

Report No.113/2559 concerning community rights and liberties in occupation in a case that local fishermen were affected by the Fishery Decree B.E 2558 (2015).

Issued of complaint

A complainant submitted a petition to the National Human Rights Commission of Thailand (NHRCT) requesting it to investigate a claim that the Fishery Decree B.E. 2558 (2015) had a provision that affected local fishermen, especially Article 34 which provided that local fishermen were strictly forbidden to do fishing outside of the coastal zones and prescribed heavy punishment for violators despite the fact that up to present day, local fishermen did carry out fishing outside of the coastal zones without creating negative impacts on the environment or caused any damages to the state. This provision was thus a restriction to the right to occupation, while in fact local fishermen had resided on the coast as communities that sustainably preserved, recovered and used marine and coastal resources. In addition, before proclaiming this decree, the state did not provide any opportunity for people whose fishing occupation might be affected to voice their views; this action or non-action could be a violation against community rights.

Actions

The NHRCT took this case into consideration and opined that originally fishery law had allowed local fishermen who used permitted equipment to do fishing outside off the coastal zones and in traditional marine fishing culture, most local fishermen had done fishing in coastal zones together with in outer sea off coastal zones. Then the government proclaimed the Fishery Decree B.E. 2558 (2015) of which Article 34 restricted local fishermen to do fishing only in the coastal zones, only up to 3 nautical miles from coast lines of the land or islands. This law thus severely affected local fishermen and would affect marine life resources because coastal zones were breeding and nursing areas of young marine lives. When local fishermen, who altogether comprised 80 per cent of all Thai fishermen, were restricted to do fishing only in coastal zones, reproduction capacity of the sea was then affected. Together with the fact that coastal zones in many provinces had been affected by industrial development and deep sea port, only few, or none at all, economic marine lives existed in the coastal zones and local fishermen then had to do fishing in areas outside of the coastal zones. Commercial fishermen, who did fishing in form of fishing industry, on the other hand, could do their work outside of the coast from 3 to 200 nautical miles, which was the boundary of the Specific Economic Zone, outside of the coasts. Referring to Section 4 of Constitution of the Kingdom of Thailand (Temporary Edition) B.E. 2557 (2014) has a provision to protect human dignity, rights, liberties and equality of Thai people according to Thailand's ruling tradition under the Constitutional Monarchy system, existing obligations to international instruments Thailand is a state party, Article 3 of the Universal Declaration of Human Rights (UDHR) which provides that "Everyone has the right to life, liberty and security of person.", Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and Article 1 and Article 25 of the International Covenant on Civil and Political Rights (ICCPR) have laid down principles concerning right to political participation and access to public services, the petition in this case is then about community right and liberties to occupation as protected by the Constitution and international obligations as mentioned above. The NHRCT agrees in principle reformation of fishery sector and recognizes its need and emergency, and also agrees that the state must organize fishery

system to ensure that fisheries are done legally with reporting and under control; fisheries are carried out according to the UN Food and Agriculture Organization's Code of Conduct for Responsible Fisheries (COC). Marine resources must also be taken care to ensure that they are used appropriately and in balance according to the UN Convention on the Law of the Sea 1982 of which Thailand is obliged to observe as a state party. Investigation of this case revealed that local fishermen, including the complainant, did not oppose the Fishery Decree B.E.2558 (2015) as a whole; they opposed only the provisions in Article 34 that they saw violating community right and rights of local fishermen and would cause problems. Concerning this problem, in the meeting No. 1/2559 of the accused on 10th February 2016, the meeting agreed to set up a sub-committee to consider amendment of Article 34 and other related articles in the decree. The problem was primarily solved as the accused no.3 cancelled the announcement on fishing equipment that needs permission for fishing in local area. In practice, Article 34 of the Fisheries Decree B.E. 2558 (2015) is not yet in effect, which is to spare local fishermen, enabling them to fish in marine fishing zones out of the coast. The NHRCT therefore considers that this case should be closed.

Recognizing importance of community right and liberties to occupation as protected by Constitution of the Kingdom of Thailand and international obligations that Thailand needs to follow as mentioned above, the NHRCT sees that it is appropriate to give policy recommendations and suggestions for improvement of the law to each of the five accused.

Policy recommendation or suggestions for improvement of the law

(1) The accused no.1 (the Cabinet), the accused no.2 (the National Fisheries Policy Committee) and the accused no. (the Department of Fisheries) should amend Article 34 of the Fisheries Decree B.E.2558 (2015) which provides that "those received permission to carry out fishing locally are prohibited to carry out fishing in the sea outside of the coast" by possibly adapting wordings in Article 43, Paragraph 3, of the Fisheries Decree B.E 2558 (2015) which provides that those who carry out fishing with fishing equipment with permit according to Article 42 (Permit for fishing equipment to be used in the coastal marine fishing zone), or local fishing equipment as determined by the minister, to carry out fishing in marine fishing zone outside of the coast without needing permit.

(2) The accused no.1 (the Cabinet), the accused no.2 (the National Fisheries Policy Committee) and the accused no.3 (the Department of Fisheries) should consider amending or improving provisions of the Fisheries Decree B.E. 2558 (2015) in the part that identifies local fishermen with fishing boats they use to be those less than 10 ton gross by changing the method for identifying local fisheries with types of fishing equipment and characteristics of fisheries.

(3) The accused no.2 (the National Fisheries Policy Committee) and the accused no.3 (the Department of Fisheries) and related agencies should arrange hearing process and allow those involved to participate in improving the Fisheries Decree B.E. 2558 (2015), including issuing proclamation, rules or regulations related to practice according to the Fisheries Decree B.E. 2558 (2015).

(4) The accused no.4 (the Command Center for solving illegal Fisheries problem) should issue additional proclamation that requires registration of Thai boats for fisheries according to Order no. 10/2558 by the Head of the National Council for Peace and Order dated 28th April 2015 concerning solution to the problem of illegal fisheries without

reporting and without control, so that local fishing boats could register as fishing boats and act according to fisheries law.

(5) The accused no.5 (the Marine Department) should consider improving rules for seafaring in the parts that are related to local fishermen and coastal communities' way of life by determining seafaring distance from the coast and an island that is consistent with facts and technology that has been developed, and allowing local fishermen who are able only to have one boat to register their boats for occupations, both fisheries and tourism together, depending on the season. These boats could be inspected during occupation changing to have enough safety standards, so that local fishermen could act according to the law. Occupations and local employment should be promoted. Life quality of local fishermen, who are small-scale farmers, should be developed. Using non-compliance to the law as an excuse to create unfairness against local fishermen must be prevented.

(6) To enact any law to control fisheries in the sea, community right or local traditions for fisheries that do not have impacts on marine resources should be considered.

(7) According to the intention of the Facilities for Official Approval Act B.E. 2558 (2015), for services provided by the state, a system to facilitate official approval and registration related to fisheries should be arranged to be at one place (one stop service).

Successes/progress in human rights protection

(1) The Command Center for Solving Illegal Fishing Problems reported that it had already issued an announcement on additional criteria for registering Thai boats that are used for fisheries or other boats. The Center and other related government agencies, that were Department of Fisheries and Marine Department, had always recognized importance of assistance and supports given to local fishermen groups within legal framework. Boat registration right of 1,154 boats had been given back to local fishermen from a total of 1,622 boats of which appeal was submitted to request their right back. The remaining 468 cases is being investigated by the Marine Department whether or not these boats really exist and to check their real size. Their right would be considered given back in the second phase after receiving a report from the Marine Department providing results of the examination. In order that local fishermen could quickly receive news and information that would be useful for receiving back their boat registration right, the center wishes to kindly ask your agency to carry out public relations, informing local fishermen who had already submitted their case to ask for their right back but had not received it to contact an office of the Marine Department in the local area they are residing.

(2) Department of Fisheries reported that in the process to prepare draft Fisheries Decree (.... Edition) B.E. in the parts related to local fisheries, three hearings had been organized to receive views from those affected. These meetings were attended by representatives of the Fisheries Association of Thailand, Association of Local Fishermen in the Gulf of Thailand, Association of Local Fishermen on the Andaman Sea and related government agencies. The meetings had taken into consideration related issues, that were meanings of "local fisheries" and "commercial fisheries", relations between size of fishing boat and number of fishing equipment used in local fisheries, and prohibition of local fisheries in the sea outside of coastal area. All of them are now under consideration by the Council of State (Special Committee). Any progress on this issue would be reported to the NHRCT.

(3) Ministry of Transport reported that it agreed with results of consideration on this issue by the NHRCT. The Marine Department had enacted two related legislatives: (1) Rules for boat inspection concerning criteria, methods and conditions for issuing a boat inspection certificate B.E. 2559 (2016), and (2) Marine Department Order No. 795/2559 dated 23rd September 2016 to solve the problems faced by local fishermen as indicated by Office of the NHRCT.