Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
AL THA 2/2019

21 February 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 36/6, 37/8, 34/5 and 33/12.

In this connection, we would like to bring to the attention of your Excellency's Government information that we have received regarding alleged **attacks and renewed harassment of the indigenous Karen peoples in the Kaeng Krachan Forest Complex (KKFC) by officials of the National Park, Wildlife and Plant Conservation Department and over the failure to ensure accountability for these violations. Allegations have also been received regarding the Thai Government's reactivation of its nomination of the KKFC to be designed as a UNESCO World Heritage site in 2019, particularly in relation to the lack of consultation with affected indigenous peoples and the failure to seek their free, prior and informed consent. Concerns have been raised over how UNESCO heritage status, if awarded, may impact on the Karen communities' land rights and livelihoods**.

According to the information received:

Background

In February 2011, the Thai Government submitted a nomination to designate the Kaeng Krachan Forest Complex (KKFC) as a UNESCO World Heritage site. The KKFC consists of Kaeng Krachan National Park, Kui Buri National Park, Chaloem Phrakiat Thai Prachan National Park and Mae Nam Phachi Wildlife Sanctuary and is situated in three provinces in western Thailand (Ratchaburi, Phetchaburi and Prachuap Khiri Khan). The Government submission makes no mention of the indigenous Karen peoples who have inhabited the forest for centuries, long before the Government started to declare the area as protected for conservation in the 1980s.

According to an official census of "hill tribe" communities conducted by the Thai Ministry of Social Development and Human Security, there are over 400'000 Karen peoples living in some 15 different provinces in Thailand, mainly in the

northern and western provinces of the country. There are at least four Karen villages in KKFC, these are located in remote and dense forest. The Karen claim that their land is part of their identity, and most of their livelihood comes from the land they cultivate and from the surrounding forests.

Karen peoples usually live in villages consisting of bamboo houses. Most are subsistence farmers, living in mountainous forest areas where their livelihood depends mainly on small-scale rotational cultivation of rice and vegetables. This entails a complex agricultural practice that relies on seven-year cycles. They cut down trees without using heavy machinery, leaving tree roots and stumps. On the cleared land, they plant crops. They then move on to another location the following year, leaving the vegetation in the cultivated area to regrow. They repeat this practice seven times, returning to the original location in the seventh year.

The Karen villagers in the KKFC assert that they were not well informed nor consulted about the application for the area to become a World Heritage Site. While representatives of the Karen community are not necessarily opposed to the registration of the KKFC as a World Heritage site, they expressed a number of concerns, notably that the designation might lead to the destruction of their traditional way of life, loss of access to land and forced evictions. The Karen communities wish to continue exercising their traditional livelihood, including the rotation plantation. Some Karen residents have complained that the park officials do not understand rotation plantation and blame the Karen for trespassing to new areas while they are actually returning to one of the areas that they cultivated previously during the seven-year-cycle period. Furthermore, the Karen have expressed fears that they might not be able to use wild plants as food and medicines and that they might be prohibited from collecting and selling wild honey and herbs. Critically, many Karen have voiced concerns that they never understood what the laws and regulations in the KKFC allow or prohibit. They have also expressed concern that the designation as a World Heritage Site may lead to an increase in the number of tourists visiting the area, affecting the environment and creating problems with waste management.

Alleged human rights violations

Over the past decade, there have been at least five attempts to forcibly remove the Karen villages from the Kaeng Krachan National Park by park officials, in coordination with the military and the police.

In May 2011, 98 homes, farmland and rice barns belonging to the Karen community were burnt down and their belongings - including artefacts of spiritual and historical importance such as sickles, silver axes, traditional dress and beaded necklaces at Bang Kloy Bon and Jai Pendin - were confiscated.

In June 2011, 21 homes, farmland and rice barns of the Karen in 14 locations were burnt and destroyed. Knives, fishing nets, sickles, salt and music instruments (Tena) of the Karen were seized. The then-chief of the Kaeng Krachan National Park, Mr. [redacted] accused the Karen villagers of being "a group of minorities who committed encroachment of Kaeng Krachan National Park" and ordered the demolition and destruction of villagers' houses and properties as part of an organised campaign by park authorities known as 'Operation Tanaosri'.The forced evictions were reportedly done without any investigation of whether the lands in question were traditionally occupied and used by the Karen.

In September 2011, an unidentified assassin shot and killed Mr. Tatkamol Ob-om, a human rights defender who was helping Karen villagers to report allegations of abuses, violence, and illegal loggings in the Kaeng Krachan National Park. Allegations were made against Mr. [redacted] and three other people, who were indicted for premeditated murder but subsequently acquitted in October 2014. On 15 October 2015, the Appeal Court also ruled in favour of Mr. [redacted] acquitting him from being involved in the killing.

In 2012, six Karen villagers from Kaeng Krachan, including Mr. Ko-ee Mimee (at the time 98 year-old Karen leader), filed a lawsuit at the Administrative Court against the Kaeng Krachan National Park, Department of National Parks, Wildlife and Plant Conservation, Ministry of Natural Resources and Environment, and Mr. [redacted] for allegedly burning and destroying the villagers' houses and properties in 2011. The complaint documented the impact of the attacks on the Karens' traditional way of living, livelihood and identity. The plaintiffs also requested the court to give recognition to their rights to return and live on their ancestral lands and to order the relevant authorities to pay compensation for damages to their property.

On 17 April 2014, Mr. Pholachi Rakchongcharoen (known as Billy), a Karen human rights defender from Bang Kloy in Kaeng Krachan National Park disappeared after attending a meeting on a lawsuit against park officials for destruction of Karen housing in 2010/2011. Mr. [redacted] and at least four park officials reportedly arrested Mr. Rakchongcharoen on his way home after the meeting. Park officials acknowledged having detained him earlier that day for illegal possession of wild honey, but claimed to have released him shortly afterwards. His whereabouts have been unknown since. Certain documentation about the lawsuit against park officials that Mr. Rakchongcharoen was carrying also disappeared. The United Nations Working Group on Enforced or Involuntary Disappearances transmitted an urgent action letter to the Thai Government concerning the disappearance of Mr. Rakchongcharoen and the case remains pending.[1]

In September 2014, the National Human Rights Commission of Thailand (NHRC) issued an investigative report, concluding that the Karen peoples at Bang Kloy

[1] A/HRC/WGEID/103/1, para. 174.

Bon and Jai Pendin in the Kaeng Krachan National Park are an indigenous community with the right to conserve and participate in the management and use of natural resources in the area. The NHRC recommended relevant authorities to conduct investigations into the forced eviction and destruction of Karen villagers' properties and provide compensation for affected individuals.

In October 2015 Mr. Ko-ee Mimee, Karen leader and also grandfather of Mr. Rakchongcharoen, filed a police complaint at the Kaeng Krachan police station against the former Kaeng Krachan National Park head Mr. [redacted] over the forced eviction of Karen villagers in Phetchaburi's Kaeng Krachan district since May 2011. He gave the same testimony previously filed in the Administrative Court in 2014. However, the police complaint alleged a serious criminal offence by the National Park chief Mr. [redacted] and subordinates, as arson is an offence punishable with life imprisonment.

On 12 June 2018, the Supreme Administrative Court issued its verdict in case no. OS 4/2561 holding the National Park, Wildlife and Plant Conservation Department responsible for the park officers' violent forced eviction operation, led by Mr. [redacted] against the Karen community in KKFC in 2011. The verdict found that even though the Karen village was located inside the Kaeng Krachan National Park, it should have been treated as a traditional community. The Court ruled that the National Park, Wildlife and Plant Conservation Department must compensate the affected Karen plaintiffs.

On 25 October 2018, Mr. [redacted] (officer of the 'Praya Sue' task force, a unit dealing with illegal activities in national parks, led by Mr. [redacted] filed a complaint with the Provincial Police Station of Kaeng Krachan in Petchaburi Province against six Karen land rights defenders including Mr. Ko-I Mimi (106-year-old Karen leader deceased in October 2018), Mr. Keu Pukad (also deceased), and other four Karen community members. According to the information received, the six Karens were accused of trespassing in the KKFC in violation of the 1961 National Park Act, and 1964 National Forest Conservation Act. It is reported that the Director General of the Department of National Park, Wildlife and Plant Conservation had instructed his staff to report the case in retaliation for the Supreme Administrative Court's verdict decided in June 2018 in favour of the Karen community. It is alleged that the counter complaint by the Department of National Park, Wildlife and Plant Conservation, despite the recent verdict by the Supreme Administrative Court in favour of the Karen community, was a deliberate measure to intimidate and prevent further Karen community members from seeking access to justice.

In a parallel process, a criminal defamation case was filed by Mr. [redacted] against Mr. Wut Boonlert, a prominent Karen defender. Mr. Boonlert is accused of defaming Mr. [redacted] through a Facebook message in 2017 stating that Mr. [redacted] personal property, allegedly a resort, is also trespassing the National Park. On 2 August 2018, the Attorney-General's Office indicted Mr.

Boonlert and the preliminary court hearing has been scheduled to take place on 4 March at the Minburi Provincial Court in Bangkok. Mr. [redacted] has also filed a civil case against the defender amounting to 2 million Thai Baht (approximately US$63,700) for defaming him.

Consideration of the World Heritage Status application for the KKFC

In November 2014, the Office of the High Commissioner for Human Rights submitted a briefing paper to the IUCN World Heritage Panel and the UNESCO World Heritage Committee in relation to World Heritage Status application for the KKFC. It raised concerns that the draft management plan prepared by the Thai Government does not mention the existence of the Karen community in KKFC, how they would be affected by the designation of the KKFC as a World Heritage Site, and how the rights of the Karen would be protected.

In 2015, the World Heritage Committee amended its Operational Guidelines for the Implementation of the World Heritage Convention, affirming that 'participation in the nomination process of indigenous peoples... and other stakeholders is essential to enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to prepare nominations with the widest possible participation of stakeholders and to demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained, through, inter alia making the nominations publicly available in appropriate languages and public consultations and hearings. The same year, at its 39th session in 2015, the World Heritage Committee referred the nomination of the Kaeng Krachan Forest Complex back to the State Party, urging it to 'address in full the concerns that have been raised by the Office of the United Nations High Commissioner for Human Rights concerning Karen communities within the Kaeng Krachan National Park including the implementation of a participatory process to resolve rights and livelihoods concerns'.

It is reported that the issues related to land distribution and access to land among the Karen communities who have been relocated remain unresolved. The land on which they are currently living is reported to be uncultivatable, forcing many of them to leave the community to work in the cities.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern over the attacks against and harassment of the Karen by the National Park, Wildlife and Plant Conservation Department, and over the failure to ensure the accountability of park officials for these violations. The steps taken to criminalise and otherwise intimidate Karen community members and human rights defenders appear to constitute deliberate measures intended to restrict their their peaceful and legitimate work in defense of human rights.

We also are concerned about the process whereby Thai Government submitted the nomination for the KKFC to be designated as a World Heritage site, particularly in relation to the lack of consultation with affected indigenous peoples and the failure to seek their free, prior and informed consent. Concern is also raised about the negative impact that World Heritage status may have on the traditional livelihoods of the Karen, their exercise of land rights, and potential exposure to forced evictions. Increased tourism may affect the cultural rights of the Karen and also the environment, for example through increased pressure on waste management.

We wish to recall that the Special Rapporteur on the rights of indigenous peoples has previously addressed the situation of the Karen in the Kaeng Krachan National Park in her 2016 report to the General Assembly which explored how conservation measures impact on indigenous peoples.[2] Her report notes that increasing evidence supports the correlation between secure indigenous land tenure and positive conservation outcomes in protected areas. The report furthermore underlines that the participation of indigenous peoples is a key condition for conservation to be sustained and that the management capacity of indigenous peoples is now well-recognised as part of the new conservation paradigm. The Special Rapporteur on the rights of indigenous peoples urges States to *inter alia:*

- *'Develop mechanisms for solid partnerships for regular and continuous engagement with indigenous peoples, including ensuring their full and effective participation in designing, implementing and monitoring conservation initiatives;*

- *Support indigenous peoples to develop and sustain their own conservation initiatives and exchange conservation management experiences with them. This will allow learning from indigenous traditional conservation measures and transfer of technical skills to engage indigenous peoples in protected areas management.'*[3]

The Committee on the Elimination of All Forms of Racial Discrimination has also raised concerns that that the various forestry and environment protection laws may have a discriminatory effect on the ethnic groups living in forests in Thailand. Raising concerns about the lack of assurance of how the free, prior and informed consent of those groups is guaranteed in decision-making processes affecting them, the Committee urged the Thai Government to review the relevant forestry laws to ensure respect for ethnic groups' way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment. [4]

We wish to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Attacks against individuals who

---

2 A/71/229, 2016, para. 63 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/71/229

3 Ibid. paras. 80, 81

4 Committee on the Elimination of all Forms of Racial Discrimination, Concluding Observations on Thailand, CERC/C/THA/CO/CO/1-3, 2012, para. 16

are peacefully exercising human rights activities are in contravention of Articles 6, 9, 19 and 21 of the International Covenant on Civil and Political Rights, acceded to by Thailand on 29 October 1996, which state that every human being has the inherent rights to life, liberty and security of the person, and freedom of expression and association. Under Article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, all peoples have the right of self-determination, by virtue of which they are entitled to 'freely pursue their economic, social and cultural development'.

We would also like to refer to the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with a favourable vote by your Excellency's Government. The provision on self-determination under the two Covenants has been explicitly re-asserted by UNDRIP to apply to indigenous peoples (Article 3). UNDRIP sets out that indigenous peoples have the right to the full enjoyment of human rights under international human rights law (Article 1) and that indigenous peoples have the right to life and security and shall not be subjected to any form of violence (Article 7).

With respect to their rights to property in the form of land and natural resource rights, Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.' In addition, Article 29 sets out that indigenous peoples have the right to the conservation and protection of the environment.

UNDRIP furthermore affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'. Article 10 underlines that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

In connection with the above alleged facts and concerns, please refer to the **Annex on reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations. The full texts of the human rights instruments and standards cited are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information or any comments you may have on the above-mentioned allegations.

2. Please provide information on the criminal investigations that the Government has carried out in order to investigate and bring to justice the perpetrators of the attacks on the Karen communities in the KKFC in May and June 2011, the murder of Mr. Tatkamol Ob-om in September 2011 and the enforced disappearance of Mr. Pholachi Rakchongcharoen in April 2014. Kindly also indicate what reparation measures have been provided for the same cases.

3. Please provide detail of the witness protection measures which were made available in the context of investigations into the above cases.

4. Kindly advise what measures have been taken to ensure that indigenous human rights defenders are able to carry out their legitimate work, without fear of threats or acts of persecution and harassment of any kind.

5. Please provide information regarding the measures taken to comply with the decision 39 COM 8B.5 of the World Heritage Committee in 2015. Specifically, please advise:

    a) What measures have been adopted to ensure the participation of the Karen in the management of the KKFC;

    b) What consultations have been undertaken to seek the prior, informed consent of the Karen communities in the KKFC in the review process of the application for World Heritage status;

    c) How have regulations, rules and practices by the Department of National Park, Wildlife and Plant Conservation been brought in line with international human rights standards;

    d) Whether a mechanism to solve disputes in the KKFC in an impartial manner has been established and how such a mechanism is accessible for the affected communities;

e) What measures have been taken by the Government to ensure to improve the livelihoods of the Karen community, including their access to cultivable land.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David R. Boyd
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Michel Forst
Special Rapporteur on the situation of human rights defenders

Victoria Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we wish to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Attacks against individuals who are peacefully exercising human rights activities are in contravention of Articles 6, 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which state that every human being has the inherent rights to life, liberty and security of the person, and freedom of expression and association. We also wish to recall that, Article 4 of the ICCPR sets out strict boundaries within which a State can derogate from certain of its obligations under the Covenant when a public emergency, officially proclaimed, threatens the life of the nation. Such derogations must be of an exceptional and temporary nature and strictly required by the exigencies of the situation.

Under Article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, all peoples have the right of self-determination, by virtue of which they are entitled to 'freely pursue their economic, social and cultural development'.

We would also like to refer to the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with a favourable vote by your Excellency's Government. The provision on self-determination under the two Covenants has been explicitly re-asserted by UNDRIP to apply to indigenous peoples (Article 3). UNDRIP sets out that indigenous peoples have the rights to the full enjoyment of human rights under international human rights law (Article 1) and that indigenous peoples have the right to life and security and shall not be subjected to any form of violence (Article 7).

With respect to their rights to property in the form of land and natural resource rights, Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.'

In addition, UNDRIP furthermore sets out in Article 29 that indigenous peoples have the right to the conservation and protection of the environment and in Article 24 that indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.

UNDRIP furthermore affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any

project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources'.

Furthermore, the same Article 32 of UNDRIP underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Article 10 affirms that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Finally, we would also like to refer your Excellency's Government to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realisation of human rights and indicates State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (Articles 1 and 2) and details the States's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders (Article 12).