. Later the cockle raiser notified the police to prosecute six local people who went to collect cockles in Pattani Bay on charge of commonly taking by stealth. The case is with state prosecutors. The capitalist also notified the police against Pattani Deputy Provincial Governor and Mueng Pattani District Fishery Official on charge of commonly supporting and wrongful conduct in instigating the people to collect cockles in Pattani Bay area. The complainant then made this complaint to ask for investigation of human rights violation and coordination of human rights protection.

According to the motion, issues for investigation can be divided into three issues as follows:

1. Whether the case that the capitalist notified the police to prosecute local people who went to collect cockles in Pattani Bay, which was a public area, on charge of taking by stealth is a human right related issue or not?

The NHRCT considered facts obtained from an investigation and related laws, and saw that issues in this case are right in the judicial process and community right. However, as the issue had already been the case for prosecution in court. Both parties could use facts that support their arguments to defend their points in court according to Section 28 of the Constitution of the Kingdom of Thailand. The NHRCT therefore could not use its authority to conduct investigation and propose corrective measures according to Section 22 of the National Human Rights Commission Act B.E. 2542, and decided to stop the related investigation.

2. Whether the case that Pattani Deputy Provincial Governor and Mueng Pattani District Fishery Official on charge of commonly supporting and wrongful conduct in instigating the people to collect cockles in Pattani Bay area is a human right related issue or not?

The NHRCT considered facts obtained from an investigation and related laws, and saw that issues in this case is being considered by the National Anti-Corruption Commission which has the authority investigate wrongdoings by government officials in position According to Section 250 (3) of the Constitution of the Kingdom of Thailand B.E. 2550 and decided to stop the related investigation.

3. Whether the complainants and people living around Pattani Bay have the right to use areas in Pattani Bay or not?

The NHRCT considered facts obtained from an investigation and related laws, and saw that Pattani Bay area is public space and a natural source of aquatic animals and Pattani Provincial Authority had not yet declared it to be an area permitted for cockle raising in particular according to Section 7 of the Fishery Act B.E. 2490 (1947). **The Constitution and related laws have provisions that recognise rights of individual persons and local communities to manage, preserve and utilize natural resources and it is considered to be a duty of fundamental state policy to enable the people and communities to access and utilize natural resources evenly and fairly.** Therefore everyone has the right to utilize and make a living in Pattani Bay area. This right is recognized and protected for individuals to join together to become a community, local community or traditional local community. As Marine Department, Fishery Department, Interior Ministry, Pattani Provincial Authority and local administrative organizations in the area, that are related agencies with direct authority and responsibilities in this case had already acknowledged the problems, the NHRCT thus decided to stop the investigation in the meantime.

However, the capitalist's act of cockle raising, demarcating the area without receiving permission from officials with legal authority, and preventing other people to collect cockles in the area indicated a quality of possession for one's own benefits and thus was using right that might cause damages to other people and led to conflicts within the communities. Even if Pattani Provincial Authority held meetings that came up with conclusions to solve the problems, conflicts remained there. In addition, conflicts over use of natural resources occurred not only in Pattani Bay area, but also in other areas of the country. Therefore, in order to solve this type of problem in the country as a whole, the NHRCT has come up with policy recommendations for the government cabinet as follows:

1. The government cabinet, through related government agencies, should consider solving conflicts related to access to or utilization of natural resources based on proportionality between public interest and personal interest for social justice and sustainable natural resource conservation, restoration and utilization according to provisions in the Constitution concerning equality and community right, and the State Policy on land, natural resources and environment, and on participation of the people.

2. The government cabinet, through related government agencies, should increase effectiveness of law enforcement to supervise, control and examine sustainable use of natural

resources. Involved officials found to be negligent of their duties or unfairly discriminatory in their actions should be seriously punished.

3. The government cabinet, through related government agencies, should take actions seriously and continuously to restore degraded natural resources to their richness, so that the people could use them independently and appropriately with ecosystems. Related government agencies, both in Bangkok and in the regions, and local administrative organizations must coordinate their administrative and management works to maximize benefits for the country, communities and life quality of people in the community with participation of the people and local communities that are or could be affected. Those related government agencies should include at least the following ones:

- (1) Department of Fisheries should use its authority to promote, protect and develop fishing occupation among the people by taking into consideration their way of life in local fishing community and related popular wisdom, and to increase and sustainably manage aquatic animal resources, maintaining their diversity.
- (2) Department of Marine and Coastal Resources should use its authority for conservation, restoration, sustainable use and management of marine and coastal resources and mangrove forests with participation of local communities, including people who are or could be affected.
- (3) Office of Natural Resources and Environment Policy and Planning should use its authority to make policies and plans for sustainable conservation and management of natural resources and environment, and preservation of biological diversity with participation of local communities and people who are or could be affected.
- (4) Department of Environment Quality Promotion should use its authority to promote and maintain good quality of the environment and management of natural resources and environment with participation of local communities and people who are or could be affected.
- (5) Department of National Parks, Wildlife and Plant Conservation should use its authority for conservation, promotion and restoration of forest resources, wildlife and plant species in protected forest areas that are connected to the coast and marine areas that have been declared as national park in order to achieve balance of ecosystems and the environment, and biological diversity, with

participation of communities in the areas, and promotion of sustainable and balanced use of natural resources.

(6) The Royal Forestry Department should use its authority to protect, restore and develop forests that are close to the coast, including ecosystems and biological diversity in the areas with participation of communities in the areas, including management for sustainable and balanced use of natural resources.

(7) The Marine Department should use its authority to control and look after anything intruding into waterways or the sea, preventing them from affecting the environment or ecosystems or causing pollution, taking into consideration proportionality between utilization of what intrude into waterways and public interest, including rights of local communities or people who make use of the areas.

(8) The Treasury Department should use its authority to take actions related to state land on the coast, including utilization of the areas, with participation of communities in the areas and people who are or could be affected.

4. To consider issuing a permit for fishing in public waters, opinions gathered from hearings with communities and people who are or could be affected from the permit should be taken into consideration as an important factor, and the permit must be issued strictly according to rules in the laws.

5. Public forum should be organized to gather opinions from communities and people who are or could be affected from any actions towards resources and coastal areas for protection of rights of communities and people recognized and protected by the Constitution and related laws and for being an important factor in determining policies and actions for sustainable conservation, promotion, development and restoration of natural resources and the areas, including biological diversity, taking into consideration local communities' way of life and popular wisdom.