

Mandates of 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 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 situation of human rights defenders; and the Special Rapporteur on extreme poverty and human rights

REFERENCE:
AL THA 7/2019

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 situation of human rights defenders; and Special Rapporteur on extreme poverty and human rights, pursuant to Human Rights Council resolutions 37/8, 34/9, 34/5 and 35/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the conviction of 14 land rights defenders 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.

Ms. **Nittaya Muangklang** is a land rights defender, community leader and board member of Isaan Land Reform Network (ILRN), established in 2006 in the Sai Thong National Park area, Chaiyaphum Province to assist local villagers in the defense of their land rights. Ms. Nittaya Muangklang, along with 13 other land rights defenders from ILRN, Ms. **Seenuan Phasang**, Ms. **Pattama Komet**, Ms. **Sunee Nalin**, Ms. **Saki Prakit**, Ms. **Narisara Muangklang**, Ms. **Thongpan Monggang**, Ms. **Suwalee Phongam**, Ms. **Suphaphorn Seesuk**, Mr. **Suwit Rattanachaisi**, Mr. **Samon Somchitr**, Mr. **Put Sukbongkot**, Mr. **Wanchai Arphonkaeo**, and Mr. **Sompitr Taennok**, has sought to resist the eviction of her community from their lands. ILRN forms part of the People's Movement for a Just Society (P-Move), a country-wide network of civil society organizations working to raise awareness on the rights related to land and the sustainable, community-led management of natural resources.

According to the information received:

The villagers have lived on and farmed the lands located in the Yae Sub-district, Nong Bua Rawe District of Chaiyaphum Province since the 1970s. In 1992, the Government designated the area a national reserved forest and national park. According to Forest Act B.E. 2484, the National Reserved Forests Act B.E. 2507, and the National Park Act B.E. 2504, those who encroach on, clear, and utilise land belonging to national reserved forests and national parks shall be punished

and evicted accordingly. The area covered by the Sai Thong National Park includes lands inhabited and farmed by eight communities and over 8,000 people.

In 2014, the Forestry Master Plan, known as the “Forest Reclamation Policy”, was adopted. The main aim of the policy was to address the problems of forest destruction and trespass on public lands, and to increase Thailand’s national forest area to cover 40% of the total area of the country. 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 arrest 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 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 impoverished villagers who have lived on their lands for decades identified as “investors” or as funded by investors by the State, resulting in their loss of the protection granted to them by Order 66/2014. The State has reportedly evicted people as part of a strategy to combat illegal logging and forest encroachment. Further, as a result of the implementation of the Master Plan, the management and utilization of natural resources by communities inhabiting forests and protected areas has been restricted. Numerous cases linked to the enforcement of Order 64/2014 have been filed against local communities, many of them indigenous.

In 2015, in the context of the implementation of the Forestry Master Plan, residents of Sab Wai village were approached by officers from the Sai Thong National Park who told them that if they signed a certain document they would only be required to vacate a fraction of their land but could continue to utilize the rest of it. They were also told that the Master Plan and its associated NCPO orders were aimed at protecting forest-dependent communities. The Royal Forest Department officials and national park rangers repeatedly visited the houses of residents of Sab Wai village in order to force them to sign the documents or leave their homes and lands. During these visits, the villagers were reportedly threatened that they would be imprisoned along with their children. Some villagers signed the documents, while others refused to do so. The documents were later used as “evidence” of the villagers’ consent to vacate the entirety of their homes and lands.

In April 2016, eleven villagers were notified by the National Park Office that they had to remove all structures, including their homes, from their lands by the end of the month. Despite several subsequent meetings between the villagers and different government agencies, no agreement was reached and some of the villagers were formally accused of encroachment and trespassing. Those who had refused to sign the above-mentioned documents were reportedly threatened with prison and surveilled by the Sai Thong National Park officers.

Ms. Nittaya Muangklang

On 7 April 2016, the rangers of the Sai Thong National Park filed a case against Ms. Nittaya Muangklang (case no. 1739/2017) for trespassing on land belonging to the national park.

On 11 July 2016, the rangers filed a second case against her (case no. 1738/2017), in this instance for destroying the forest through farming activities.

On 20 July 2017, the public prosecutor submitted both cases against Ms. Muangklang to the Court of First Instance of Chaiyaphum Province.

On 8 August 2018, during a hearing at the Court of First Instance concerning cases 1738/2017 and 1739/2017, Ms. Muangklang was found guilty of encroaching on, utilising, and clearing land belonging to national reserved forest and national park area under Sections 54(1) and 72(1) of the Forest Act B.E. 2484, Sections 14 and 31(1) of the National Reserved Forests Act B.E. 2507, and Section 16(1), (2), (4), and (13), Section 24, and Section 27 of the National Park Act B.E. 2504. In case 1739/2017, the land rights defender was sentenced to 4 months in prison and a fine of THB 40,000 with an interest rate set at 7.5 percent per year as compensation for the damages caused to the forest. In case 1738/2017, she was sentenced to 8 months in prison and a fine of THB 150,000 with an interest rate set at 7.5 percent per year for destroying or seizing the forest for herself or others. She was also ordered to remove all structures causing damage to the national park area and vacate the land.

Ms. Muangklang denied all charges brought against her and was summoned for the appeal process before the Chaiyaphum Provincial Court.

On 15 May 2019, the Appeal Court Division 3 at the Chaiyaphum Provincial Court upheld the verdict of the Court of First Instance with regards to case 1739/2017. On 5 June 2019, the Appeal Court upheld the verdict of the Court of First Instance with regards to case 1738/2017, and concluded that Ms. Muangklang had not provided sufficient evidence that she had occupied the land before it was declared a national park.

Ms. Muangklang's legal representatives subsequently submitted an appeal to the Supreme Court, concerning the judgment of the Appeal Court in the case

1739/2017. The petition challenges NCPO Order 66/2014, claiming that it does not meet the objective of protecting poor people, including Ms. Muangklang.

On 31 July 2019, Ms. Muangklang was released on bail from Chaiyaphum Provincial Prison.

The remaining land rights defenders

Between July and September 2018, the Court of First Instance of Chaiyaphum Province convicted the 13 other above-named land rights defenders on charges of utilizing, clearing and encroaching on land forming part of the national reserved forest and national park under The Forest Act B.E. 2484, Section 54(1), and Section 72(1); The National Reserved Forests Act B.E. 2507, Section 14 and Section 31(1); and The National Park Act B.E. 2504, Section 16(1), (2), (4), and (13), Section 24, and Section 27. The public prosecutor of Chaiyaphum Province appealed the judgments of the Court of First Instance in all cases, as the Court had reduced the amount to be paid in damages, provided by the public prosecutor. Appeal hearings were held between May and July 2019.

On 4 June 2019, the Appeal Court of Chaiyaphum Province upheld the decision of the Court of First Instance, sentencing Ms. Phasang, who is 60 years old, to 5 months and 10 days in prison and a fine of THB 150,000. Ms. Phasang started serving her prison sentence in Chaiyaphum Provincial Prison on the same day. Her lawyer has submitted a petition, along with a request for bail, before the Supreme Court within 30 days following the Appeal Court judgment. The petition questions the validity of Ms. Phasang's exclusion from protection under NCPO Order 66/2014.

On 12 June 2019, the Appeal Court of Chaiyaphum Province upheld the decision of the Court of First Instance, sentencing Ms. Komet to eight months in prison and payment of a fine reduced from THB 250,000 to THB 200,000 at 7.5 percent interest per year. She started serving her prison sentence in Chaiyaphum Provincial Prison on the same day.

On 12 June 2019, the Appeal Court of Chaiyaphum Province upheld the decision of the Court of First Instance, sentencing Ms. Nalin, who is 71 years old, to five months and 10 days in prison, and payment for damages increased from THB 150,000 to 439,027 THB at 7.5 percent interest per year. The Appeal Court rejected the request to allow for a bail application to be submitted directly before the Court, despite Ms. Nalin's advanced age.

On the same date, the Appeal Court of Chaiyaphum Province upheld the decision of the Court of First Instance, sentencing Ms. Seesuk to five months and 10 days in prison, and payment of a fine increased from THB 190,000 to THB 381,010 at 7.5 percent interest per year. The Appeal Court concluded in its judgment that Ms. Seesuk could not be granted protection under NCPO Order 66/2014 as there

was no evidence to prove that she had lived on her land before its designation as a national park.

On 18 June 2019, the Appeal Court of Chaiyaphum Province upheld the decision of the Court of First Instance, sentencing Ms. Prakit to four years in prison, and payment of a fine increased from THB 900,000 to THB 1,587,211 at 7.5 percent interest per year. The Appeal Court concluded that Ms. Prakit could not be considered poor due to her lifestyle and the fact that her family owned a house, a tractor, and a computer.

Ms. Monggang is Ms. Nittaya Mongklang's mother. She was sentenced by the Court of First Instance to nine months and 10 days in prison, payment for damages amounting to THB 70,000 at 7.5 percent interest per year for case 1740/2017, and an additional payment for damages in the combined second case 1741/2017 amounting to THB 30,000 at 7.5 percent interest per year. On 25 June 2019, the Appeal Court upheld the decision of the Court of First Instance, while reducing her prison sentence to 8 months. The Appeal Court concluded that Ms. Monggang could not be granted protection under NCPO Order 66/2557, as she reportedly had no evidence to prove that she had been forced to sign the agreement to vacate her land.

The Court of First Instance ruled that Mr. Somchitr would be monitored for one year, during which he will be required to present himself every three months at the provincial Department of Probation of the Ministry of Justice. The monitoring measure is aimed at preventing Mr. Somchitr from leaving the country. Further, he was ordered to complete 24 hours of voluntary social service activities related to forest conservation and protection of the environment. He was also issued a fine of THB 80,000 with 7.5 percent interest per year.

On 25 June 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance against Mr. Somchitr and increased the amount to be paid in damages to THB 366,663. The Appeal Court concluded in its judgment that Mr. Somchitr was excluded from protection under NCPO Order 66/2557, as he had not provided evidence that he had lived in the national park area before its declaration as national park.

Mr. Arphonkaeo was sentenced by the Court of First Instance to six months and 20 days in prison, and payment of THB 300,000 in damages, at 7.5 percent interest per year. On 25 June 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance and increased the amount to be paid in damages to THB 860,395. The Appeal Court concluded in its judgment that Mr. Arphonkaeo was excluded from protection under NCPO Order 66, as he had only proved that he was allowed to live in the national park area after committing the offence.

On 2 July 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance, sentencing Mr. Sukbongkot to six months and 20 days in prison, and payment of THB 370,000 in damages at 7.5 percent interest per year. The Court justified the exclusion of Mr. Sukbongkot from protection under NCPO Order 66/2014 by concluding that he could not utilize the land given to him by his wife's father, as his wife's father had not been included on the list of persons with the right to utilize the land located in the national park.

Mr. Taennok was prosecuted in two cases (1746/2017 and 2452/2017). In case 1746/2017, he was sentenced to ten months in prison, and payment of a fine of THB 100,000 at 7.5 percent interest per year. On 2 July 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance concerning this case. The Court ruled that Mr. Taennok was excluded from protection under NCPO Order 66/2014, as he had not been included on the list of people who had lived on the land before its designation as a protected area.

In case 2452/2017, Mr. Taennok was sentenced to a further ten months and 20 days in prison, and payment of THB 100,000 in damages at 7.5 percent interest per year. On 3 July 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance.

Ms. Narisara Muangklang was sentenced to nine months and 10 days in prison, and payment for damages amounting to a total of THB 130,000 at 7.5 percent interest per year. On 3 July 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance and increased the amount to be paid for damages to a total of THB 607,171. The Court excluded Ms. Muangklang from protection under NCPO Order 66/2014, as she had not been included on the list of people who had lived on the land before its designation as a protected area.

On 3 July 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance, sentencing Ms. Phongam to five months and 10 days in prison, and payment for damages amounting to THB 160,000 at 7.5 percent interest per year. The Court excluded Ms. Phongam from protection under NCPO Order 66/2014, as she had not been included on the list of people who had lived on the land before its designation as a protected area.

Mr. Rattanachaisi was sentenced to seventeen months in prison, and payment of THB 40,000 in damages at 7.5 percent interest per year. On 3 July 2019, the Appeal Court at the Chaiyaphum Provincial Court upheld the decision of the Court of First Instance and increased the amount to be paid for damages to THB 110,762. The Court excluded Mr. Rattanachaisi from protection under NCPO Order 66/2557, as he reportedly had not been able to prove that he had utilized the land before its declaration as a protected area.

All 14 land rights defenders were ordered to vacate their homes and lands and remove all structures that could cause damage to the protected area. They were not offered relocation or compensation.

All of the land rights defenders barring Mr. Somchitr, who is being “monitored”, have been imprisoned in Chaiyaphum Provincial Prison. Ms. Muangklang has reportedly been separated from the other imprisoned land rights defenders. The lawyer representing the 14 land rights defenders has submitted applications to the Supreme Court within 30 days following the Appeal Court judgements in all cases, along with an application for bail for the 13 land rights defenders who have been imprisoned. The orders to vacate the land will not be enforced until the Supreme Court provides its final verdict.

On 19 July 2019, Mses. Seesuk, Phasang, Prakrit and Komet were released on bail. On 25 July 2019, Mr. Sukbongkot and Ms. Nalin were released on bail. On 6 August 2019, Mr. Arphonkhaeo was released on bail. On 13 August 2019, Mses. Phongam, Narisara Muangklang and Monggang were released on bail as well. Messrs. Taennok and Rattanachaisi remain in prison, awaiting the review of their bail applications.

We express our serious concern at the prosecution and conviction of the 14 land rights defenders, and the imprisonment of 13 of them, which appear to be directly linked to their peaceful resistance to eviction from lands designated as part of the Sai Thong National Park. Ms. Nittaya Muangklang was the first land rights defender in the Sai Thong National Park area to be convicted and imprisoned, which appears to be a result of her work as a community leader and board member of the ILRN. Moreover, we express our concern at the unclear criteria and measures used to establish whether the land rights defenders qualified for protection under NCPO Order 66/2014.

Further concern is expressed regarding the reported misuse of the Forest Reclamation Policy and the supplemental NCPO orders, leading to the violations of the human rights of forest-dependent communities and land rights defenders, in particular through their pending eviction. If executed, their eviction from their homes and lands may violate multiple human rights, including their right to housing, food, water, health, work and security of the person. While we welcome the efforts of your Excellency’s Government to preserve the forest and its natural resources, we wish to recall that protecting the environment and protecting human rights are interdependent priorities as opposed to competing goals. While the environment must be protected to ensure the enjoyment of human rights, the environment itself depends on the exercise of human rights. It is thus crucial that conservation policies integrate these rights.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal and factual basis of the prosecution and conviction of the 14 land rights defenders, along with information on how these are compatible with international human rights law.
3. Kindly explain the legal procedure and criteria invoked for identifying individuals excluded from protection under NCPO Order 66/2557. Please provide information on the definition of the “poor” under the NCPO Order 66/2557 and on how it is employed in the process of granting protection from the impacts of the NCPO Order 64/2014.
4. Please provide information on how the evictions of forest-dependent communities from their lands, as being pursued under the Forest Reclamation Policy and the supplemental NCPO orders, as well as the lack of corresponding relocation or compensation measures, are compatible with Thailand’s obligations under international human rights law.
5. Please provide information as to what steps have been taken to ensure that human rights defenders, including land rights defenders, in Thailand are able to carry out their peaceful and legitimate work in a safe and enabling environment, free from any physical, judicial or other harassment.

We would appreciate receiving a response within 60 days. Passed 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.

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

Leilani Farha
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

Michel Forst
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Philip Alston
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Annex
Reference to international human rights law

We wish 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), ratified by Thailand in 1999, which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

We further recall the General Comments 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, due process, alternative accommodation, and access to an effective remedy of those that are affected by eviction orders. In its General Comment No. 7 on forced evictions, the Committee clarified that "appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, Government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions should not take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts". The Committee has repeatedly expressed concern over forced evictions that have taken place without adequate compensation or alternative accommodations.

We also wish to draw your attention to the Basic Principles and Guidelines on Development-Based Evictions and Displacements, prepared by a former Special Rapporteur on adequate housing, which urges all States to ensure that relevant policies and programmes "are not formulated or implemented in a discriminatory manner, and do not further marginalize those living in poverty" and that "[a]ll persons, groups and communities have the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy the following criteria for adequacy: accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education".

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 9 paragraph 1, which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

- article 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.

Finally, we would like to refer to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.