



## THAILAND'S FALSE CLIMATE SOLUTIONS WITH BAD FOREST CONSERVATION LAWS

### Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

During the 2nd UPR cycle, the Thai government received three recommendations directly related to land rights, forest conservation laws, and climate change policies made by Vietnam, Bolivia, and the Maldives. All three of them were accepted, nevertheless, our assessment shows that none of them has been fully implemented. State agents misappropriate land under the guise of climate change mitigation and protection of the environment, and while large corporate actors are generally unaffected, small subsistence farmers and indigenous peoples who protect their forests through their traditional ways of living, including traditional farming techniques, bear the brunt of such policies. Human rights defenders and community leaders who defy such actions are harassed, often without access to appropriate remedies. Women are especially excluded from public participation and find themselves at the margins of the community and society as a whole. Although the efforts to mitigate the effects of climate change and protect the national environment are commendable, they cannot come at the concerned communities' cost. The situation was further exacerbated by the revision of the National Parks Act in 2019. The amendment criminalizes villagers living within national parks and enables their eviction, making them vulnerable to poverty and further rights violations. The Act builds on the 2014 Forest Reclamation Policy which authorizes state officials to evict forest dwellers from their homes if they are found to encroach forest.

The unfair forest conservation laws are in line with the Thai government's ongoing efforts to ostracize indigenous peoples and forest-dependent communities. Instead of recognizing them as protectors of the forest whose traditional ways of living can help conserve the environment, the Government casts them as criminals and destroyers of the forest. This happens despite existing evidence that traditional farming of indigenous peoples is more resilient than industrial agriculture and is an effective climate change mitigation solution. For example, the 2012 Asia Indigenous Peoples Pact report showed how traditional cyclical cultivation strengthens food security, supports biodiversity, and can even contribute to the effective storage of carbon (carbon sequestration). More recently, a 2021 United Nations report evidenced that indigenous peoples are by far the best guardians of the forest, with deforestation being lower among indigenous communities. It is crucial that the Thai government recognizes these contributions and stops prosecuting indigenous peoples.

## REALITIES ON THE GROUND

### Challenges

### Cases, Facts, Comments

#### Challenge 1: Thailand's false climate solution: Unfair forest conservation laws and the Forest Reclamation Policy.

Through the Forest Reclamation Policy of 2014, the Government has tried to ensure stricter enforcement of flawed forest conservation laws such as the Forest Act of 1941, the National Reserved Forests Act of 1964, and the National Park Act of 1961 which was amended in 2019. The policy as well as the older forest conservation laws were not developed with the interests of indigenous peoples and concerned communities at the centre, even though they are protectors of the forest. Instead of addressing their concerns, they criminalise them. In particular, the National Park Act of 2019 focuses on providing authority to officers rather than creating a collaborative process between communities and the authorities to sustain and maintain natural forest resources.

In Chaiyaphum province, 14 Sab Wai villagers have been unfairly convicted of trespassing, encroaching, and clearing land belonging to Sai Thong National Park under the Forestry Act, National Park Act, and National Reserved Forests Act enforced through the Forest Reclamation Policy of 2014. The criminalization of the villagers happened even though they have been living in the area since the 1970s, prior to its declaration as a national park. The villagers have been intimidated by national park officers and were forced to sign papers stating that they would vacate their land. In spring 2021, the Supreme Court confirmed lower instance courts' judgements that all 14 villagers were guilty, putting 11 of them on probation and sentencing 3 of them to jail. In May 2021, one of the villagers, Mr. Suwit Rattanachaisri received a writ of execution with a call for him to pay a civil penalty of 60,000 THB plus an interest rate of 7.5% per year, and to vacate his land.



## REALITIES ON THE GROUND

### Challenges

### Cases, Facts, Comments

**Under the National Park Act 2019**, villagers residing in areas designated as national parks are automatically deemed to be in violation of the Act regardless of them having protected the forests and lived there for generations, which was not the case under the previous Act. Under the transitory provisions, villagers who wish to continue to reside in such areas must request permission from the government on a case-by-case basis. If the government grants permission, the villager is allowed to continue to reside in her/his respective area for a period of 20 years. However, the government has not yet indicated what will happen after the lapse of 20 years, so there is a substantial degree of uncertainty in respect of villagers' rights. If the government does not grant permission, the villager must immediately vacate her/his respective area.

**Forest-dwelling communities in Mae Hong Son province have been recently facing a surge in land seizure cases.** The situation is exacerbated by the Covid-19 pandemic which makes travelling of rights groups into the area very difficult. Local communities are then left to their own means without any external support. In June 2021, the Khao Pu - Khao Ya National Park issued an order to Mr. Decha to vacate land he had inherited under Section 64 of the National Parks Act 2019. This was in spite of the fact that his family had lived in the area prior to its declaration as a national park.

#### **Indigenous human rights defenders arrested as they #SaveBangkloi**

In February 2021, Kaeng Krachan National Park authorities forcibly moved around 100 Karen villagers from their homes in the Bang Kloi - Jai Pandin highland unfairly accusing them of forest encroachment within Kaeng Krachan National Park (KKNP in Phetchaburi and Prachuap Khiri Khan Provinces). On 5 March 2021, 22 members of the indigenous Karen community in Bang Kloi - including women and a disabled person - were arrested by Thai national park authorities and were detained in prison for returning to their ancestral land in the Kaeng Krachan Forest. They were released under the condition that they would not return to the area. This has put the whole community in a considerably difficult situation. Villagers are facing malnutrition as a result of having no access to their ancestral subsistence (foraging natural resources and rotational farming). They are also facing health risks and loss of income as Karen villagers were forced to resettle and struggled to farm infertile land. Young villagers had to work in cities to feed their families, but the spread of COVID-19 limited their income. Returning to their ancestral land within Kaeng Krachan National Park turned out to be the last and only option. However, on 26 July 2021, UNESCO declared the National Park a World Heritage Site, ignoring the pleas of the indigenous Karen who currently cannot enter the area. Furthermore, Phetchaburi provincial prosecutors have prepared an indictment against 27 Bang Kloi villagers on 18 August 2021.

### Challenge 2: Legal vacuum to recognize indigenous peoples' ancestral lands leads to rights violations and land evictions

**The system of community land titles was introduced in 2010 through the "The Regulation of the Prime Minister Office on the Issuance of Community Land Title Deeds"** but it does not guarantee secure land tenure to indigenous and local communities. As the community only manages the land for a certain period of time after which it needs to apply for an extension, the community land title system does not honour the collective right of indigenous peoples to their ancestral lands as recognized under international human rights law.

**The same year, in 2010, a Cabinet Resolution on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies of 2010** was promulgated and has been perceived as a positive step in recognising indigenous peoples' cultural rights. However, its implementation has been poor and it does not resolve any land-related concerns of indigenous peoples.

**The community title deeds as per the 2010 regulation do not provide sufficient protection to the community land tenure.** While it provides grassroots communities a certain level of protection from land grabs by private investors, it only guarantees use of land for a certain period of time. After this period, the community needs to request extension again. As such, communities do not own the land but only manage state-owned land. This also violates indigenous peoples' rights as they cannot exercise control over their lands as under international human rights standards. However, at times, the community land titles also negatively affect individual rights to property, for example in cases where community members inherit the land from their ancestors.

**Ineffective implementation of 2010 regulations.** Sapum village in Phuket province has been waiting for a community title deed since 2016 when it was proposed to the Government. In 2018, the Sapum community was issued an eviction order from the Marine Department which had plans to build a port in the area. This happened despite the fact that the community has lived in the area since 1952 – 20 years before the Marine Department declared ownership of the land. Furthermore, as a recognised Urak Lawoi community, Sapum villagers had a right to be protected under the Cabinet Resolution on the Restoration of the Traditional Practices and Livelihoods of Chao Lay in Thailand of 2010 – which was not respected, however. Establishing a community title deed is crucial for land tenure security of this community but ineffective implementation of the 2010 regulation keeps the villagers' future in jeopardy.



## REALITIES ON THE GROUND

### Challenges

### Cases, Facts, Comments

**The Draft Protection and Promotion of the Way of Life of Ethnic Groups Act fails to provide protection guarantees to indigenous peoples as it does not recognize indigenous peoples' inalienable right to their ancestral lands** as stipulated in the UN Declaration on the Rights of Indigenous Peoples and confirmed many times over by various human rights mechanisms.

**Laem Tukkae community on Sireh island has been prosecuted as the villagers refused to leave the lands they had occupied at least since 1935.** Expanding business and construction activities infringe on the community's rights to their ancestral lands and even as Urak Lawoi peoples, they did not find sufficient protection under the Cabinet Resolution on the Restoration of the Traditional Practices and Livelihoods of Chao Lay in Thailand of 2010 which guarantees them right to manage their natural resources. The Supreme Court ruled in favour of the villagers in 2019, however, the process had been marked by efforts to manipulate the community.

**Protection areas not providing rights safeguards under the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act (2021).** Protection areas established under Section 35 of the Draft Protection and Promotion of the Way of Life of Ethnic Groups Act would be designated at the discretion of the National Committee (created under Section 7 of the draft Act) and each area would have its own management plan. Indigenous peoples living within such protected areas would have rights to utilise their natural resources through farming, animal husbandry etc. While the efforts to protect cultural traditions of Thailand's "ethnic groups" are commendable, new legislation needs to recognise indigenous peoples' right to their traditional lands, including their right to free, prior and informed consent in all decisions concerning their land. In line with the draft Act's own principle to move from "charity" to "empowering" communities, recognition of indigenous peoples as rights holders and not mere beneficiaries of Government policies needs to be the first building block of any new legislation. Furthermore, the new bill needs to contain sufficient guarantees against forced evictions of indigenous peoples from their lands in line with international standards.

### Challenge 3: Criminalization and harassment of land rights defenders

**Thai legislation does not provide sufficient protection to land rights defenders** who become victims of strategic lawsuits against public participation (SLAPP), judicial harassment, and violence by using ineffective laws such as Sections 161/1 and 165/2 of the Criminal Procedure Code and Section 21 of the Public Prosecution Organ and the Public Prosecutors Act.

**While the National Action Plan on Business and Human Rights** deals with the situation of human rights defenders, it fails to acknowledge gaps in Thai legislation and its lagging behind international human rights standards.

Please refer to the **Torture and Enforced Disappearance in Thailand** factsheet as well as **Civic Space: #WhatsHappeningInThailand** factsheet for further information.

**The legitimate human rights work of land rights defenders to protect their lands is criminalized as they are subjected to the violation of their freedom of expression and right to assembly.** According to an analysis of Environmental Human Rights Defenders (EHRDs) by the UN conducted in 2016, Thailand is amongst the ten most dangerous countries for environmental defenders, and as specified by Protection International, more than 50 environmental rights defenders have lost their lives in Thailand in the last 20 years. In 2020, Global Witness found that at least 2 environmental defenders were killed in Thailand. Further, the report indicates that environmental defenders have been targeted for safeguarding particular ecosystems, with 71% trying to protect the world's forests from deforestation and industrial development.

**Enforced disappearance of a land right defender.** In Thung Lui Lai Subdistrict, Khon San district in Chaiyaphum Province, Mr. Den Kham Lae refused to follow eviction orders his community received and gathered with the community to submit a complaint on the case to government agencies. On 16 April 2016, he disappeared near the bamboo forest in Khok Yao Forest. In 2017, human remains found were 90 percent confirmed to belong to Den.

**Environmental rights defenders judicially harassed for their peaceful protests.** In July 2016, in Phichit province, 100 villagers affected by a gold mining company, held a peaceful protest to prevent trucks of a mining company from transporting ore out of the mining area, as this would cause additional air and noise pollution to the communities. After the protest, the Thab Khlo district police filed charges against 27 out of 100 villagers who participated in the protest for allegedly violating Section 309 of the Penal Code and Article 16 of the Public Assembly Act of 2015. Additionally, the police charged Ms. Prensinee under Article 10 of the Public Assembly Act of 2015 for her alleged role in organizing the protest. The same day, the 27 accused villagers were jailed for half a day at the Phichit Provincial Court and had to be bailed out accordingly.



## RECOMMENDATIONS

### 1. On challenge 1: Thailand's false climate solution: Unfair forest conservation laws and the Forest Reclamation Policy.

- 1.1. In line with the 2015 Concluding Observations of the Committee on Economic, Social and Cultural Rights (CESCR) to Thailand, **ensure that forced evictions are only used as a measure of last resort and persons forcibly evicted are provided with adequate compensation and/or relocation.**
- 1.2. Undertake immediate **legal reforms to land and forest-related laws, including the Forest Act, National Park Act, and National Reserved Forests Act, to recognize and safeguard the rights of local communities and rights of indigenous peoples over their traditional lands and resources**, including their land tenure and resource management systems. Ensure Indigenous Peoples and Forest-Dependent Communities are considered **Guardians of the Forest and are not criminalized as Capitalist Investors**, and **refrain from using the Forest Reclamation Policy as Thailand's Climate Solution.**
- 1.3. **Stop, without further delay, the abuse of forest conservation laws and policies, to evict local communities and individuals who are living in poverty from lands they have been living on for generations and refrain from enforcing the Supreme Court verdicts against the 14 Sab Wai villagers to guarantee they can continue living on their land and are not put in a situation of extreme poverty.**

### 2. On challenge 2: Legal vacuum to recognize indigenous peoples' ancestral lands leads to rights violations and land evictions

- 2.1. **Review the relevant forestry and conservation laws and programs in order to ensure respect for indigenous peoples' way of living, livelihood and culture, and their right to Free, Prior and Informed Consent (FPIC) in decisions affecting them**, while protecting the environment, in line with the 2012 Concluding Observations of CERD to Thailand and the 2015 report of the Special Rapporteur on the Rights of Indigenous Peoples.
- 2.2. **Evaluate and align Community Title Deeds Regulation so as to recognize traditional land tenure system and resource management systems of indigenous peoples as per their rights over lands, territories, and resources**, in line with the 2010 Cabinet's Resolutions on Restoration of the Traditional Practices and Livelihoods of Karen and Sea Gypsies.
- 2.3. **Ratify the International Labour Organization Convention No. 169, and draft and adopt separate legislation for the promotion and protection of the rights of indigenous peoples**, in line with the 2012 Concluding Observations of the Committee on the Elimination of Racial Discrimination (CERD) to Thailand. Ensure that such legislation is in full compliance with international human rights standards, in particular with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and that **it is drafted with full and effective participation of indigenous peoples, including indigenous women and youth.**
- 2.4. **Drop all criminal and civil charges against the 28 Bangkloi Indigenous activists who legitimately exercise their rights to protest and protect their ancestral land in the Kaeng Krachan National Park.**

### 3. On challenge 3: Criminalization and harassment of land rights defenders

- 3.1. In line with the 2017 Concluding Observations of the Human Rights Committee, ensure that **Thai legislation fully complies with the ICCPR, in particular by prohibiting torture and enforced disappearance. The State party should expeditiously enact a law on the prevention and suppression of torture and enforced disappearances.**
- 3.2. Decriminalize defamation by **repealing sections 326 to 333 of the Criminal Code** and enact a **standalone anti-SLAPP law to ensure legal protection against Strategic Lawsuits against Public Participation (SLAPP) aiming at silencing dissents, and protect individuals from judicial harassment by the state and corporations.** In the meantime, **enforce Sections 161/1 and 165/2 of the Criminal Procedure Code and publish statistics on its use to assess its effectiveness in addressing SLAPP cases.**
- 3.3. In accordance with the 2015 CESCR's Concluding Observations to Thailand, **adopt all measures necessary to protect human rights defenders, from any and all acts of intimidation, harassment, and killings and to ensure that perpetrators of such acts are brought to justice.** Effectively **protect and define "human rights defenders" under the Constitution**, in line with the UN Declaration on human rights defenders.



## REFERENCES

Way Magazine, 27 ชาวกรวยจะ เป็นบรรพบุรุษ 2.7 ล้านคน, 19 August 2021, available at: <https://waymagazine.org/27-bangkloi-villagers-will-be-prosecuted/>  
 Information obtained from Manushya Foundation's discussions with Nittaya Muangklang, an Isaan Land Reform Network representative, in August 2021.  
 Information obtained from Manushya Foundation's discussions with Sompha Jaikla, a Banthat Mountain Range Land Reform Network representative, in August 2021.  
 Information obtained from Manushya Foundation's discussions with Katima Leeja, an IMPECT representative, in July 2021.  
 Manushya Foundation, Cruel Injustice in Thailand: When the Supreme Court Forces Poor Villagers into Extreme Poverty!, 25 May 2021, available at: <https://www.manushyafoundation.org/post/cruel-injustice-in-thailand-when-the-supreme-court-forces-poor-villagers-into-extreme-poverty>  
 The Guardian, Indigenous peoples by far the best guardians of the forests - UN report, 25 May 2021, available at: <https://www.theguardian.com/environment/2021/mar/25/indigenous-peoples-by-far-the-best-guardians-of-forests-un-report>  
 FAO and FILAC, Forest Governance by Indigenous and Tribal People: An Opportunity for Climate Action in Latin America and the Caribbean, 2021, available at: <http://www.fao.org/documents/card/en/c/cb2953en>  
 Sai Thong Rak Pah Network, the Indigenous Women's Network of Thailand (IWNT), the Thai BHR Network and the Thai CSOs Coalition for the UPR, Land-related Rights, Forest Conservation Laws and Climate Change Policies: Joint Submission to the Universal Periodic Review (UPR) for Thailand's Third UPR Cycle, 39th Session of the UPR Working Group, 25 March 2021, available at: <https://www.manushyafoundation.org/joint-upr-submission-landrights>  
 Manushya Foundation, Why We Need to #SaveBangKloi, 11 March 2021, available at: <https://www.manushyafoundation.org/post/why-we-need-to-savebangkloi>  
 Global Witness, Last line of defense, 13 September 2021, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>  
 Manushya Foundation and Indigenous Women Network of Thailand, Raising Our Voices to Save Our Future: Overview of the Human Rights Challenges Faced by Indigenous Women in Thailand & Their Practical Solutions for a Sustainable Future, September 2019, available at: <https://www.manushyafoundation.org/iwnt-report>  
 Asian Indigenous Peoples Pact and International Work Group for Indigenous Affairs, Drivers of Deforestation? Facts to be considered regarding the impact of shifting cultivation in Asia, 2012, available at: <https://www.iwgia.org/da/3075-drivers-of-deforestation-facts-to-be-considered-regarding-the-impact-of-shifting-cultivation-in-asia.html>