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JOINT SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ADVANCE OF THE EXAMINATION OF THAILAND'S INITIAL AND SECOND PERIODIC REPORTS UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Rights to Land and Natural Resources and health care  
for Indigenous peoples / ethnic groups in Thailand

**By**

Cross Cultural Foundation (CrCF),  
Highland Peoples Taskforce (HPT) and  
Center for Protection and Revival of Local Community Rights (CPCR)

Submitted on 5 May 2015

## **Recommendations**

### **Article 1 – Right to land and natural resources**

1. Withdraw NCPO orders no. 64/2014 and 66 /2014, which gives authority to local officers to arrest, threaten, destroy crops, evict local communities arbitrarily without due notice to the affected communities and without prior consultation with civilian local agencies.
2. After lifting of martial law on 1 April 2015, the NCPO issued order 4/2015 which may lead to eviction operations by authorities. All government officers should stop any arrests relating to allegation of land encroachment and stop threatened local communities to evict or move out prior to consultation and verifying the land location with participatory approaches.
3. Further, a review of the 10 years forestry plan under Internal Security Operation command and Ministry of Natural resources management should be made to assess their impact on the rights of people dwelling inside forests
4. Thai Government should apply the cabinet resolution dated 11<sup>th</sup> May 1999 (Land rights verification process) as solution for any land dispute between local villagers and state forestry agencies including ministry of natural resources and Internal Security Operation Command (ISOC) rather than using blanket policy of 10 years National re-forestation plan launched since July 2014 without land rights verification process. However the applicants for rights to land shall not only limited to Thai citizenship but also for those whose their nationality is undergoing verification process under Thai law.
5. The National Park Act, National Forest Reserve Act, Wildlife Conservation and Protection Act and other forest and natural resource management laws should be reviewed and amended accordingly. Indigenous peoples who have been displaced or relocated according to these laws should be given redress: either restitution, or where not possible “just, fair and equitable compensation”.
6. Supporting the Community land title act drafted by CSOs to solve the issues of land and natural resource management.

### **Article 11 – The right to an adequate standard of living**

#### **Recommendations**

7. Since the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/ or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection therefore Thai government shall consider to relocate the evicted community back to the dispute land. Then applying participatory approach together with local communities, therefore the right to an adequate standard of living would be restored
8. Provide compensation to evicted local communities and take measures for their rehabilitation such as ensure that they have adequate housing, adequate land for

cultivation and that they are able to access other rights such as health care and schooling for their children immediately

9. The government of Thailand should recognize the “hill tribes” of the North and the “chao le” of the Coastline of the south and other “tribal peoples” in the Northeast, East and West as indigenous. Therefore National forestry and land laws should legally recognize the collective rights of indigenous peoples over their lands, territories and resources as per the *United Nations Declaration on the Rights of Indigenous Peoples*.

## **Article 12 – The right to physical and mental health**

### **Recommendations**

10. Thai government shall approve budget allocation per head supporting the Cabinet Resolution dated 16 April 2015 immediately. Thai government after approved the Cabinet Resolution but it was announced that the allocation of budget shall be pending upon the consideration whether the national budget will be allowed to allocate or not. The promise of upholding access to Universal Healthcare scheme to all shall not be restricted due to the constraint of budget.
11. Thai government shall reconsider to add the student coded “G” of 76, 540 students in the Universal Healthcare as soon as possible and allocated budget per head accordingly.
12. Establish “Border Disease Control Fund” under the Ministry of Public Health to cope with those migrants and non-verified Thai nationality that not cover under Universal Healthcare. The group of these population in accounts for 1.5 million. The budget per head is 383.61 baht/person/year (13 USD/person/ year) or 161.5 million baht ( 5.4 million USD/ year). These will be earmarked to reduce the burden of state facilities and to promote health, and enhance control and prevention of diseases.
13. To ensure sustainable solutions to health problems and equality and fairness to all groups including non-verified Thai citizen, Thai government must review and revise Article 5 of the 2002 National Health Security Act to address the needs of the non-verified Thai nationality who is undergo investigation to verify their full nationality. They should be entitled to healthcare services and health insurance without discrimination.

### **Introduction**

This is a joint submission by Cross Cultural Foundation (CrCF), Highland Peoples Taskforce (HPT) and Center for Protection and Revival of Local Community Rights (CPCR). CrCF operating since 2002 promoting human rights and legal protection to marginalized population in Thailand, it is based in Bangkok, Thailand. HPT is operating since 2008 and focusing on rights to health care for IPs and ethnic groups in Thailand since 2010. CPCR is a lawyer organization providing free legal aid and legal empowerment program operating since 2002. Both HPT and CPCR are based in Chiangmai Province of Thailand.

This submission is consisting of three parts:

**Part 1:** The right to self-determination and participation in decision-making guaranteed in Article 1 of the ICESCR in relation to indigenous and ethnic groups in Thailand

**Part 2:** The right to an adequate standard of living affected from forced eviction

**Part 3:** Rights to Health care of non-verified Thai nationality population

## **Article 1 – Right to land and natural resources**

### **Part 1: The right to self-determination and participation in decision-making guaranteed in Article 1 of the ICESCR in relation to indigenous and ethnic groups in Thailand**

1. In 2014, the National Council for Peace and Order (NCPO) made a number of orders and announcements calling for an end to deforestation and forest encroachment (NCPO Order No. 64/2557 & NCPO Order 66/2557). In July 2014, the Internal Security Operation Command (ISOC), a joint army lead operation, released 10th year National re-forestation Plan with the same objective and set up a targeted plan to increase forestry land of Thailand to 40% from 31 % of total area of Thailand in 10 years.
2. This policy, if implement fully without reviewing and consultation, may have serious impacts on many ethnic and Indigenous Peoples (IP) communities in the Northern provinces of Thailand who may be considered to be in violation of these orders. It has created serious challenges for the ethnic/ IPs in maintaining their traditional way of life in close interaction with nature. The martial law applied by the NCPO officers since July 2014- Mar 2015 for consecutively 9 months have led to many cases of human rights violations to Article 1 of this convention.
3. After lifting the martial law on 1 April 2015, the NCPO issued order 4/2015 in April 2015, which might again lead to eviction operations without prior information to the affected communities. Beside the use of new orders and military forces, the park officer/ forestry officers applied the existing laws and policies regarding forests and through cases illustrates the ways in which indigenous communities are affected by such laws and policies discriminatory to other lowland settlement and business oriented landowners.

### **Problems faced by Indigenous Peoples<sup>1</sup>**

4. A common strain of the problems faced by the people from different areas is the alienation of the people from the land that has been their homes and source of life and livelihood since a long time. In general, indigenous peoples in Thailand do not have a legal right to the forest land in which they live and over which they depend. A framework of laws and cabinet resolutions govern ownership of forest land. This framework of laws has given ‘opportunities’ for forest people to get legal recognition of their rights over the land which they have been using. However these ‘opportunities’ have largely been very narrow and restrictive, leaving the large population of the people living in the forests vulnerable to exploitation and abuse by different stakeholders.

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<sup>1</sup> There were also IPs living in other parts of the country such as northeastern and center and upper-south. However, the issue of the struggle for Recognition of Indigenous People’s rights over land occurred in the upper northern of Thailand.

5. Since Thai State has disregarded the recognition of the identity of the indigenous groups or their relationship to the forests. Through its laws and policies is taking away the rights of the people over their land by accusing them of committing deforestation or destruction of forest resources through traditional practices such as shifting agriculture or encroachment of land belonging to the protected forest area. The public in general has tried to delegitimize them and their rights by creating biases and prejudices against them. The indigenous groups have been accused of spreading social evils like drugs to the Thai society. They have been accused of growing opium and trading in drugs in 1970s, 1980s. The famous reduction of opium plantation replacing by royal projects and other government supported project has been successful but replacing by one single crop plantation such as cabbage, corn etc. Myths have also been propagated that indigenous groups are destroying forests through their practice of 'slash and burn' agriculture, when experience of different countries have clearly shown that it is 'mono-cropping' in forest land that encourage the spread of forest fire.
6. The different laws on forests completely invisibilizes the indigenous people and their relationship with forest land. All forest land, or land over which nobody has a title, is made property of the State, after which the State assumes the power to regulate the use of forests and forest produce. Thus with passing of each law, the State has destroyed the connection of indigenous people with their land and has turned them into 'trespassers' or 'encroachers' over their own land. There has been a movement of indigenous people for the passing of a law on 'community forestry' but it has not been successful as yet.

### **Struggles of the Indigenous Peoples**

7. The indigenous people's movement which included the Northern Farmer's Alliance, has been focusing on how to use common land, over which no one person has any property rights. Some of such land had been illegally sold by some people in the village and then abandoned by its owners. As one of their strategies the movement decided to take possession of such land and divide it between the indigenous families, so that each family had one share. When the authorities accused them of illegally encroaching upon land, the movement insisted that such land was public land. Some of the movement leaders were charged and convicted for encroaching upon another's property. In some cases the leaders were able to prove that the title deed held by owner of such land was illegal. The movement has also been advocating for land reforms and recognition of the rights of the indigenous people in managing and protecting forest resources.
8. The struggle is not easy as the indigenous people have to fight against the powerful machinery of the State. Biases and prejudices held against the indigenous people further isolate them from the general Thai people. These 'myths' dis-empower the indigenous people by instilling fear in themselves. The State also uses many different tactics of breaking the unity of the indigenous groups. These tactics include selective application of laws and recognizing citizenship rights of few groups while leaving out others. The State also tries to create differences between groups by propagating false information – such as telling the low land people that their water resources are getting discriminated because of exploitation of such resources by the high land people.

## **Situation during 1997 constitution till 2006**

9. A series of three Cabinet Resolutions dated 17th, 22nd and 29th April 1997, gave some recognition to the rights of the people who had been living inside the forests. Under the Resolutions, a Sub-Committee at the provincial level would examine petitions made by people to revoke the declaration of forest land or national park over a certain area. After investigation, the Committee could give suggestions to the Cabinet to amend the Declarations of Forest Land or National Park with respect to the particular areas. Thus for the first time, rights of people living in forests prior to the declaration of reservation areas was taken into consideration. However in 1998, forest fires broke out in many parts of northern Thailand. The Deputy Agricultural Minister publicly held the hill tribe people responsible for causing the forest fires with their 'slash and burn' cultivation practices.
10. As economically valuable timber or with a minimal number of economically valuable timber', and there is feasibility to rehabilitate the natural condition of the forest, then a person could apply for permission to utilize or live in such area. Permission would be granted for a maximum period of 30 years, if the competent authority considered that such land was necessary for the 'living condition' of the applicant. Under this clause 2 of Section 16 duo, a person could also apply for permission to use such land for a 'tree plantation'. The Act also provided the scope for obtaining permissions to live in the land or to utilize it.
11. The Cabinet Resolution of 30 June 1998 was promulgated canceling the effects of the April 1997 resolutions. Under the June 1998 Resolution, the government could not allocate 'conservation forests' demarcated under law for land reform. It further stipulated that if land claimed by the people was critical for ecology, the people living therein should be relocated. Also any action that could be regarded as 'forest encroachment', or damaging forest resources and environment was to be strictly dealt with under law. The Cabinet Resolution of 30 June 1998 provided for the surveying of land usage in the forests, verification of such usage and consequently granting approval for such usage. The criteria used for granting such approval were very restrictive in nature. For example the land had to have been used continuously for a period of sixty years.
12. Army maps of 1952 were used to cross check with army maps of 1998. Even if the villagers could provide proof that they were using a piece of forest land before such land was declared to be protected forest area, still they could be evicted if such land was considered to be a watershed area or conservation forest. Highland People's Assembly and the Northern Farmers Federation were of the opinion that under the Cabinet Resolution, 85% of the people living inside the forests would be considered to be violating the laws relating to forests. This led to thousands of highland people and their organizations to demonstrate in front of Chiangmai Town Hall for a month in April – May 1999.
13. The demonstrations led to the promulgation of a new Cabinet Resolution and the Cabinet in its meeting on 11th May 1999 approved the proposal presented by the Ministry of Interior to solve the problems of the northern farmers and highland peoples. The 11th May Cabinet Resolution provided the recognition of land use and stated that all villages in the communities in the forest area can be registered. The announcement shall be displayed 7 days before the registration date. The joint committee was set up to handle

the step to be taken to enforce this resolution. After registered, during the verification of land rights, Forestry Department shall organize the meeting in order to consider the verification process. The community shall gain the temporary protection not to be evicted or charged of encroachment and the communities also promised that if there is any act of encroachment over forestry lands after that, legal action against such acts will be taken strictly. At that time the local communities and NGOs/CSOs working on land rights across the country holds the position that this cabinet resolution is fair and provide the opportunities for both state and communities to proof their land rights/land used.

14. However, these opportunities could not be taken by all indigenous peoples / communities because of lack of information about the law, lack of awareness as well as inability to understand the Thai language and sometimes because of their lack of citizenship status. No action was taken by the government to make the indigenous people aware of such opportunities and enable them to make their claims or apply for permissions. At the same time, people with money and power took advantages of these opportunities and sought permissions for planting fruit orchards, gardens and building holiday resorts.

#### **Situation after the Coup in 2006**

15. There was also military coup in Sep 2006. The following months, there were a number of threat against the existing of ethnic communities in the forest reserved area. The following cases are documented by CrCF, HPT and CPR who provided legal and advocacy assistance to the struggles of local communities regarding their land during 2007-2008. With the strong support and understanding of local government agencies via negotiation the case studies below, the communities has not been evicted and the villagers still inhabited till the present.
16. In Pangdang village, Chiangmai province, an area that has been declared as a National Park Area, the people have faced arrest thrice since 1989. In 1998 the villagers were arrested on charges of deforestation. The Court ordered the villagers to be evacuated from the area, however the villagers refused to do so. The Court did not insist on the enforcement of its order. However in July 2004, around six in the morning, more than 200 armed forestry, border petrol police and military officers raided the Pang Daeng village. The officers asked the villagers to show their ID cards and household registration papers. Without giving any explanation, the officers then took photographs of the villagers standing in front of their houses. They then told the villagers that they would be taken to the District Office for training and given free blankets. If the villagers refused to listen to the officers, they were beaten. At the District Office, they arrested 48 villagers from different ethnic groups: 19 Palaung, 25 Lahu, 1 Lisu and three local persons. The 48 villagers were charged with 54 counts of encroachment on 47.3 rai (17.2) acres of land, on which they allegedly caused damage to state land to the amount of about 3.2 million baht. However with the help of lawyers and Northern Farmers network, the solution came in 2008. Since the villagers of Pang Daeng did not have citizenship status their claims to the land could not be recognized. Therefore it was agreed that a private Foundation would be set up. The Foundation, a legal entity, would be given the right to utilize or live in the land in Pang Daeng village. The Foundation would in turn allow the Pang Daeng villagers to do the same. The Foundation would also help the villagers in constructing new houses. As on June 2008, the Foundation was set up through

negotiation the Pang Daeng villagers still reside in the area till today with no threat and intimidation.

17. In September 2006, at Huaykon village, Phrao District, Chiangmai Province, there was an attempt of forced eviction of 34 families that might had a great impact on their human security and their right to livelihood. The families were evicted overnight and no alternate settlement site was provided to them. Their shelter, source of livelihood and above all their way of life was taken away from them in the most arbitrary manner possible. In Sri Lanna National Park, two villagers have been arrested for encroaching upon National Park Land. A female villager has already been convicted by the trial court and she is now fighting an appeal against that decision. Another male villager who was arrested was snatched away from police custody by the other villagers. Because of these insecurities relating to land, many hill tribe people have migrated to nearby towns and are trying to earn their livelihood by selling pirated CDs, working in massage parlors, hotels, and petrol stations.
18. In the Huaysan Lisu, Chiangrai Province signposts were put up prohibiting the villagers from cultivating that land which they had been cultivating for the past 16 years. In Nov 2007, forest officers in four army vehicles came to the villages to put up the notices. In the past three water reservoirs had been constructed in the area with the help of the villagers. But two of these reservoirs are located in the land belonging to village headman and the forest department office and the ordinary villagers cannot use them.
19. In Na-on, Paksaem Village, Vienghang District, Chiangmai Province, located in the Chang Dao National Park, the villagers have been accused of encroaching upon 200 rai of land belonging to the National Park. In Nov 2007, the authorities have threatened to evacuate them and resettle them in a new piece of land. However the villagers are worried that that in the absence of any title deed to the land on which they have their houses, they may be uprooted and forced to move again. They are also afraid that in the same way they would lose rights over the land cultivated by them. In Na-on also, the power of the military was used to intimidate the villagers in evacuating the land. The whole district of Vienghang falls under the National Park Area and villagers are in the danger of being evacuated.
20. Once evacuated from the forests, the people have no option but to migrate to the cities in search of employment. Many hill tribe people do not have citizenship status so they are more vulnerable to harassment by the state authorities and other vested interests. They are not able to access health or educational facilities. Further while the State is evacuating the villagers from protected forest area, rich and powerful people are purchasing land in the same area for building holiday homes or private orchards. There have been cases where the government has announced the construction of reservoir in an area, and influential groups have purchased the land earmarked for such reservoir – only to get compensation from the State when acquired by it.

### **Situation between 2007- 2013**

21. There is no special policy related to land and natural resource management. However, the indigenous peoples and farmers living in the forestry area are still facing the enforcement of existing land laws. According to a research leading by Dr. Akit Rapipat called “Poor defendants”. The research collected information from the court justice office and at least seven farmers and land rights networks operating in the north, northeast and the south in

Thailand during 2007-2012, that there were 426 court cases filed against those farmers living in the forestry area. These 426 court cases made up 4,680 individuals farmers became defendant facing charges both criminal and civil court cases. These poor farmers are facing difficulty in their legal court cases as defendants as lacking of free legal aid providers. Most of the charges are criminal and many found guilty of living in forestry reserved area. Many were under probation or must pay fine.

22. According to CPCR alone, CPCR provided legal aid since 1994 till the present in the northern region of Thailand, they act as defense lawyers for more than 80 court cases, assisting 505 individual farmers who became encroachers of their own land. 140 individuals faced charged of violating Forestry Act, 114 individuals faced charged of violating Forestry reservation Act, 1 individuals faced charged of violating National Park Act, 255 individuals faced charged of illegal encroaching. 62 individuals faced charged of damaging other people's property. Two individuals faced charged of thief. Twelve individuals faced charged of defamation.

**New threat under NCPO orders after the Coup in May 2014**

23. Under the Action Plan developed by the NCPO, the Upper Northern region of Thailand has been classified as the most crisis area and has been targeted in the first and second year of the Action plan. The focus of the First year of the plan is to bring forest area under state control (Kun Pun Pa) and in the second year the focus is on reforestation (Puk Pa) through state projects under the management of ISOC. From website of ISOC, Internal Security Command Operation Office no. 4 (<http://www.isoc04.go.th/>) Since these NCPO orders no. 44 and 46 and announcements, at least 173 communities in 9 provinces of the upper northern region are reported to be affected by the joint operation of ISOC, Military, Police and forestry department, national park department under Ministry of Natural Resource Management who have threatened to take strict legal action against communities living in the restricted forestry areas in the northern provinces.

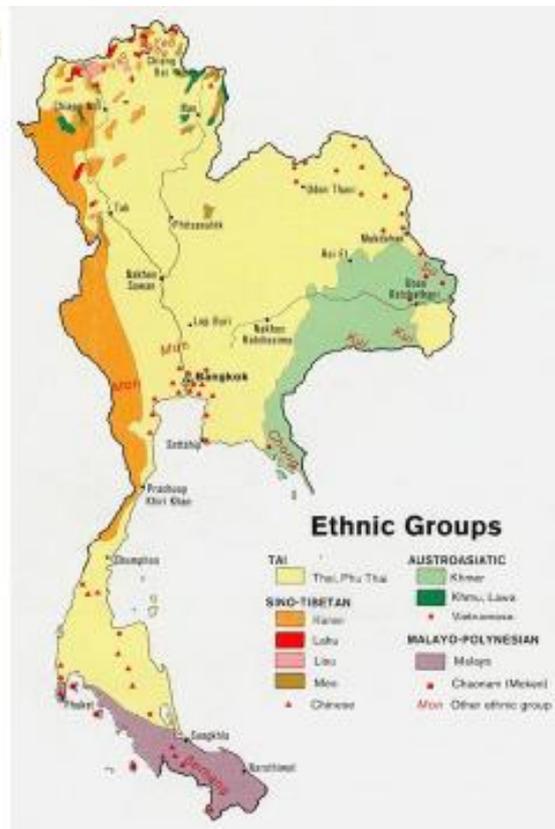
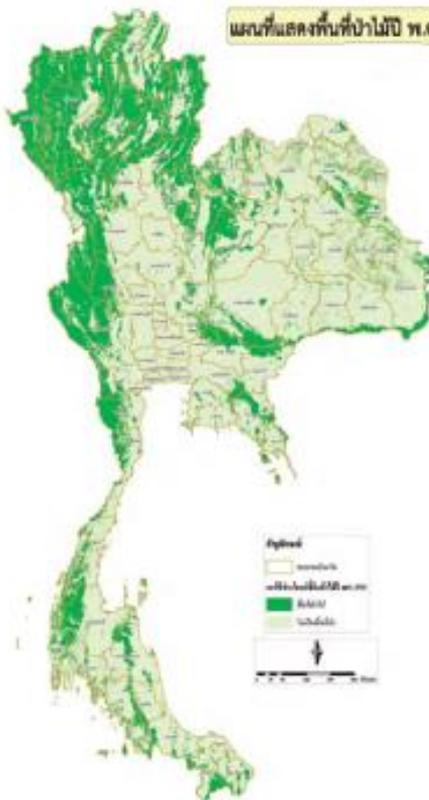
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|----------------------|---|
| Chiangmai Province   | 29 communities spread over 13 districts |
| Lampoon Province     | 2 communities spread over 2 districts   |
| Lampang Province     | 49 communities spread over 11 districts |
| Pae Province         | 7 communities spread over 5 districts   |
| Nan Province         | 21 communities spread over 7 districts  |
| Payao Province       | 21 communities spread over 6 districts  |
| Chiangrai Province   | 8 communities spread over 6 districts   |
| Maehongsong Province | 18 communities spread over 4 districts  |
| Tak Province         | 18 communities spread over 6 districts  |

24. National Human Rights Commission issued a Preliminary Recommendations of the National Human Rights Commission's Sub-Commission on the Rights Related to Lands and Forest and the Sub-Commission on Community Rights regarding the Orders of the National Council for Peace and Order (NCPO) No. 64/2557 and 66/2557 stated that the said order has affected livelihoods of the communities in the forest. It suggested that hereby request that all relevant agencies cease or suspend their operations in the areas designated in the Master Plan and launch a process that allows peoples to participate in the consideration and decision-making related to the Master Plan and its associated action plans.<sup>2</sup>

<sup>2</sup> Please see the Preliminary Recommendation by NHCR in Annex 1



Source: ISOC published in 10 year National re-forestation Plan  
 Map no. 1: Forestry area in 2008. Red zone is 1st target , Orange zone is 2<sup>nd</sup> target and Green Zone is 3<sup>rd</sup> target



Source: ISOC published in 10 year National re-forestation Plan  
 Map no. 2 : Ethnic groups in Thailand (2008)

25. From our fact finding documentation, on 26-27 August 2014, in Muang District, Chiang Rai, 30 participants belongs to Ban Krua Dam and nearby villages from various ethnic groups including the Karen, Lahu, Lisu, etc get together. The village is located about 50 kilometers from the city of Chiang Rai. Most local villagers live and work in area classified as protected forest call the Left Mae Kok National Park. Local NGOs called Upland Holistic Development Project (UHDP) worked with this villagers introduced that this village have been advocating the system of community land title deeds to enable them to have the right to manage their land. But after seven governments, there has not been much progress. The authorities continue to refuse to recognize their collective right to land. The new National Park Chief Officer often has them arrested for forest encroachment. Villagers need to brainstorm on how to manage their farmland and residential area and to demand their community right to manage their local resources.
26. The implications of the NCPO Orders no. 64 and 66/2014 invoked by the military and forestry officials that a satellite image made in 2002 would be an only evidence used to verify forest encroachment. Only land tilled prior to 2002 is regarded as legal for use. This blanket policy by NCPO to apply as verification of land used is a threat to local villagers even though the village has not been visited by army and park officers since policy announced and applied in other national parks already. They are living in fear but ready to prepare themselves to defense themselves that they settled in this land prior to National park and ready to deal with the officials who wanted to enforce the NCPO Order. The same situation also explained to us by villagers of Ban Huay Lu Luang, Muang District, Chiang Rai during our trip on 27-29 August 2014.
27. On 10-11 October 2014, around 30 ethnic Hmong villagers from various districts of Mae Hong Son. Mae Hong Son Network of the Ethnic Hmong together with community leaders including district headman, village Headmen, members of Tambon Administration Organization shared similar concerns. Most of the ethnic Hmong in Mae Hong Son live in area classified as forest reserve and continue to live their traditional way of life. Many have changed to grow cash crops and expand their farmland. Though the land has been tilled for a long time, the authorities accuse them of forest encroachment and they are being affected by the NCPO Orders no. 64 and 66/2014. The villagers has the same respond asking how to prepare in dealing with the officials who wanted to enforce the NCPO Order and forced us to leave or not to cultivate.
28. On 2-3 December 2014, documenting from a gathering of around 30 participants including the ethnic Parong, Lahu, Shan and Muang villagers, most of whom are community leaders, voluntary teachers and volunteers of the Fang River Basin Project. Fang, Chiang Mai, Fang River Basin Project and PLAN shared that the river basin is consisting of three districts including Chai Prakan, Fang and Mae Ai district. All of them similarly face problems concerning their livelihood and farming in area classified as protected forest, drug trafficking , teen marriage, a lack of interest to study among youth, a lack of care and attention from parents toward their children, unemployment, etc. On top of that the authorities do not recognize community land title deeds, some officers allegedly extorted for money if found the villagers cultivate or use forest reserve land due to lacking of citizenship of a number of villages.

29. The Northern part of Thailand is also classified as having the most forestry land and predominantly under sustainable cultivation by ethnic/IPs communities. Therefore if policy continues without consultation with concerned communities, rights of communities affected are not limited to the rights to be free from forced eviction but also other rights relating to citizenship, the right to food, right to work, right to health care and right to education. In addition, many communities still lack the capacity to access justice for defending their basic human rights and are often not able to effectively deal with lawsuits regarding land disputes with government agencies such as Forestry Department, Ministry of Natural Resource Management or criminal charges of trespassing on their own land.
30. Case of Laohu village, Muang-haeng, Vieng-haeng District, Chiangmai Province (Northern part of Thailand), community facing threat of eviction, refusal of authorities to recognize the temporary permission granted to villagers under Cabinet Resolution of May 1999. On 21 Aug 2014, Pa-deang National Park's Head Officer issued a letter to Laohu village headman, stating that those people who were living in the forests in violation of the National Park Act, should stop encroaching upon the forestland, or legal action would be taken against them. The Pa-deang national park officers also submitted complaints to the local police station against people who were allegedly encroaching upon forestland on 21 July 2014. The complaints filed by the Pa-daeng authorities will affect 110 households having 145 plots of land, all together 1,500 Rai (one rai is equivalent to 0.16 ha) of land. If the authorities take legal action, these 110 families will be charged with encroachment and will be vulnerable to eviction.
31. The Laohu village of 110 households comprises of 530 villagers (252 male and 278 female). Most of the villagers belong to Lisu and Chinese ethnicity. The village had been registered under a special scheme announced by the Cabinet resolution dated 11 May 2542 (1999). Under this resolution, the Laohu village was allowed to register the land used by them for housing and cultivation and temporary permission was given, pending further investigation regarding their rights to own the land.
32. Till date, the Laohu village is enjoying the temporary permission granted to them under Cabinet Resolution dated 11th May 1999. Since then, the villagers have settled down upon the land and their livelihood depends upon the land. Their children are attending local schools. If the villagers are evicted, they will become landless with so security of food and housing. The right to education of their children will be adversely affected.
33. Pa-daeng National Park authorities does not take the complaints from villagers into their consideration. In the course of the joint fact-finding conducted by the three organizations, it was found that the order of the national park authorities in this case is an outcome of the Order issued by the NCPO in June 2014 and the Action Plan formulated under the NCPO Orders. The organizations submitted an appeal to the National Human Rights Commission on 29 September 2014, requesting that the concerned authorities should cease to take action under the two NCPO Orders and that the 10 years National re-forestation Plan should be suspended till consultations are held with all stakeholders.

**Destruction of rice fields, cornfields and property of villagers by the authorities Case of Ban Huayhok, Moo 5 Muangnuang Sub-district, Vienghaeng District, Chiangmai Province belong to Lisu and Shan ethnic communities**

34. On 25 August 2014, park officers came to destroy rice and corn field of two villagers: one man of his one rai (one rai is equivalent to 0.16 ha) and one woman of her two rai. On 4 September 2014, park officers came again. Till end of Sep, reportedly, there are 11 families (8 Lisu families, two Thai families and one Shan family) whose rice and cornfields in Huay Nam Dang National Park were destroyed, totaling 58 rai of land. At first, the village headman tried to negotiate with the authorities that no action should be taken till the fields are harvested so that the villagers could depend on the harvested crops for their food security. However, the officers referred to NCPO Orders and ignored the appeals of the village headmen.
35. Some of the affected villagers are very poor and are not in a position to support the basic needs of their families if their rice and cornfields are taken away from them. Even though, the Huayhok village has no title deeds regarding the land used by them, the community has been using the land since 1994, 1997, 2000, 2002 and 2004. Further, there is a temporary agreement with the Huay Nam Dang national park since 2009. No compensation has been paid to any villager.

**Recommendations**

36. Withdraw NCPO orders no. 64/2014 and 66 /2014, which gives authority to local officers to arrest, threaten, destroy crops, evict local communities arbitrarily without due notice to the affected communities and without prior consultation with civilian local agencies.
37. After lifting of martial law on 1 April 2015, the NCPO issued order 4/2015 which may lead to eviction operations by authorities. All government officers should stop any arrests relating to allegation of land encroachment and stop threatened local communities to evict or move out prior to consultation and verifying the land location with participatory approaches.
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40. The National Park Act, National Forest Reserve Act, Wildlife Conservation and Protection Act and other forest and natural resource management laws should be reviewed and amended accordingly. Indigenous peoples who have been displaced or relocated

according to these laws should be given redress: either restitution, or where not possible “just, fair and equitable compensation”.

41. Supporting the Community land title act drafted by CSOs to solve the issues of land and natural resource management.

## **Article 11 – The right to an adequate standard of living**

### **Case of Mae Om Ki community: Shifting Agriculture in Protected Forests found not guilty by appeal court but the appeal court requested communities to move out from protected forestry land**

42. Indigenous peoples who practice shifting agriculture can also face criminal charges and can be ordered to relocate. In Mae Om Ki, Tha Song Yang District, Tak, two members of the Karen community, Mr. Dipaepho, an 80 year old man and Ms. Naw He Mui Whigwittacha were charged with slashing, clearing and burning forest and use of land in a national forest reserve under the National Reserved Forest Act and the Forest Act in 2008.<sup>3</sup>
43. Although in 2010, the Court of First Instance acquitted the villagers of all charges, the Court of Appeal ruled differently in two separate decisions in 2012. The Court of Appeal found Ms. Naw He Mui Whigwittacha not guilty because she did not intend to trespass as she did not know the area was a National Forest. She had relied upon a Cabinet Resolution of June 30, 1998.<sup>4</sup> Mr. Dipaepho was found guilty even though he also did not know that the area was a protected forest and had also relied upon the Cabinet Resolution. The Court of Appeal found that the Cabinet Resolution is not law and ignorance of the law was not an excuse for Mr. Dipaepho.
44. Both defendants were required to relocate from the protected area as the Cabinet Resolution was not the law. Ms. Naw He Mui Whigwittacha had to relocate from 6 rai of protected land and Mr. Dipaepho must relocate from 7 rai. The Human Rights Lawyers Association (HRLA) will be representing both defendants in appeals to the Supreme Court.
45. Reducing the amount of land available for shifting cultivation through the creation of protected areas and forests has meant that there is less land available for shifting cultivation which means that some communities cannot practice shifting cultivation without risking arrest.<sup>5</sup> Alternatively, fallow periods used in shifting cultivation are reduced drastically which also decreases agricultural yields. This has also meant that many families are no longer self-sufficient in food production and they face increased poverty.<sup>6</sup> In addition, indigenous communities which continue to practice shifting cultivation in protected areas live in fear because they are unsure whether they will be arrested or relocated.<sup>7</sup>

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<sup>3</sup> Note: In 2008, at the lower court level both villagers were sentenced to jail time. However, in an appeal it was decided that the lower court level trial would be redone as the defendants did not have access to lawyers or interpreters.

<sup>4</sup> This Cabinet Resolution stated that communities that had settled in forests prior their becoming protected areas could continue stay in the areas.

<sup>5</sup> Asia Indigenous People’s Pact and International Working Group for Indigenous Affairs (2010). *Drivers of Deforestation: Facts to be considered regarding the impact of shifting cultivation in Asia*. Retrieved July 17, 2012, from <http://unfccc.int/resource/docs/2012/smsn/ngo/235.pdf>.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

**Case: Forced eviction from Land Case of Ban Kaobaht in Lamnangrong Sub-district, Nondindaeng District, Buriram province (North-eastern part of Thailand)**

46. Based on information received from The Assembly of the Poor and villagers themselves, authorities have allegedly harassed, detained, and evicted villagers of Ban Kaobaht from their home, agricultural land and livelihood in Lamnangrong Sub-district, Nondindaeng District, Buriram province. Some of the villages belong to Khmer ethnic communities. The area has a long history of forced relocation of villagers following Thai government's military operations against Thai Communist Party in the 1970s.
47. The Kaobaht villagers claim that the Army Office in Buriram gave permission to them to settle upon the forestland post operations against the communist groups. However, the authorities dispute this claim and stress that the State has control over the management of the land. During the period of 1988-2003, concessions over these plots of land were given to two private companies for reforestation purposes. The concessions expired in 2003 and the villagers were successful in negotiating with authorities that the concessions would not be renewed and that they could cultivate the plots of land. Since then, the villagers have been living upon the land and cultivating it.
48. On 28 June 2014, two villagers of Ban Seangsawan were arrested and detained for 7 days. On 29 June, another 10 villagers of Ban Seangsawa were arrested and detained for 7 days under martial law. On 4 July, a member of the Tambon administration was arrested and released on the same day. During 1-7 July 2014, at least 6 communities of around 1000 villagers were forcibly evicted from the land under joint operations conducted by provincial authorities in pursuance of the NCPO Orders 64 and 66.
49. The guidelines regarding evictions elaborated upon by the Committee of Economic Social Cultural Rights in General Comment 7 were not followed. The organizations conducted a fact-finding mission on 15-17 July 2014, and observed that 66 villagers in Wat Lamnangrong were not provided proper assistance as promised by provincial joint operation. The group of 66 people's mostly elderly men and women and children were staying in an open shelter in Lamnangrong Temple, without access to the means to support their basic needs of food, water and shelter.
50. On 18 July, the group was forced to move out from the temple. They sought assistance from a village in Lamnangrong where they could take shelter in a premise belonging to a women handicraft group. The villagers still lack the means to support the basic needs. The elderly and children (at least 15 in number) are especially vulnerable in the circumstances. The provincial authorities have not discussed any proposals about where the villagers can be relocated. As of September 2014, at least 19 families from Talad Kway community and 19 more families are still living in temporary shelter in Nondindaeng district. No compensation or relocation site has never been discussed.

## **Forcible Eviction of Karen People from Kaeng Krachan National Park by the State of Thailand (in western part of Thailand)**

51. For more than a decade, the Government of Thailand, and specifically the National Park and Forestry Authority, have been attempting the forcible eviction of Karen indigenous people from the Kaeng Krachan National Park (“KKNP”). These evictions have resulted in numerous violent and discriminatory human rights abuses.
52. The forcible evictions may even be linked to the murder of Karen human rights defender Mr Tatkamol Ob-om who was shot on 10 September 2011 after helping one of the victims petition the Thai National Human Rights Commission. These evictions continue despite a clear legal framework which protects the rights of the Karen people to remain on their ancestral lands and continue their traditional cultivation system.
53. Much of the conflict between the Karen and the Thai State began in 1961, when a part of the Karen people’s ancestral lands were declared to be part of KKNP by way of the National Park Act. Since this time, the State has relied on many arguments to legitimise the forcible eviction of the Karen people, from claiming that the cultivation techniques they use are damaging to the environment to arguing that the evictions are necessary for national security, to claiming that the evictees are involved in the drug trade or arguing that the Karen are not even of Thai decent. These arguments do not withstand scrutiny.
54. The most recent forced eviction occurred in July 2011. During this attack national park guards burned the homes and food supplies of the Karen, stole valuables, killed livestock and forced villagers to flee. The Head of the KKNP, then, claimed that these latest evictions were undertaken against undocumented migrants from Myanmar, rather than Karen indigenous people. It was further argued that even if the evictees had been indigenous people, the evictions would still have been lawful because the Forestry Law prohibits anyone from occupying the park.
55. Evidence from this incident indicates that the evictees were indeed Thai by birth and decent. Further, sections 66 and 67 of the 2007 Thai Constitution provide for the right of Thai people to remain in protected areas, such as KKNP, as long as it can be proven that their people occupied the land before its establishment and demarcation. Moreover, the Cabinet Resolution, adopted on 3 August 2010, specifically affirmed the rights of the Karen people to remain on their land and to continue their pattern of agriculture.
56. A tragic incident happened to a Karen community and environmental rights activist after the long flight to get justice over the forced eviction in KKNP. Mr. Pholachi Rakchongcharoen, also known as Billy, an activist for the rights of the indigenous Karen in Thailand’s largest national park, is believed to have been enforced disappeared since 17 April 2014. The truth about his fate and whereabouts remains unknown till today. Mr. Pholachi has five young children with his wife, Ms. Pinnapa Puagsapan. His wife and his family including his friends and other CSOs, believed that his enforced disappearance is in connection with his attempts to hold authorities to account for human rights violations against ethnic Karen residing in KKNP.

## **Article 11 – The right to an adequate standard of living**

### **Recommendations**

57. Since the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/ or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection therefore Thai government shall consider to relocate the evicted community back to the dispute land. Then applying participatory approach together with local communities, therefore the right to an adequate standard of living would be restored
58. Provide compensation to evicted local communities and take measures for their rehabilitation such as ensure that they have adequate housing, adequate land for cultivation and that they are able to access other rights such as health care and schooling for their children immediately
59. The government of Thailand should recognize the “hill tribes” of the North and the “chao le” of the Coastline of the south and other “tribal peoples” in the Northeast, East and West as indigenous. Therefore National forestry and land laws should legally recognize the collective rights of indigenous peoples over their lands, territories and resources as per the United Nations Declaration on the Rights of Indigenous Peoples.

## **Article 12 – The right to physical and mental health**

### **Part 3: Rights to Health of Indigenous peoples and ethnic groups in Thailand**

60. The promulgation of the National Health Security Act B.E. 2545 (2002), has been successfully provided Universal Healthcare Program for all Thai citizen, it made up 99 per cent of the Thai population is covered through a comprehensive healthcare package that ranges from health prevention and primary care, to hospitalization due to traffic accidents to renal replacement therapy and access to treatment for HIV.
61. However, the Universal healthcare Program is not for 680,000 ethnic minorities which including those who their Thai nationality are not yet being verified. Prior to the health scheme those who has not yet verified their Thai nationality used to enjoy public health services through the Welfare Program for People with category of low income or with the 500 Baht Health Card program of the Ministry of Public Health.
62. Due to the interpretation of the Office of State Council interpreted that these not yet verified their Thai nationality are not “Thai citizens” as per Section 5 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). As a result, they are not entitled to basic public health services including the universal healthcare. Likewise, the National Health Security Office (NHSO) has received no budgets to provide for basic health services for these groups of population.
63. Since 2002, these groups of people was not access to universal health scheme. Public health facilities which are supposed to provide services to them based on humanitarian principle are not allocated with financial resources to do so. They have to take out part of the budgets earmarked for Thai citizens to make possible services for these group of

populations. This has inflicted an increased burden on public health facilities, particularly among those concentrated around border provinces in the Northern region that are home to most of ethnic minorities in Thailand.

64. On 18 January 2005, the cabinet endorsed the “strategy to address non-verified Thai nationality population” as proposed by the National Security Council (NSC). It was an attempt to set out a guideline to handle problems concerning legal status and rights of all groups of people dwelling in Thailand. Four strategies were spelled out including (1) legal status determination strategy, (2) the provision of fundamental rights to those who has not yet verified Thai citizenship strategy, (3) the proactive and creative measure to push back new immigrations strategy, and (4) management strategy to address the issue.
65. The violation of rights to universal healthcare that discriminated against these population still happened despite the fact that on 30 June 2009, the cabinet endorsed the Statute of National Health in which Article 16 states that the health security and protection must be made available to all of the people living in Thailand without discrimination based on economic or social status, physical condition, disability, gender, age, domicile, race, nationality, religion, culture, political belief and ideology.
66. NHSO holds the supporting idea that universal healthcare shall be provided to all peoples. If the people are deprived of treatment and care, they shall become a source of communicable diseases among Thai population including TB, HIV/AIDS, Malaria, dengue fever, etc. According to the Bureau of Epidemiology, Department of Disease Control, Ministry of Public Health (MoPH), it is clearly established that diseases commonly found among undocumented persons who have access to services of the MoPH are mostly communicable diseases which can be controlled and prevented. And if no effort is made to contain them, they can spread and cause massive harm to the Thai population.
67. To address a lack of access to basic public health services among non-verified Thai Nationality and to effectively control diseases and to reduce burden of public health facilities having to provide services to these population, the NHSO has set up the “Fund to Provide Public Health Services to non-verified Thai nationality” and proposed action plans to the cabinet including the following;
  - 1) The population and number: The grouping of people shall be based on the criteria set forth by the NSC for undocumented persons including four groups – ethnic minorities being temporarily allowed to live and those having permanent residency in Thailand with ID card numbers beginning with 3, 4, 5, 6, 7, 8 and 0 including students living off subsidies from the government; rootless persons and those contributing to the nation who have been registered under the TR38K system. The number of the people is 457,409 in total.
  - 2) Duration: An attempt shall be made to register and issue a card under the national universal healthcare program and to provide fundamental rights to the undocumented persons beginning from 1 April 2010.
  - 3) Financial resources: The financial resources to be provided to health facilities in the 2010 fiscal year shall be calculated based on a per head amount varying to the structure of the age and according to the criteria used in the National Health Security System. Each person is allocated per year with 2,067.40 baht (69 USD/per person), or 472.8 million baht (15.8 million USD) in total.

68. On 23 March 2010, a cabinet resolution was approved in principle for the MoPH to offer the right to fundamental health services to 457,409 non-verified Thai Nationality individuals. It covered the rights to health promotion, treatment, rehabilitation, disease control and prevention and became effective since 1 April 2010. Now the scheme was supported with central administrative funds and contingency funds and the fund is sufficient.
69. However, due to some legal interpretation, there are still people who are not yet subject to this universal healthcare under the National Health Security System and the Rights Reinstatement Fund by the virtue of the 23 March 2010 Cabinet Resolution. This includes more than 402,179 persons who are non-verified nationality who can be classified as;
- 1) Persons with ID card numbers beginning with '0' who are included in the TR38K civil registration and with the sixth, seventh, eighth, and ninth digit (0-xxxx-89xxx-xx-x) who have been part of the survey of ethnic minorities who have been living in Thailand for a long time, but are unaccounted for (Group 1 according to the 2005 strategy) including 150,076 persons.
  - 2) Descendants of undocumented persons who are issued with Birth Certificate 13-digit-numbers beginning with '0' (descendants of Group 1) including 56,672 persons
  - 3) Those undocumented persons whose birth status cannot be verified. Their ID card numbers being with '0' and the sixth or seventh digit will be 0 and 0 (0-xxxx-00xxx-xx-x) including 1,883 persons
  - 4) Aliens who are born in Thailand but are not given Thai nationalities as per Article 7 bis (1) of the 1965 Nationality Act. They are given birth certificates the 13-digit-numbers of which begin with '7'. They cannot be grouped with descendants of the ethnic minorities since their parents have failed to indicate their ID numbers. The group accounts for 123,548 persons.
  - 5) Students in public and private schools who missed out on the civil registration survey and are issued with the coded script 'G' including more than 76,540 children.
70. HPT holds the interpretation that the above population is entitled to fundamental health rights as per the 23 March 2010 Cabinet Resolution starting from 1 April 2015. We also regards that for example, Umphang Hospital in Tak Province uses more than 30 million baht per year to provide medical treatment on humanitarian basis to those not subject to universal healthcare. It has incurred burden to the public health facilities.
71. With the successful movement of various groups, the cabinet resolution dated on 16 April 2015 agreed to provide that Non-verified Thai nationality individual of 208,631 to be restored in the universal healthcare program therefore they now obtained their rights to basic health care.
72. The 208, 631 individuals are consisting of;
- a. Persons with ID card numbers beginning with '0' who are included in the TR38K civil registration and with the sixth, seventh, eighth, and ninth (0-xxxx-89xxx-xx-x) who have been part of the survey of ethnic minorities who have been living in Thailand for a long time, but are unaccounted for (Group 1 according to the 2005 strategy) including 150,076 persons.

- b. Descendants of undocumented persons who are issued with Birth Certificate 13-digit-numbers beginning with '0' (descendants of Group 1) including 56,672 persons
  - c. Those undocumented persons whose birth status cannot be verified. Their ID card numbers being with '0' and the sixth or seventh digit will be 0 and 0 (0-xxxx-00xxx-xx-x) including 1,883 persons
73. However, there are still 76,540 children students in public and private schools who missed out on the civil registration survey and are issued with the coded script 'G' that was not included in the Cabinet Resolution dated 16 April 2015.

## **Article 12 – The right to physical and mental health**

### **Recommendations**

74. Thai government shall approve budget allocation per head supporting the Cabinet Resolution dated 16 April 2015 immediately. Thai government after approved the Cabinet Resolution but it was announced that the allocation of budget shall be pending upon the consideration whether the national budget will be allowed to allocate or not. The promise of upholding access to Universal Healthcare scheme to all shall not be restricted due to the constraint of budget.
75. Thai government shall reconsider to add the student coded "G" of 76, 540 students in the Universal Healthcare as soon as possible and allocated budget per head accordingly.
76. Establish "Border Disease Control Fund" under the Ministry of Public Health to cope with those migrants and non-verified Thai nationality that not cover under Universal Healthcare. The group of these population in accounts for 1.5 million. The budget per head is 383.61 baht/person/year (13 USD/person/ year) or 161.5 million baht (5.4 million USD/ year). These will be earmarked to reduce the burden of state facilities and to promote health, and enhance control and prevention of diseases.
77. To ensure sustainable solutions to health problems and equality and fairness to all groups including non-verified Thai citizen, Thai government must review and revise Article 5 of the 2002 National Health Security Act to address the needs of the non-verified Thai nationality who is undergo investigation to verify their full nationality. They should be entitled to healthcare services and health insurance without discrimination.

## Annex I

### Law and State Policy on land and natural resources

#### a. Forest Act, 1941

78. The Forest Act is primarily concerned with the regulation of logging operations. As per Section 4 of this Act, a forest is defined as any land which had not been acquired by any person under the land code. Section 4 also defines forest product – as all products that naturally originated or were found in forests such as timber, plants, bird nests, honey, stones, charcoal etc. The Act regulates the logging of timber as well as collection of natural forests products by a system of licensing and payment of royalty. Under chapter 5 of the Act people can only use that forest land which was notified as ‘agricultural area’ by the authorities. Any person found to be in illegal possession of untransformed and restricted timber is liable to imprisonment for up to 5 years or fine of 50,000 baht or both. Any person found to be in illegal possession of restricted forest produce is liable to imprisonment up to one year or fine of 10,000 bath or both. The Act also provides for seizure of any product made illegally out of restricted forest produce.
79. Thus in effect, through this law, the State assumed control over all land and natural resources. Land could either be privately owned or State owned. It also converted resources that have been gifted by nature, to ‘commodity’ the usage of which could be regulated by the State. The State completely ignored the rights of those people who had been living in these forests for generations, and whose life and livelihood was intricately linked with the resources that were available from the forests. Since such people did not have any title deed – occupation of land termed by them was illegal and they were also prohibited from making use of the forest produce.
80. The Act did not completely prohibit use of forest resources. Licenses could be obtained from the State for logging and collection of forest produce. However indigenous people did not have the organizational capacity to compete with commercial enterprises in obtaining such licenses. Moreover many of the indigenous groups were not even recognized as citizens of Thailand, so they did not have any legal status to even apply for a license.

#### b. National Park Act, 1961

81. The Minister of Agriculture is responsible for the execution of the Act. Under the Act, if the government finds that certain natural features of a land area should be maintained and preserved for the benefit of public education and pleasure, it may declare such land to ‘National Park’ land by a Royal Decree. A map showing the boundary lines of the determined area has to be annexed to such Royal Decree. The National Park land will also be surrounded by appropriate sign posts marking out its boundary.
82. To protect and maintain the National Park, the Act prohibits different kinds of activities within the national park area. Such activities include possession of land within the Park, engaging in slash and burn agricultural practices, collecting natural forest produce or taking in cattle within the park. It also prohibits any actions that may endanger wildlife,

deteriorate or alter the natural resource. Any activity for benefit can be only carried out if a written permission has been obtained from the appropriate authority.

83. A person found to be violating the provisions of the Act can be evicted from the National Park. If the authorities find that any change has been made to the National Park, they may order the offender to remove such changes and restore the Park to its earlier condition. Also the offender is responsible for any expenses incurred by the authorities in restoring the condition of the Park.
84. A person found guilty of occupying National Park Land can be punished with imprisonment up to five years or a fine up to 20,000 baht or both. A person found guilty of collecting forest produce or allowing cattle to enter the national park can be punished with imprisonment up to one month and fine up to 1000 baht or both.

#### **c. National Reserved Forest Act, 1964**

85. Under this Act, definition of forest included mountains, rivers, canals, waterway, island, sea-shore – land that has not been acquired by anyone. The objective of the Act is preservation of forests, rather than regulating trade in forest products. The Ministry of National Resources and Environment has the authority to declare any forest to be a 'national reserved forest' under the Act, by issuing a regulation to that effect. Such regulation has to be accompanied by a map identifying the boundary of such national reserved forest. The copy of the regulation and the map has to be notified in an appropriate public place in the related districts. Also the boundary of such reserved forest has to mark out by appropriate signposts.
86. Under section 12: a person can claim rights over land in a national reserved forest area by making an application before the appropriate authority within 90 days from the ministerial regulation. If a request is not made within that period, then such person is deemed to have renounced his or her right or benefit.
87. Under section 13: the National Reserved Forest Committee is authorized to make necessary investigation into petitions filed under section 12. If the authorities find that the rights of the person have been affected, an appropriate compensation shall be paid to such person.
88. Under section 16, a person can also apply for permission to live in the Reserved Forest Area, though granting of such permission depends on the procedures and conditions specified by the Director General and approved by the Minister. If any part of the forest area is found to have deteriorated, then permission can be given to continue living or utilizing such deteriorated forest area.
89. Chapter II of the Act prohibits any kind of activity within the Reserved Forest Area such as cultivation, logging or collection of forest produce. A person may do logging or collect forest produce after obtaining a license from the authorities.
90. This Act further erodes away the rights of IP to their lands and resources. First it offers only monetary compensation for taking away their land resources. Money cannot

compensate for the loss of security of life and livelihood which is offered by land and forest resources. The indigenous people have no other skills other than that of farming and when that is taken away from them, it becomes very difficult for them to earn a living for themselves.

91. The other problems associated with the Act is that many times villagers do not have any information that the area that they are living in has been declared as a National Reserved Forest, until it is too late. Usually the maps attached to such Declaration are very difficult to read and understand. As a result many villagers are not able to claim any rights.
92. The Act also assumes a formal equality of the indigenous people with the rest of the society, as it gives everybody a right to apply for licenses to use forest resources. However, first, many of the indigenous people have still not obtained citizenship status. Even if they have Thai citizenship it is not easy for them to comply with all the necessary requirements for applying for a license. Even if they do manage to submit their application, they have a very low chance of getting a license since the authorities have very strong biases against them.

#### **d. Wild Animal Preservation and Protection Act, 1992**

93. A National Wildlife Preservation and Protection Committee is functioned under the Ministry of Agriculture. Chapter 6 of the Act, gives authority to the Minister of Agriculture to declare any area to be a 'Wild Animal Reserved Area' to ensure the preservation of wild animals. It gives the authority to designate areas for conservation of wildlife and list the species that are to be protected. The different provisions of the Act make it unlawful to do any act that destroys and endangers wildlife and their habitat. Thus under Section 37 and 38, no persons can enter, possess or occupy sanctuaries.
94. This act which has often drawn comments that the life of animals is more valuable than that of indigenous people, lays down that down that no person can live or do any activity that is declared to be wild animal reserved area.

#### **e. Land Code 1954**

95. Section 5 of the Code provided the option to people occupying forest land as on 30<sup>th</sup> November 1954, to prove their claims and obtain a user certificate. However such claim had to be presented within 180 days of the promulgation of the Act.

#### **f. Cabinet Resolution 22 April 1997**

96. A series of three Cabinet Resolutions dated 17<sup>th</sup>, 22<sup>nd</sup> and 29<sup>th</sup> April 1997, gave some recognition to the rights of the people who had been living inside the forests. Under the Resolutions, a Sub-Committee at the provincial level would examine petitions made by people to revoke the declaration of forest land or national park over a certain area. After investigation, the Committee could give suggestions to the Cabinet to amend the Declarations of Forest Land or National Park with respect to the particular areas. Thus for the first time, rights of people living in forests prior to the declaration of reservation areas was taken into consideration. It agreed to the proposal of the National wide Resolution and Measure on Land dispute and Encroachment of forestry land and National Parks that

categorized forestry land to 5 groups as proposed by forestry and parks official and urged concerned agencies to implement but has no participation of local communities in this regard.

**g. Cabinet Resolution 30<sup>th</sup> June 1998**

97. This Cabinet Resolution gave some recognition to the rights of the people living in forests. As per this Cabinet Resolution, a person could reclaim his / her land by a two-step process. First, persons wanting to reclaim land have to prove that they had been living in the area before the Declaration proclaiming such area to be reserved or protected area was issued.
98. Second, if a person can prove ownership or occupation as above, then the piece of land reclaimed has to pass through some tests such as
  - a. The degree of the slope of land is not more than 30 degrees
  - b. The land is not in an area that is deemed 'sensitive' by the forest department – such as: it is not home to any endangered species of wild life, or it does not have any natural features such as waterfalls, caves or springs.

In cases where the piece of land claimed by the person fails to pass these criteria, such person would be given alternative piece of land.

**h. Cabinet Resolution 11st May 1999**

99. All villages in the communities in the forest area can be registered. The announcement shall be displayed 7 days before the registration date. The registration process will handle by officers to do registration for village communities living in the forest areas. The announcement shall be displayed 7 days before the registration date. Villagers living in the forest areas shall registered within 30 days (official working days and at the designated office only). The applicants to be eligible should have Thai citizenships. The application should be made in the official form provided. The applicants should submit the following documents with the application form; (1) Copy of ID, (2) Copy of house registration
100. Land identification shall be conducted by Forestry Department that hold a meeting to consider details of process of land identification. The officers from the Provincial Office and from the Regional Forest Department shall be responsible for implementing the process. After the completion of the registration, the forestry department shall present a report to concerned offices.
101. Forestry Department shall organize the meeting in order to consider the verification land rights process. Verification process shall be according to Cabinet Resolution on 30 June 1998 titled "Resolution of land (rights/dispute) in the forest. In order to implement land registration and identification, the government through the Cabinet has agreed to provide temporary protection. If there is any act of encroachment over forestry lands after that, legal action against such acts will be taken strictly.

## **I.Royal Projects**

102. Under these different projects, forest areas have been claimed for the purpose of reforestation and preservation. After claiming of land by these projects, some land is given to the villagers for housing purposes. Under these projects different kinds of farming activities are carried out. However these projects are dependent on the government for their budgets. So activity under these projects, and consequently benefit received by the local people are dependent on budget allocated by the government to these projects.

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**Annex 2**  
**Unofficial Translation**  
**The National Council for Peace and Order**  
**NCPO Order 64/2557<sup>8</sup>**

*Suppression and stop the encroachment and destruction of forest resources*

In order to ensure efficient operations of the NCPO on the suppression and stop the encroachment and destruction of forest resources to be carried out which will mitigate negative impacts on economic, social and environment of the country, the order of the NCPO is to be readjusted as follows:

1. Ministry of Defense, Ministry of Interior, Royal Thai police, Ministry of Natural Resources and Environment, Peace and Order Maintaining Command, Border Defense Command of Royal Thai Army and Royal Thai Navy including other concerned government agencies shall suppress and arrest encroachers as well as people who possess, destroy or commit any actions that lead to a worsening of the forest condition. Conspirators and supporters shall also be arrested. The said agencies shall also suppress deforestation, illegal logging and smuggling along the borders including the suppression of encroacher networks in every village and community.
2. Concerned agencies shall control and monitor wood lumber business, wood lumber factory, wood lumber trade as well as trading or possessing of restricted wood and any matters made of restricted wood. Any negligence or intentional violation of law shall be swiftly punished.
3. Concerned agencies shall follow up on cases pertaining to forest and rehabilitate encroached land in order to transform the forest into its former status. The agencies shall cooperate with all relating agencies including public sector and community organizations so that they can actively participate in the improvement process.
4. Government officers who neglect or involve in the aforementioned crime shall be imposed disciplinary as well as legal punishment immediately.
5. Ministry of Natural Resources and Environment shall follow up the progress according to number 1. – 4. and continuously report to the NCPO

This Order shall take effect immediately.

Announced on 14 June B.E. 2557 (2014)

General Prayuth Chan-O-Cha  
Head of the National Council for Peace and Order

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<sup>8</sup> See NCPO Order 64/2557 [http://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-order64.pdf](http://library2.parliament.go.th/giventake/content_ncpo/ncpo-order64.pdf)

## Annex 3

### Unofficial Translation The National Council for Peace and Order *NCPO Order 66/2557<sup>9</sup>*

*Additional government agencies for suppression and stop the encroachment and destruction of forest resources and interim policies on practices in the current situation*

In order to ensure efficient operations and coordination on the suppression and stop the encroachment and destruction of forest resources to be carried out which will mitigate negative impacts on economic, social and environment of the country, the order of the NCPO is to be readjusted as follows:

1. A special unit of the Internal Security Operations Command (ISOC), an agency comprised of military, police, and civilian officials, to aid in the enforcement of NCPO Order No. 64/2557 (2014) on Suppression and stop the encroachment and destruction of forest resources.

2. Concerned agencies shall comply with interim policies in the current situation as follow:

2.1 Ordering all concerned government agencies to adhere to the policies and practices and any operation must not impact the poor, people with less income and the landless who live in the land before the enforcement of the Order. For the new encroachers, there will be investigation and right proving procedure so that the appropriate practice and process can be identified.

2.2 An immediate action in the current situation is to prevent an additional land encroachment by strictly and systematically enforcing laws.

2.3 Concerned agencies shall systematically specify measures and procedures together in order to solve deep rooted problems and immediately ask for an approval from the National Council for Peace and Order (NCPO).

2.4 Any ongoing cases in the justice system procedures shall proceed until the termination.

This Order shall take effect immediately.

Announced on 17 June B.E. 2557 (2014)

General Prayuth Chan-O-Cha  
Head of the National Council for Peace and Order

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<sup>9</sup> See NCPO Order 66/2557 [http://library2.parliament.go.th/giventake/content\\_ncpo/ncpo-order66.pdf](http://library2.parliament.go.th/giventake/content_ncpo/ncpo-order66.pdf)