

ASSESSMENT
ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
IN THAILAND

FOCUSING
ON
NATURAL RESOURCES ON
BUSINESS AND HUMAN RIGHTS
AND CASES OF TRANS-BOUNDARY IMPACT

Joint Submission
to
the United Nations Committee on International Covenant
on Economic, Social and Cultural Rights (ICESCR)
55th Session
01 - 19

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Submitted by May 8, 2015

Preamble

This report is created by a NGO network consisting of the Community Resource Centre, the Northern Development Foundation, the Thai Sea Watch Association, the E-Sarn Human Rights and Peace Information Centre and the Project for Campaign for Public Policy on Mineral Resources. The information presented in this report is based on the work of the civil society organizations mentioned above, all of which work with supporting communities affected by human rights violations, and with protecting natural resources and the environment.

Issues relating to the general provisions of the Covenant

The collective experience of the NGOs in the network is that violations of the rights derived from the International Covenant on Economic, Social and Cultural Rights occur in Thailand. The violations especially arise in relation to the exploitation of natural resources and the environment, including natural resource management, but also in most of the on-going development projects, which affect not only the country's environment and the natural resources, but also its people and communities. The network would like to present the situation in Thailand according to its experience in relation to the Covenant as follows.

Article 1

1. Right to Information

Although the constitution of the Kingdom of Thailand BE. 2550 guaranteed the right of citizens to access information in its Chapter 3, Section 10, article 56 and article 57, the constitution was terminated during the Coup D'état in 2013, when the National Council for Peace and Order (NCPO) issued announcement no. 11/2557. An interim constitution - the Constitution of the Kingdom of Thailand (interim) BE. 2557 on July 22, 2014 - was instead adopted. In section 4, the interim constitution guarantees the right to freedom and equality of people. Furthermore, the Information Act BE.2540, guarantees the right of access to official information.

However in practice, the state agencies does not respect the right of citizens to access information, particularly in relation to development projects, regardless of whether it is private or public projects. The government does not provide information to the public before approving projects as it should. Relevant information relating to any new project should be publicly disclosed, especially to the people living in the areas which are to be affected by the project. But the government agencies refuses to disclose the information even at the request of the people who might be affected. It is evident that the communities affected by the project do not really have access to information related to the projects, and if the information is made public the it tends not to be objective. There is also no reliable data assessing the effects of the different projects. The information shared in this regard is mostly biased in favor of the continuation of the project.

Although the communities requests information from the relevant government agencies, the communities do not receive the information which they should have been given prior to the start of the projects' public hearings. Even though Thailand has an Information Commission this agency is difficult to access and does not provide responses in a effective and

timely manner, which causes the projects to move ahead without the communities being able to receive the information from the Commission.

For example, in the Khuha lime stone mining case in Songkhla province in the South of Thailand, the affected community submitted a letter to the responsible government agency requesting to see the Environmental Impact Assessment report (EIA) by the mining company. However, the community was given only a draft report of the environmental impact assessment which was not complete. Another example is the exploration drilling project in the Northeast of Thailand. The community asked relevant authorities for information about the chemicals and drilling technologies used by the company in order to understand the impact of the drilling. However, the Government did not provide any information to the community. Other examples of similar omissions by government agencies are the lignite mining case in Ngao district of Lampang province in the North of Thailand, and the potash mining case in Udon Thani province in the North-East of Thailand. The communities in these provinces requested to receive relevant information about the planned projects, but as of yet, the relevant government agencies have not provided the communities with the information they have a right to receive before the initiation of said projects. In the potash mining case, although the community was provided with some information, the information was incomplete and the community has had to request additional information. It should be the government's responsibility to disseminate accurate and comprehensive information about planned projects and to ensure it is distributed to those who will be directly affected by the projects.

In all of the four cases mentioned above, the government claims that it must obtain prior consent from the private sector before disclosing any information relating to the projects. It is clear from those claims that access to information is not respected or protected for the people of Thailand, especially those who are at risk of being affected.

2. Public participation and consultation in natural resources and environment management

The state should encourage and support people to participate in every step of the process of natural resource management; before the project's implementation, during ongoing projects, and after the completion of the project, whether it is public or private projects. But it appears that the processes of development projects are almost entirely conducted without any actual public participation.

For example, in the Khuha lime stone mining case in Rattaphum district of Songkhla province, the Khuha mountain was declared a stone industry area. The government granted land concessions and issued license to a private mining company in spite of the fact that the area is a community area, a water resource area, and an agricultural area. The Khuha mountain is also an area rich in natural resources which people rely on for subsistence. In the project process the local people were not allowed to be involved in determining whether the mountain should be a source of industrial rock or not. It was rather a decision imposed upon them by the local authorities.

For the Power Development Plan (PDP), however, the government has an obligation to provide the public with energy services and utilities, but it should allow for people participation on issues related to power management. People have the right to participate in relation to power policy decisions, distribution of resource of power, and power producing methods, in order to prevent the adverse impact on the environment and communities. For example, the government has decided on a policy of PDP for backup power. But the fact of the

matter is that the power estimation is not consistent to the wants or needs of the people. The power backup resources is in fact estimated to be more than what is necessary. The proposed power project and power purchase therefore exceeds the demand and it is improper in relation to the potential use and impact of the project. In addition, the PDP is also set to produce energy from sources which are hostile to public health, natural resources and the environment. For example the PDP energy development plan requires a thermo power plant and a nuclear power plant, rather than exploring alternative energy, such as solar or wind power. Those types of renewable energy has more potential in Thailand to produce energy and are more friendly to the environment and the communities.

The state's attempt to establish an energy development plan which is invalid and not based on real estimations results in the fact that the state then supports project which would justify the energy level estimations in the PDP, one such case being the Xayaburi hydropower dam project in Laos PDA. The stakeholder in the Xayaburi Dam are the constructor, the investors, and the buyer of electricity, which are all Thai government or private agencies. In the Mae Moh Thermo power plant project the consequences for the environment and the community are clear. The Krabi Thermo power plant project is located in one of the major natural tourist areas in Thailand, and the biomass power plants are decided to be placed in the heart of the land of a community. The same circumstances apply to the case of the Thai-Malaysian gas pipeline and gas separation plant, which show grave impact on the affected community and the environment. Furthermore, some projects are considered cost-effective by the government but they don't take into account the damages being caused to the environment.

In cases of land resources management, it has been found that the government does not try to decentralize the land to the people sufficiently, especially not to people who are less fortunate. These people are not promoted or encouraged to participate in the allocation of land. Even though, the state is obliged to make public access to land in accordance with international rules, when people try to claim their rights or take any action to achieve land reform and fair land management, they are met with civil and criminal charges. The state does not try to find solutions to protect people.

In some areas, indigenous communities have inhabited the land long before it was declared a restricted area by the state. Instead of exploring ways to ensure that people can stay on their native land, the government pushes the communities out of the area into settlements where they are abandoned by the authorities and where they may face prosecution if they object. The government prior to the coup in May 2557 had no plan to solve the issue. But now when there has been a government takeover, the military junta has issued an order on forest protection which strictly prohibits people from living in the area. Following the order, the junta used military troops to arrest and forcibly remove people living in the area who are disadvantaged. The members of the community have been arrested, been put in detention and prosecuted while the authorities have not taken into consideration that the indigenous community has the right to this specific land.

Similarly for the fishery sector, the network finds that the government does not fulfill its duty to ensure public participation or to allocate resources to provide access to resources for people who are less fortunate. The government recently passed a Fishery Act. Initially, the Act seemed to be an improvement of the old regulation, but upon reflection the new Fishery Act impose limits for local fishermen, for example by requiring all fishermen to be registered to a Fishery Agency. In addition, the boat and the fishing tools also need to be registered, otherwise it is considered to be illegal fishing. Under the previous act, small scale

fishermen did not need to be registered, and could fish without restrictions. The new act therefore poses a problem for people who do small-scale fishing for a living. It seems as though the registration process is rather a means of making illegal commercial fishing boats legal since all they have to do to become legal is register to the relevant authorities under the new Fishery Act. This shows that the prioritization and resource allocation of the government is faulty and do not help the disadvantaged to gain access to the resources of their livelihood.

3. Public hearing and right to free determination of intention

Although the principles in Section 4 of the Constitution of the Kingdom of Thailand (Interim) BE. 2557 and Section 57 paragraph 2 of the Constitution of the Kingdom of Thailand BE 2550 states that the government must hold public hearings before implementing new projects, these principles have not been fulfilled. On the contrary, the public has not been adequately informed, which subsequently effect their right to attain their own free determination. Without information, people cannot weigh the interests of the development of the state against the impact and effect on them. The government does not attempt to collect the opinions of people who will be affected by the development projects, nor does it consult with the public to consider the approval or disapproval of the project.

Examples of when the government has failed to fulfill the rights of art 1 in the Covenant are: the Potassium mining in Udon Thani province, the Gold mining in Loei province, the Khuha lime stone mining in Songkhla province, the Xayaburi hydropower dam in Laos, the Mae Kajarn dam in Chiangmai province and the Thai-Malaysian Gas pipeline and gas separation plant, etc. In neither of these cases has the government identified or disseminated information about the project properly. The government has also lacked in holding serious public hearings during the processes in order to receive comments before implementation of the projects. In some projects there have been no public hearing, but even when the government has organised public hearings, it did not take into account the right to life and livelihood of the people. Instead, it just continued to push for the implementation and continuation of the projects. This has been the cause of the many conflicts in project areas, which has led to prosecutions of community members for objecting to the way in which the project processes have been carried out.

Article 2

1. Corporate Social Responsibility (CSR)

Although the concept of "Corporate Social Responsibility" (CSR) is very prevalent in the corporate sector, it is clear that the government makes no attempt to ensure that corporations take their CSR activities serious because there are no legal instruments available to support such enforcement. Instead corporate bodies complete with each other in doing CSR-activities in order to showcase how they take social responsibility, which benefits the business and which creates a positive public image for the corporation. But in fact, most of the time, the corporate bodies do not take any actions which is in the nature of true social responsibility. In the Thepa thermo power plant project in Songkhla province, the corporation distributed rice in the meeting when they were informing the communities of the project, instead of clarifying the pros and cons of the project properly. Another example is the PTT public company limited which uses its budget to promote CSR-activities such as reforestation or the creation of simple water barriers. However, the company still goes ahead and implements projects which has adverse effects on natural resources, environment and communities. Also, the state use the enforcement agencies to threaten civil society and communities to support the push for the project

construction and the success of it like the case concerning the Thai-Malaysia gas pipeline and gas separation plants project. Or like the fishing industry which uses destructive fishing methods as otter trawl nets or nets pod to get small fish for animal food while they claim that the methods and resources used are non destructive. These activities are not monitored by the government, and can be seen simply as propaganda for the companies given that the government cannot legislate or enforce strict laws to ensure the CSR-activities are of benefit to individuals and communities. For this reason, the network recommend the government agencies and financial institutions to adopt principles of corporate social responsibility. If there are no CSR-principles of operation, it may easily result in violations of economic, social and cultural rights of the people. The government should draft and adopt legislation related to social responsibility of private enterprise, government agencies and financial institutions in order to protect the economic, social and cultural rights of people. It should be the responsibility of the government to set serious standards, procedures and penalties to apply to private enterprise, government agencies and financial institutions The government must also include principles of social responsibility of activities of private enterprises, government agencies and financial institutions when they venture abroad so as to control any operation that could potentially have cross-border effects.

2. Extraterritorial Obligations

Currently in Thailand, the government and the private sector makes large invest in a number of foreign countries to increase the chances of trade and boost the economy. The laws in some of the countries where Thailand invest benefit economic development but it does not protect the economic, social and cultural rights of the people, resulting in violations of human rights of the people in those countries. The Thai government does not try to control, monitor or prevent these human rights violations or make efforts to find solutions to the problem. There are no laws or regulations to prevent, control, or supervise the public or private sector from taking actions which could cause violations of human rights in the overseas investment countries. Noticeable cases relating to extraterritorial obligations are for example the Xayaburi hydropower dam which is built in Laos but where the major owners are either the Thai state agencies or Thai private companies. The Kohkong sugar cane factory which is built in Cambodia is another case where the owner and investor are from the Thai private sector. Also in the Hendra copper mine in Dawei of Myanmar the investor is from the Thai private sector. All of the mentioned projects violate human rights and environment in different ways, for example through natural resources grabbing, pollution, harassment and threatening of the communities. But the Thai state has no laws or regulations which protect victims outside its own borders when the public or private sector of Thailand causes human rights violations.

Even though Thailand has a conflict law no BE.2481, which provide regulations in a potential conflict of applicable law between a Thai national and a foreigner, the applicable law could still be another country's law which may provide less human rights and environment protection. It may not provide enough to protect the economic, social and cultural rights of potential victims. Furthermore, it is not easy to prove for the victims of human rights violations committed outside Thailand because whenever private sector companies from Thailand go abroad to invest, they register as a legal person under that country's laws. And the conflict law in Thailand is not applicable when the victim from the other country tries to use it to claim violations committed by the Thai owned company.

Article 4

Every individual has the right to access natural resources in the way in which they want. This may cause disparity in the enjoyment of economic, social and cultural rights if the government does not try to control the allotment. Corporate bodies and the government can access these resources to its fullest but a lot of people have no opportunity to access these rights. The state is not attempting to regulate or limit these rights in certain vulnerable sectors to encourage the general public to have a chance of accessing resources for their livelihood.

For example, there is a law regulating fishing with otter trawl nets or nets pod, but the model of monitoring whether or not these fishing trawls comply with the new law lacks effectiveness. The government has not succeed in controlling the number of fishing vessels which uses these trawl nets. The lack of monitoring of the fishing industry using these types of illegal fishing gear has resulted in the destruction of marine resources, destruction of aquatic larvae, and destruction of coastal habitats and ecosystems widely. This stands in contrast to state-issued Phongphang fishing demolition tools - a fishing tool that local fishermen have good knowledge of.

Currently, the government has attempted to decriminalize vessels which use trawl nets by providing opportunities for fishing boats to use otter trawl nets, nets pod and seine. But to permit the license to legally fish within specified periods of time is equal to promote and support violation of the right to access the resources of local fishermen.

In relation to the land issue in Thailand it is evident that the state cannot provide a solution to the rights to land for people. The state does not have any measures to control the ownership of private land. This results in that wealthy private persons owns large land areas because they hold the purchasing power, while people across the agriculture sector are unable to buy land for their own livelihood. In addition, the state does not offer support to people in the agricultural sector in order for them to live life in their own traditional way. Since they do not get support, the theoretical knowledge is lost and the price of products on the market are low, which makes the persons working the hardest in the country even more poor. This results in the fact that they are forced to sell their land and rent arable land because they might not have any other career choice. Civil society and NGOs have launched campaigns for land reform calling for changes in legislation, including the 4 laws, but despite these efforts it does not appear that the state is paying attention to it nor is the state taking any action to address the issue. When people demand their right to access their land through the land reform campaign, they face prosecution and imprisonment instead of the support from the state. This was evident during the crackdown and prosecution of the Southern land reform community networks in Krabi Surat province and Surat Thani Province, and the Northern Farmer Network in Lamphun province and Chiang Mai Province.

In addition, the current situation after the coup when the junta has ordered to reclaim forests areas(t order is by National Council for Peace and Order (NCPO) as order no.64/2557 and order no.66/2557 to be a tool to evict people from their traditional lands is discouraging. The junta is using its power of authority to arrest and prosecute people, regardless of the people's rights to access their land.

Article 11

1. Right to live in good environment

The state does not only have a duty to provide adequate housing to people, but the housing should also be appropriate, i.e. people must have the right to live in a good environment.

But the state does not take this into consideration. For example, the state issued a gold mining license in Loei province and in Phichit province and Khuha limestone mine in Songkhla province without considering the rights of the communities to live in a good environment. The mining sites are located in areas very close to the communities. The risk of adverse impacts on the environment, the communities, and the communities' sources of livelihoods is inevitable. The communities must now therefore endure to live in a deteriorating environment unable to access their land in a normal way.

Furthermore, studies conducted in relation to the two cases showed that the environmental standards set by the government in relation to pollution levels is too high. The pollution levels are very rarely exceeded and none of the plants in the projects were letting out more pollution than the set limit, but together they were considered to have effect on the natural environment and people living in the areas. The local authorities tries to solve the problem with providing remedies instead of addressing the root problem and prevent the pollution to happen in the first place.

Although the environmental laws in Thailand requires certain project categories to develop an environmental impact assessment (EIA), the requirement depends on the size of the project. So, it appears as though a commonly used tactic now is to structure the projects to not reach the size limit which actualizes the obligation to conduct an EIA. For example, the regulation for biomass projects states that biomass projects which produce less than 10 megawatts (mw.)do not need to develop an EIA. So, almost all of the planned biomass project are now trying to limit the size to 9.9 mw., 9.8 mw., 9.5 mw., and 8.5 mw. to avoid the requirement to follow the EIA process. This legislation has therefore become counterproductive and cannot be made enforceable. Despite calls for correcting and amending these regulations the state has yet to address the issue.

2. Rights to Food

The state does not respect the rights for people to have food and not to starve as can be seen from the Xayaburi hydropower dam case. The development of the Xayaburi dam will block the passage of certain fish species which will affect the communities living in the area and for which fish is a major food source. The project will build fish ladders to replace the natural fish migration route, however, there is to this day, no study that prove that the fish can use such fish ladders successfully. This means that the dam potentially will cause the food source of fish will be lost, and that people consume fish in the same way and in the same amount as previously. This constitutes a violation of the right to food of the people living in the area, and the dam can obviously also have a huge impact on the next generation in the area, for example by potentially cause iodine deficiency in persons. Although the Xayaburi dam is built inside Laos, all the major actors involved in the construction of it are Thai owned. Thailand is a member of the Mekong River Commission (MRC) which has a duty to prevent activities which could have an adverse effect on the residents in the Mekong countries. The Thai government has not only omitted to take any action in relation to the development of the dam but it actually encourages the different agencies in Thailand to collaborate on the project.

The network has as previously mentioned also found that Thailand lack any proper legislation or regulation for the supervision of both the public and private sector in order to prevent human rights abuse in neighboring countries or other countries by Thai owned companies, agencies or nationals (so called extra territorial obligations).

Other cases, such as the Pak Bara deep-sea port project in Satun Province, the Tha Sala thermo power plant construction project in Nakhon Si Thammarat province and Krabi Krabi thermo power plant in Krabi province are all located in the heart of where food resources exist, especially when it comes to the protein from seafood. Even though the three geographic areas are precious and rich in marine resources, the state supports the fishery, regardless of the consequences. This will have a devastating impact on the marine resources and directly affect the food supply of the people of Thailand.

Article 12

1. Pollution standard

The study from Khuha limestone mining case, shows that even though the pollution measurement is not exceeding the pollution standard of Thailand it still has an effect on the health of people living around that area. This further shows that the standard of pollution that the state has set is unable to protect people's health. This suggests that state legislators should set pollution standards in ways that protect people's health more than ever. Otherwise, the public will suffer from high pollution indefinitely without any control. Other examples are the gold mining in Loei province and the Phichit province, where the state is refusing to accept that people is suffering from the toxic caused by the operation of the mine.

2. Technology standard

There are cases in Thailand which show that the state does not monitor the that the projects in place use good technology standard in order to ensure that the right to health of people and a good environment is fulfilled. The case of Khuha limestone mining and gold mining in Loei and Phichit show that the private company operates with a mine technology using a lower standard in order to maximize the benefit of the economy without regard to the consequences that follows. The state has made no attempt to regulate the standards of technology in the operation of the mine and as a result, communities living near the mining area has affected the physical and mental health of the people, their property and damaged the natural resources.

There is no any evidence that showcases the state's efforts to legislate to control and/or define the technology standards in the operations of the companies. This relates not only to the case of mining, but also includes larger project which affect the physical and mental health of the people and environment. The state must enforce the law strictly, without any gap in the protection of the rights of people and environment.

Summary

It is clear, according to the network, that in the current situation, the state does not take into account the rights under the International Covenant on Economic, Social and Cultural Rights in terms of human rights, community rights, the environment and natural resources, despite the fact that Thailand has ratified the Covenant.

There are many laws that are constituted in a manner that guarantees and protects the economic, social and cultural rights of people, the problem lies with the lack of enforcement of those laws. People do not have access to their rights because the state does not create a process that facilitates the exercise of people support and public participation. We continue to experience repeated violations of economic, social and cultural of peoples.

And even though there are laws to ensure the rights, many people cannot recognize or access those laws since the state makes no effort to promote the recognition of the rights of the people. The government does not make any efforts to disseminate information to the public which is easy to understand and absorb thoroughly. This increases disparity in the access to economic, social and cultural rights more and more.

Further, the practice of state agency still shows a lack of understanding and awareness of the economic, social and cultural rights to the extent that they should be fulfilled. And when violations happen, the state does not attempt to take control or take any measures to prevent or resolve in a sustainable way.

In addition, some laws on the protection of economic, social and cultural rights, has lagged behind and has not set appropriate standards to contemporary changes. This causes people to live under improper conditions.

Recommendations

The network recommends that the state must seriously recognize the economic, social and cultural rights under the International Covenant on Economic, Social and Cultural Rights, more than ever. State should not only develop by using a limited resource without regardless of the rights of people. The state should not promote or encourage such abuses of the human rights because it is strictly prohibited whether directly or indirectly.

The state must respect the right to democratic participation of the people. People must be encouraged and supported to participate in all processes, in the beginning of the development of the projects, ongoing development projects and the subsequent development projects.

The state must promote the dissemination of information to the public so people understand the consequences of the projects. This way people can exercise their right to freely express their intent. The state has a duty to listen to and respect the will of the people.

The state legislators must protect the economic, social and cultural rights and even if the law is already accepted, the state must also revise and improve standards even further to take into account the reduction of inequality in the access rights of the people.

The state must provide a better understanding of the government officers and the people about the economic, social and cultural rights and the state must establish effective processes to support the exercise of the rights of people, in order for people to be able to access those rights more easily.

The state must legislate a good standard of technology and pollution to prevent the violation on human rights and environment.

The state must withdraw the NCPO no. 64/2557 and NCPO no. 66/2557 which effected the local community and people who lives in the protected areas.

The state must legislate a good governance and social responsibility for government agency and cooperate to promote the rule of business and human rights and not only in Thailand but need to make it according to Extraterritorial obligation.

The state should revise the laws which do not support. Especially, the laws regarding, Fishery law

Finally, the state must withdraw or reform the law and regulation which does not ensure the right to live in good environment and impose their livelihood and right to public participation, access to information and participation on natural resources management, especially, new Fishery Act, Land law, Mining law, Forest, National park law and Environmental law.

As, Thailand is member of ASEAN, the state should join with other member to promote and protect Human Rights and Environmental Rights under extraterritorial obligation such as making the protection procedure on AICHR.