

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 the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
AL OTH 209/2021

30 June 2021

Dear UNESCO World Heritage Committee Members,

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 the situation of human rights defenders and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 46/7, 43/16 and 42/20.

In this connection, we would like to bring to your attention **updated information we have received concerning alleged violations of the rights of the Karen indigenous peoples in the Kaeng Krachan Forest Complex (KKFC)**. In view of the Government of Thailand's decision in January 2020 to resubmit the KKFC file for consideration by the World Heritage Committee in July 2021, **we are transmitting this communication to the UNESCO World Heritage Committee with the request that the below information be taken into account in its consideration of the case**, together with the communication we previously sent to you on 21 April 2020 (AL OTH 23/2020), which we are reattaching here for ease of reference. We regret that we have to date not received a reply from UNESCO World Heritage Committee to the communication sent on 21 April 2020.

This communication provides an update concerning the human rights situation faced by the Karen indigenous peoples who traditionally reside in the KKFC. Their concerns include ongoing harassment and criminalisation of members of the community, impunity for past violations, the lack of independent monitoring *in situ*, the lack of measures to address the land rights of indigenous peoples and concerns regarding the national legal framework, inadequate consultations and lack of good faith cooperation in order to obtain their free, prior and informed consent and their right to participate in conservation management, in line with international human rights standards, including United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international environmental law.

We wish to recall all the previous related communications on this situation, sent in February 2019 and April 2020 to the Government of Thailand (AL THA 4/2020, AL THA 2/2019), the IUCN World Heritage Panel (AL OTH 22/2020, OL OTH 7/2019) and the UNESCO Heritage Committee (AL OTH 23/2020, OL OTH 8/2019). These communications are publicly available.¹

According to the new information received:

¹ <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

Harassment and criminalisation of the Karen

There are continuing reports of harassment and arrests of Karen community members in 2021. Reports indicate the ongoing presence of members of the Thai military and armed national park officers, from the Department of National Park, Wildlife and Plant Conservation under the Ministry of Natural Resources and Environment, and the use of check-points and extensive video surveillance of the KKFC to monitor the movements of the Karen.

Between January and February 2021, around 85 Karen including women and children, had gradually returned to the Upper Bang Kloy village. The return of the Karen community was monitored closely by the armed forestry officers as this return to Upper Bang Kloy, located within the KKFC, could be considered trespassing into the National Park and a violation of the National Park Act. Reportedly, the community was under surveillance and pressured by the authorities to move back from the disputed land of Upper Bang Kloy to the Government allocated land at Lower Bang Kloy. The mobile and internet signal was cut for a number of days limiting the ability of the community to easily communicate. Furthermore, restrictions were imposed which limited the ability of outsiders to send food provisions to the community in the Upper Bang Kloy village. This restriction was reportedly imposed by National Park officers in an attempt to force the villagers back to the Lower Bang Kloy village.

On 28 January 2021, a group of national park officers patrolled the Lower Bang Kloy village and went to Upper Bang Kloy to ask the villagers to return to Lower Bang Kloy. They reportedly asked CSOs to convince the villagers to move back down to Lower Bang Kloy and affirmed that State agencies would assist with relocation and the provision of employment for the Karen.

Furthermore, in early February 2021, it is alleged that officers of the National Park Department, visited the Upper Bang Kloy village and threatened some 80 Karen community members that they would be prosecuted for illegal encroachment in breach of the National Park Act, if they did not return back to the Lower Bang Kloy village. If found guilty, they could face a maximum 20 years' imprisonment and a fine of two million Thai baht (approx. 62,500 USD).

On 3 February 2021, the Thai Minister of Natural Resource and Environment appointed a working group to address the situation of the Karen in Bang Kloy. On 16 February 2021, the Save Bang Kloy Network and the representatives from the Government signed a Memorandum of Agreement (MOA) on measures to resolve the Bang Kloy case. The MOA reportedly contains commitments of the Government of Thailand to *inter alia*:

- Provide enough land for the Lower Bang Kloy Karen. Allow the villagers to return to their ancestral land, continue their traditional livelihood, and conduct rotational farming;
- Not engage in any form of threats and human rights violations against the villagers, including arrests and criminal charges;
- Remove the checkpoint at Lower Bang Kloy;
- Allow the villagers to receive assistance and donations from outside organisations.

However, on 22 February 2021, it is alleged that around 80–100 armed military and national park officials from different units conducted a joint cordon and search and arrest operation in Upper Bang Kloy village, following which 13 indigenous Karen villagers - including women and children - were arrested and charged with breaking article 20 of the National Park Act “breaking the official order”. The villagers had to pay a fine of 100 baht (approx. 3.1 USD) per person to the park officers before they were released. Karen villagers in the Upper Bang Kloy were under the impression that it was legal for them to return to their traditional lands, however, when they returned, they were threatened and charged with breaking the national park laws. Allegedly, the authorities threatened the villagers that if they refused to return to Lower Bang Kloy, they would be arrested and taken to the Kaeng Krachan Dam. The Kaeng Krachan Dam is the location where the Department of Special Investigation (DSI) found skull fragments of Mr. Pholachi “Billy” Rakchongcharoen, the Karen land rights defender who was forcibly disappeared in April 2018.

Later, on 5 March 2021, the authorities conducted another arrest and forced eviction operation called ‘Protection of the Petch Watershed Forest Operation’. The operation was conducted jointly by civilian officers from the Provincial Governor’s Office, police officers from Kaeng Krachan and National Park officers with an arrest warrant approved by the Petchaburi Provincial Court. Female National Park officers were deployed during the operations and no major violent incident was reported. Consequently, 85 Karen villagers were taken by the authorities from the Upper Bang Kloy village to the Lower Bang Kloy village on that day. It was alleged that during the arrest operation, some male Karen villagers were handcuffed, and there were reports of forced DNA profiling without prior consent of the 83 Karen villagers. Of the group of 85 villagers, 22 villagers, including one child (a 16-year-old boy), were charged and detained, and they were denied the right to legal representation during the interrogations. On 7 March 2021, all 22 Karen villagers were released on bail on the condition that they would not return to the Upper Bang Kloy village again.

On 26 March 2021, seven additional Karen villagers were summoned at the Kang Krachan Police Station to acknowledge four charges under laws related to the national forest conservation, the same charges that were previously levied against the 22 Karen villagers. The seven were released on bail.

On 24 May 2021, a further 28 Karen villagers (7 females and 21 males), including one child, were summoned to the police where they were charged with additional violations (both criminal and civil charges) under laws including the Forest Act B.E.2484 (1941), the National Reserved Forest Act B.E.2507 (1964), and the National Park Act B.E.2562 (2019) for trespassing in the KKFC. Currently, all 28 Karen villagers face seven charges under the three laws. If found guilty, they could face up to 20 years’ imprisonment and a fine of two million Thai baht (approx. 62,500 USD) each. The cases of all 28 Karen villagers are under investigation of the Provincial Public Prosecutor. They are required to periodically report their presence to administrative officials every 12 days and this hinders their freedom of movement and negatively impacts their ability to economically support their families.

Allegations have also been received that images showing damage to flora and fauna, notably burnt land and poached wildlife (elephants) are being circulated, purportedly claiming the Karen caused the damage in the images. These images are reportedly part of a smear campaign to undermine the efforts of Karen for their rights. The community denies the allegations and notes that the images are unverified and many appear old, some likely over a decade.

Lack of independent monitoring in situ

The allegations indicate the importance of independently monitoring of the situation in the park. The International Union for Conservation of Nature (IUCN) has not been able to visit the KKFC formally and assess the situation since 2014.

The official visit request of the Special Rapporteur on the rights of indigenous peoples to Thailand remains pending a response from the Government of Thailand.

Issues regarding the national legal framework and indigenous peoples' rights to land and conservation

In November 2019, three national laws on natural resource management entered into force which could play a role in addressing the persistent tensions between Thai authorities and indigenous communities living in or adjacent to forests in Thailand. These laws are: the Wildlife Preservation and Protection Act (2019), the National Park Act (2019) and the Community Forest Act (2019). The Community Forest Act only applies outside of National Parks.

The National Park Act of 2019 (sections 64 and 65) envisages that persons registered as inhabiting in National Parks could potentially participate in conservation projects. The elaboration and control of such projects would however remain under the Department of National Parks, Wildlife and Plant Conservation (DNP). Details of such measures, according to the National Park Act, are to be further elaborated in Royal Decrees with the 'objective to help people who are landless to inhabit or earn a living in the National Park'. To date, no such Decrees have been enacted in Thailand.

However, the National Park Act explicitly excludes land rights (section 64). Conservation projects are foreseen for a period not exceeding twenty years and must be in accordance with the Government's policy of National Park management and the plan of the area management of the National Park. The Act does not refer to consultations, co-management or benefit sharing with indigenous communities.

Furthermore, the National Park Act (section 64) required a survey of persons inhabiting in National Parks within 240 days after the Act entered into force. Concerns have been raised that the stipulated time-frame of eight months is too short to ensure adequate recording of the presence of indigenous community members, also considering that a previous official survey conducted in National Parks took almost 12 years. The consequences for communities that cannot be recorded in the period set out for the survey are unclear, and there are concerns that they may risk being charged with trespassing.

The Government informed Special Procedures in its reply on 9 April 2021² that the survey had already been carried out and that a joint conservation management project shall be developed with the aim of assisting the communities.

While the statement in the Government reply that the DNP intends to apply a participatory approach in the forest management plan under development is positive, however it appears from the wording that this initiative is conditional on the KKFC being inscribed as a World Heritage Site.³

Concerns remain over the lack of concrete measures to address land tenure rights and to recognise the traditional rotational agricultural practices of the Karen.

Lack of compliance with requirements set out in the Operational Guidelines for the Implementation of the World Heritage Convention

Concerns remain over the inadequate consultations and good faith cooperation with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before the KKFC was included on the Tentative World Heritage inscription list.

Regarding the consultation processes which took place in December 2019 and January 2020, Karen Elders claim that the officials from the Department of National Parks misled the villagers into thinking that the consultation and the memorandum presented were about land allocation for the villagers. The villagers were reportedly not given time to read the memorandum carefully, and voluntarily inscribed their fingerprints on the memorandum as they thought they were giving their consent to the agreement on land allocation for villagers under the “Land Management and Allocation for the Poor” policy.

The Government has stated that 42 villages out of 55 villages in the KKFC support the nomination, in total just over 2000 individuals. The IUCN Technical Evaluation on the KKFC made public in June 2021 however notes that the Karen participation rate in the consultations appears to be low, as less than ten per cent of the population in the national park participated and a third of them were not supportive of the nomination.⁴

Modalities have not been developed in order for indigenous peoples to be provided shared responsibility with the State Party in the maintenance of the site. Inclusive and effective participation of indigenous peoples, equitable governance arrangements, collaborative management systems and redress mechanisms have not been established and remain pending.

Impunity for past violations

In February 2021, the Office of the Public Sector Anti-Corruption Commission dismissed the former chief of the Kaeng Krachan National Park Mr. Chaiwat Limlikitaksorn from civil service, having found him responsible

² Publicly available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36128>

³ Ibid.

⁴ <https://whc.unesco.org/archive/2021/whc21-44com-inf8B2.Add-en.pdf>

for burning Karen houses in 2011.

Whilst we welcome his removal from public office, we regret that progress in the criminal investigation and prosecution of the murder of Karen leader and land rights defender Mr. Pholachi “Billy” Rakchongcharoen remains lacking.

In November 2019, the Department of Special Investigations submitted the case to the Attorney-General’s Office to consider issuing an indictment for murder. However, on 27 January 2020, the Attorney-General’s Office issued the indictment of four suspects, including Mr. Chaiwat Limlikitaksorn, for only one charge: failing to perform duties and hence causing damages to a person.

The Attorney-General’s Office issued a non-prosecution order against the four suspects on the six more serious charges requested by the Department of Special Investigations, citing insufficient evidence. In August 2020, the Department of Special Investigations of the Police challenged the non-prosecution order, however to date the decision whether to pursue the case remains pending with Attorney-General.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern over the attacks against and harassment of the indigenous Karen by the National Parks, Wildlife and Plant Conservation Department under the Ministry of Natural Resources and Environment, and over the failure to ensure the accountability of park officials for these violations. This includes the failure to fully investigate and prosecute the perpetrators of the enforced disappearance and killing of land rights defender Mr. Porlachi Rakchongcharoen. The steps taken to criminalise and otherwise intimidate Karen community members and human rights defenders appear to constitute deliberate measures intended to restrict their peaceful and legitimate work in defense of their human rights and their collective right to live in freedom, peace and security as distinct peoples. The situation regarding the land rights of the Karen remain unresolved.

We are also concerned over the process whereby Government of Thailand has re-submitted the nomination for the KKFC in January 2019 and January 2020 to UNESCO to be designated as a World Heritage site. In particular, we are concerned over the lack of consultation with affected indigenous Karen and the failure to seek their free, prior and informed consent. Adequate measures have not been taken to address these concerns despite decisions from the World Heritage Committee (at 39 COM in 2015 and 43 COM in 2019, respectively) to refer the nomination back to the State Party in order for it to demonstrate that all concerns have been resolved, in full consultation with the local communities, in accordance with paragraph 123 of the Operational Guidelines.

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.

Specifically, we would also like to underline the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. 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.’ UNDRIP furthermore affirms in Articles 19 and 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, or the adoption and implementation of legislative or administrative measures, affecting their lands or territories and other resources.

We also wish to recall that under international environmental law, the Conference of the Parties to the Convention on Biological Diversity adopted a decision in 2014, which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples’ rights are to be respected.⁵

We respectfully urge the World Heritage Committee to consider in your upcoming assessment of the KKFC nomination, also taking into account the decisions of the WHC in 2015 (39 COM) and 2019 (43 COM) respectively, the following concerns:

- **The ongoing criminalisation and harassment of Karen community members and human rights defenders in 2021 undermines the possibility to conduct good faith consultations. The militarisation in the KKFC creates a situation of intimidation for the Karen.**
- **In terms of meaningful participation and good faith consultations in order to obtain the free, prior and informed consent of the indigenous Karen community, information indicates that the purpose of the ‘consultations’ that took place in December 2019 and January 2020 was unclear and that community members received inaccurate information and were pressurized by Government officials to put their fingerprint on documents they did not understand nor were given adequate time to review.**
- **Resolution of land tenure for the Karen remains outstanding and is a key matter to resolve.**
- **Equitable and inclusive governance arrangements for indigenous peoples’ participation in conservation have not been created nor have collaborative management systems, benefit-sharing measures or redress mechanisms been established.**
- **Independent international monitors have not been given access to the KKFC to assess *in situ* compliance with human rights standards and norms for protected areas under international environmental law. The IUCN has not been able to conduct an assessment mission to the KKFC since 2014. The official country visit request by the Special Rapporteur on the rights of indigenous peoples has not been responded to by the Government of Thailand.**

⁵ UNEP/CBD/COP/DEC/XII/12

- **The criminal investigation and prosecutions in the murder case of the Karen human rights defender Mr. Porlachi ‘Billy’ Rakchongcharoen has not advanced. The pervasive impunity and failure to establish justice, truth and redress for his murder undermines the engagement and faith of the Karen community in relation to the World Heritage nomination of the KKFC.**

We encourage the World Heritage Committee to provide information on the outcome of its assessment. The response from the World Heritage Committee will be made public via the communications reporting [website](#) within 60 days and will be available in the joint communication report to be presented to the Human Rights Council for its consideration.

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.

Please be informed that letters on the same matter have also been sent to the Government of Thailand. A copy was also sent to the IUCN World Heritage Panel for information.

Please accept the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we wish to draw your attention to 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. 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 and have the collective right to live in freedom, peace and security as distinct peoples (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 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 Articles 19 and 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, or the adoption and implementation of legislative or administrative measures, affecting their lands or territories and other resources.

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.

We also wish to recall that under international environmental law, the Conference of the Parties to the Convention on Biological Diversity adopted a decision in 2014, which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples' rights are to be respected.⁶

Finally, we would also like to refer 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). We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

⁶ UNEP/CBD/COP/DEC/XII/12