

Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; 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 right to food; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Ref.: AL THA 3/2022
(Please use this reference in your reply)

1 December 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the promotion and protection of human rights in the context of climate change; 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 right to food; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on extreme poverty and human rights and Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, pursuant to Human Rights Council resolutions 43/14, 48/14, 46/7, 49/13, 43/16, 43/8, 44/13 and 43/36.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the threat of forced evictions of 14 Isan minority members (9 women, 5 men), who are also land-right defenders, from their lands and homes in the Sab Wai village, situated in the Sai Thong National Park, under forest conservation policies and legislation. The eviction orders have been issued in the context of the Government's climate change mitigation action without the provision of alternative accommodation and productive land, nor adequate compensation. Allegedly, the national strategy to address the adverse effects of climate change pursues "false solutions" that are resulting in practice in the criminalization and impoverishment of poor small-scale farmers who depend on forests for their livelihoods, while the need to reform the energy sector is neglected.**

The special procedures mandate-holders have issued a communication in the past raising concerns over the conviction of these 14 community members and the imprisonment of 13 of them in connection with their resistance to eviction from their homes and lands located in the Sai Thong National Park (AL THA 7/2019). We thank the Government for the clarifications provided in its letter dated 19 August 2019. We note however that some questions remain pending.

According to the information received:

National climate change action and the role of forests

In 2020, under its updated Nationally Determined Contribution (NDC), the Government committed to reduce the country's Greenhouse Gas (GHG) emissions by 20% compared to the projected business-as-usual by 2030, using 2005 as the baseline year.¹ A year later, at the UN Climate Change Conference in Glasgow (COP26), it announced that it will aim to achieve carbon neutrality by 2050 and net-zero greenhouse gas emissions by 2065.

In order to achieve these goals, the Government is reportedly focusing on forestry carbon sinks by increasing the total forested areas of the country and investing in forest conservation. This has resulted in the criminalization of forest-dependent communities, including minority and indigenous peoples and small-scale farmers, and the pursuit of a “false climate solution” that impoverishes local communities and neglects to reform the energy sector to move away from fossil fuels towards renewable and clean sources of energy.

The Climate Change Master Plan (2015-2050), which sets out the national strategy for climate change mitigation and adaptation, envisages, among the various actions, the support to forest restoration efforts and the increase of forest areas. It includes support to the role of local communities in the conservation of forests and ecosystems via mechanisms such as the Payment for Ecosystem Services (PES) scheme, including REDD+. The Master Plan indicates that this approach “gives explicit recognition of community rights to forest resources while the community protects and sustains the biodiversity of the ecosystem”.² Reportedly, this latter aspect is however hampered by the implementation of the Forestry Master Plan, known as the “Forest Reclamation Policy”, adopted in 2014.

The Forestry Master Plan was designed to address the problems of forest destruction and trespass on public lands, and to increase Thailand's national forest, among other things. Within the discourse surrounding the adoption of the Master Plan, large-scale commercial exploitation of natural resources was identified as the driver of deforestation.

Since its adoption, the Forest Reclamation Policy has been supplemented by orders passed by the National Council for Peace and Order (NCPO). NCPO Order 64/2014 authorized certain State agencies to detain those who encroach on, seize, possess, destroy, or act in any manner that may cause damage to the forest, specifically on protected land. The directive was aimed at stopping deforestation resulting from the exploitation of natural resources by commercial investors. NCPO Order 66/2014 identified large-scale investors and developers as the primary targets of these measures, and expressed the State's commitment

¹ [Thailand Updated NDC.pdf \(unfccc.int\)](#)

² [CCMP_english.pdf \(onep.go.th\)](#), p. 75.

to protect the poor, landless and those who had settled in an area before it was declared as protected from any negative impacts of the implementation of NCPO Order 64/2014. Despite these provisions, the implementation of the Forestry Master Plan has seen the State identifying as “investors” or as funded by investors impoverished villagers who have lived on their lands for decades, resulting in their loss of the protection granted to them by Order 66/2014.

At the same time, the Government has reportedly authorized investors to use and operate in reserved forest areas. It has also revoked hectares of national reserved forest areas to turn them in special economic zones. Whereas NCPO Orders 64/2014 and 66/2014 were repealed in 2019, their main contents have been reproduced in other pieces of legislation, notably the National Park Act of 2019.

Under the National Parks Act, communities who have traditionally lived in or near parks can access them and use some of the forest resources, provided that they have obtained permission by the national park authorities. It is feared that ‘search and destroy powers’ accorded to the forest officials under the Act may result in forced evictions of communities and destruction of their property, including houses and crops.

The implementation of the 20-Year National Strategy, which sets out to increase the country’s forested area to 55 percent of the total Thai territory by 2037, has also allegedly adversely affected forest-dependent communities. Under the Strategy, a land allocation scheme was introduced whereby 1.21 million Rai of public land in degraded forests, corresponding only to 0.37 percent of the national territory, will be given to communities on condition that they use 20 percent of the land to plant three types of trees: (1) native trees that they will not be allowed to cut; (2) economic trees that they can cut for personal use but must be replanted, and (3) edible trees. In parallel, the Government is increasing the number of National Parks. Between 2016 and 2019, five new parks, covering 331,952 Rai, were established. Currently, the creation of 22 more parks over 44 million Rai is underway. In total, the country will count on 155 national parks extending over 45 per cent of the national territory. Such extension will challenge the life and livelihood of many forest-dependent communities, which, under the National Parks Act of 2019, face the risk of being evicted from their lands and houses.

The REDD+ Programme

Thailand participates in the Forest Carbon Partnership Facility (FCPF), a global partnership of governments, businesses, civil society, and Indigenous Peoples focused on reducing emissions from deforestation and forest degradation, forest carbon stock conservation, the sustainable management of forests, and the

enhancement of forest carbon stocks in developing countries, activities commonly referred to as REDD+.³

In 2013, Thailand submitted a “Readiness Preparation Proposal” to the World Bank to receive a USD 3.6 million grant for Reducing Emissions from Deforestation and Forest Degradation (REDD+) Readiness programme from the Forest Carbon Partnership Facility (FCPF). In 2014, the World Bank accorded the grant.

As indicated in the mid-term report by the Ministry of Natural Resources and Environment under the Forest Carbon Partnership Facility (FCPF) REDD+ Readiness Project, since the Readiness Preparation Proposal was accepted a number of policy changes and new laws have been introduced.⁴ Those include the 20-Year National Strategy and the Forest Reclamation Policy described in the previous section.

The forced evictions faced by 14 individuals from the Sab Wai village, in the Sai Thong National Park

14 community members of the Sab Wai village face threat of evictions under the forest conservation policy and legislation described above.

The Sab Wai village is situated in the Yae Sub-district, NongBua Rawe District, Chaiyaphum Province, in central northeastern Thailand and is comprised in the Sai Thong National Park. The village is home to people belonging to the ‘Khon Isaan’ minority group, an ethnic and linguistic group of Lao descent. The villagers are small-scale farmers who grow cassava, mango, banana, custard apple, taro, potato, pumpkin, and chili, among other crops, for their own consumption and to sell the surplus at the market. Cassava has proved to be particularly resilient to climate change and represent the community’s adaptation measure to ensure food security in the face of extreme weather events.

The 14 villagers have lived on and farmed the lands located in the Sai Thong National Park since the 1970s, well before the National Park was established in 1992. In the context of the implementation of the Forestry Master Plan, the villagers have been criminalized as “destroyers of the forest” and sentenced to jail time ranging from 5 months 10 days to 4 years and to fines (between 40,000 THB to 1,6587,211 THB) for violations of the National Parks Act and the National Reserved Forests Act by the Court of First Instance of Chaiyaphum Province and by the Court of Appeal.

Reportedly, the 14 villagers have been deprived of the protection guaranteed to poor people under NCPO Order 66/2014. The concept of “poor” is not clearly

³ <https://www.forestcarbonpartnership.org/>

⁴ https://www.forestcarbonpartnership.org/system/files/documents/FCPF%20MTR%20Thailand_revised_24%20Sept%202020_final.pdf

defined and depends on the appreciation of the Thai authorities. The 14 Sab Wai villagers have not been regarded as poor by the judges of the Court of first instance nor by the Appeal Court because they were owners of 2 to 3 plots of land. The Supreme Court also refused to apply Order 66/2014 and disregarded the memorandum of the Ministry of Natural Resources and the Environment, dated 14 November 2019, that recognizes the Sab Wai villagers as ‘poor’ and therefore eligible for protection under Order 66/2014.

According to the information received, the 14 Sab Wai villagers were declined protection under NCPO Order 66/2014 also because the Appeal Court concluded that the villagers had no proof that they had lived in the national park area before its establishment in 1992 since their names are not listed in the survey conducted under the Cabinet Resolution of 30 June 1998. Under the Cabinet Resolution of 30 June 1998, aerial photographs and satellite images were taken and surveys conducted amongst villagers living in national parks and reserved forest. Reportedly, the 14 prosecuted villagers of Sab Wai village were not on the list because: (1) authorities had limited time available to conduct surveys; (2) the number of personnel conducting surveys was limited, and (3) the budget allocated for surveying was insufficient. Therefore, in the case of the Sab Wai villagers, when authorities ran out of funds, they did not continue the surveys but allowed villagers to carry on living on the land. According to the information received, villagers had approached surveying rangers on various occasions to ensure that their land was surveyed, but the rangers made excuses not to survey their land and told them that another survey would take place in four years’ time.⁵

Between March and May 2021, the Supreme Court confirmed the verdicts of the courts of lower instances, and found all 14 villagers guilty of encroachment, possession for the benefits, construction, reclamation, and destruction of forests. The Supreme Court suspended the jail terms for eleven villagers and ordered the payment of fines to all of them along with community service for most of them. It also confirmed the eviction orders. Allegedly, from the beginning of 2022, the villagers have been repeatedly visited and threatened by the national park officers to vacate their land. However, no rehabilitation nor relocation plans exist.

Ms. Nittaya Muangklang, leads her community in their resistance to the Government’s push for their evictions. To support their own national litigation process at the Supreme Court and national advocacy, the 14 Sab Wai villagers formed the Sai Thong Rak Pah Network, a solidarity network which includes also their families, and allies.

Following the verdicts of the Supreme Court, the villagers had various meetings with State authorities to seek a solution to their case and also submitted complaints to the National Human Rights Commission, the Ministry of Natural

5 In 2019, the Sab Wai villagers submitted a complaint to challenge the land survey before the provincial authorities.

Resources and the Environment, the Committee on Legal Affairs, Justice, and Human Rights and the Committee on Land, Natural Resources and Environment of the National Legislative Assembly. They emphasized that, if forcibly evicted without provision of alternative house and land, they would have nowhere to live, would become homeless, and would have no means of livelihood, facing a great risk of falling into extreme poverty.

Without prejudging the accuracy of the information received, we wish to express our serious concern about the eviction of 14 individuals from the Sab Wai village and Isan minority, in the Sai Thong National Park, without the provision of alternative accommodation and productive land nor adequate compensation, in violation of international human rights law. We are gravely concerned that the actions undertaken by the Government to mitigate the adverse effects of climate change do not take into account their impact on human rights, notably the right to an adequate standard of living, including adequate food and housing, of forest-dependent communities. These actions may even aggravate their situation, while being ultimately largely ineffective to mitigate climate change. Indeed, studies suggest that the value of using forestry as a means of reducing global temperature limits may be overstated and that, while restoring ecosystems is crucial for planetary health, it is no substitute for preventing emissions from fossil fuels (A/77/226, para. 18).

We recall that the Committee on the Elimination of Racial Discrimination expressed concern about the reports of direct and indirect, multiple and intersecting forms of discrimination faced by ethnic and ethno-religious groups and indigenous peoples in Thailand, including the Isaan. It noted with concern the discriminatory effect of the State party's various forestry and environment-related laws and regulations, and their implementation, on ethnic groups and indigenous peoples living in forests. (CERD/C/THA/CO/4-8, paras. 25 ff).

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.

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 and any comment you may have on the above-mentioned allegations.
2. Please provide information on how the Government ensures the right to land, including the right to have access to, sustainably use and manage land and forests of forest-dependent minorities and communities and on the measures adopted to provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law.

3. Please provide information on the consultations held with the Isan minority villagers from the Sab Wai village with a view to exploring feasible alternatives to the evictions, including the possibility to remain *in situ* or the provision of alternative land and housing and adequate compensation, and the outcome of these consultations.
4. Please provide information on the human-rights impact assessment of the climate change mitigation measures adopted by your Excellency's Government, particularly with respect to forest-dependent communities, as well as information on the consultation and participation of these communities in the design, implementation, monitoring and evaluation of mitigation measures affecting them.
5. Please provide information on how it is ensured that the climate change strategies, policies and plans are coordinated with national strategies on housing, sustainable development and poverty reduction with a view to ensuring the respect, protection and fulfilment of all human rights, without discrimination.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

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

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Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Ian Fry

Special Rapporteur on the promotion and protection of human rights in the context of climate change

David R. Boyd

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xenophobia and related intolerance

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation.

We would like to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by Thailand in 1999, which recognizes the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing. This article must be read in conjunction with article 2.2 of the Covenant, which provides for the exercise of any right under the Covenant without discrimination of any kind.

In its General Comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights has clarified that the right to housing should not be interpreted in a narrow or restrictive sense, such as merely having a roof over one's head; rather, it should be seen as the right to live somewhere in security, peace and dignity. It has clarified that characteristics of housing adequacy include security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.

We recall that, as clarified by the Committee on Economic, Social and Cultural Rights, in its General Comment No. 7, forced evictions are a gross violation of the right to adequate housing and may also result in violations of other human rights. If an eviction is to take place, procedural protections are essential, including, among others, genuine consultation to explore all feasible alternatives. Under no circumstances, evictions should result in homelessness, and the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available to affected individuals, where they are unable to provide for themselves. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. We also wish to recall that whereas some evictions may be justifiable, it is incumbent upon the relevant authorities to ensure that they are carried out in a manner warranted by a law which is compatible with the Covenant and that all the legal recourses and remedies are available to those affected.⁶

We furthermore wish to recall the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1) which specify that evictions can only take place in 'exceptional circumstances'; that they must be authorized by law, and ensure full and fair compensation and rehabilitation. The Guidelines indicates that States should take

⁶ See also the United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18, Annex 1).

immediate measures aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land; and should take specific preventive measures to avoid and/or eliminate underlying causes of forced evictions. Moreover, the Guidelines states that States must give priority to exploring strategies that minimize displacement. Comprehensive and holistic impact assessments should be carried out prior to the initiation of any project that could result in development-based eviction and displacement, with a view to securing fully the human rights of all potentially affected persons, groups and communities, including their protection against forced evictions. “Eviction-impact” assessment should also include exploration of alternatives and strategies for minimizing harm. Furthermore, the Guidelines specify that, at a minimum, regardless of the circumstances and without discrimination, competent authorities shall ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to: (a) essential food, potable water and sanitation; (b) basic shelter and housing; (c) appropriate clothing; (d) essential medical services; (e) livelihood sources; (f) fodder for livestock and access to common property resources previously depended upon; and (g) education for children and childcare facilities. States should also ensure that members of the same extended family or community are not separated as a result of evictions. Alternative housing should be situated as close as possible to the original place of residence and source of livelihood of those evicted. Special efforts should be made to ensure equal participation of women in all planning processes and in the distribution of basic services and supplies.

We wish to draw your Excellency’s Government to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, which recognizes that peasants and other people working in rural areas have the right to land, including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures (art. 17.1). Moreover, the Declaration recognizes that peasants and other people working in rural areas have the right to contribute to the design and implementation of national and local climate change adaptation and mitigation policies (art. 18.3).

In addition, we wish to highlight that the Special Rapporteur on the promotion and protection of human rights in the context of climate change has underscored that forest-based mitigation actions have negative consequences on the exercise of human rights, particularly those that are related to land and land tenure (A/77/226, para. 19). We also recall that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance noted that “green” solutions to climate change challenges may reinforce or perpetuate marginalization and inequities along ethnic and racial lines (A/77/2990, para. 61).

Furthermore, we wish to refer to the Guidelines for the Implementation of the Right to Adequate Housing, which underscore that the right to adequate housing should be integrated into strategies for the adaptation to and mitigation of climate change, as

well as in planning, preparing and implementing strategies for addressing climate change displacement. States should ensure that these strategies do not undermine or impede the realization of the right to adequate housing.⁷ Moreover, we would like to emphasize that States should ensure coordination and coherence between climate change-related policies and plans and the housing strategy.⁸ The consultation with, and participation by, all of those affected is essential.⁹ The Special Rapporteur on the right to adequate housing has underscored that when planning and implementing mitigation and adaptation projects, the consultation and participation of concerned communities in decision-making must be ensured; projects must be gender-sensitive, and local knowledge recognized.¹⁰

In this respect, we recall that the Paris Agreement on Climate Change (ratified by Thailand in 2016) acknowledges that States Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights (preamble). We also recall that your Excellency's Government joined the Glasgow Leaders' Declaration on Forests and Land Use, which acknowledges the need for "support for smallholders, Indigenous Peoples, and local communities, who depend on forests for their livelihoods and have a key role in their stewardship".¹¹

Furthermore, we would like to recall that on 8 October 2021, the Human Rights Council adopted resolution 48/13, recognizing the right to a clean, healthy and sustainable environment, confirmed by the General Assembly in July 2022 with resolution A/RES/76/300. In addition, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 8 provides, specifically, that "To avoid authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential impacts on the enjoyment of human rights", including the rights to life, health, food, water, housing and culture. The assessment procedure itself should consider whether the proposed project or policy would comply with the obligation of non-discrimination, facilitating public participation by those who may be affected by the proposed action, and providing for effective legal remedies.

In addition, we wish to highlight the standards outlined in the International Convention to the Elimination of All Forms of Racial Discrimination, which Thailand acceded to by Thailand in 2003. In particular, we would draw the attention of your Excellency's Government's attention to article 5, which guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including in relation to housing and broader economic, social and cultural rights.

⁷ A/HRC/43/43, Guidelines for the Implementation of the Right to Adequate Housing, para. 72.

⁸ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 12.

⁹ Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 12.

¹⁰ A/64/255, para. 74ff.

¹¹ [Glasgow Leaders' Declaration on Forests and Land Use - UN Climate Change Conference \(COP26\) at the SEC – Glasgow 2021 \(ukcop26.org\)](https://www.ukcop26.org/)

We wish to refer your Excellency's Government to the United Nations Declaration on the Rights of persons belonging to national or ethnic, religious and linguistic minorities which in Article 2 indicates that persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination, and that culture may include ways of life and traditional economic activities. Moreover, the Declaration recognizes that national policies and programmes must be implemented with due regard for the legitimate interests of persons belonging to minorities.

Finally, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2 and 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.