

No. 52101/249



PERMANENT MISSION OF THAILAND
GENEVA

6 July B.E. 2564 (2021)

Dear Sirs and Madam,

I wish to refer to your Joint Communication ref. AL THA 4/2021 dated 30 June 2021, concerning the alleged violations of the rights of the Karen indigenous peoples in the Kaeng Krachan Forest Complex (KKFC).

Thailand reaffirms its commitment to engaging in good faith with the UN human rights mechanisms, including the Special Procedures. While believing that the mandates of the respective UN bodies should be upheld and respected, Thailand is of the view that the Special Procedures should maintain a constructive and regular dialogue with countries concerned. Thailand regrets that so far it had never been approached by the Special Procedures to gather our views or comments before the elaboration of the said Joint Communication, which, once released, might have sowed a misunderstanding among the general public. The Joint Communication contains a number of gross inaccuracies which should have first been verified with Thailand. Moreover, we were also dismayed at the Joint Communication, which was sent to members of the World Heritage Committee (WHC) on the eve of a WHC meeting without any prior consultation with Thailand as State Party and country concerned. Certain concerns raised to the attention of the Special Procedures by the unidentified sources reveal a lack of understanding of the multifaceted nature of the World Heritage Convention and its mechanisms. The Joint Communication further reinforces Thailand's view that the work of the human rights mechanisms should therefore be considered separately from the world heritage mechanisms.

In this regard, I wish to transmit herewith the preliminary responses addressing certain issues raised in the Joint Communication for your perusal. A detailed and most updated information will be sent to the Special Procedures at a later stage, once it is obtained from Thai agencies concerned.

In reiterating Thailand's commitment to the promotion and protection of human rights for all, I remain,

Yours sincerely,

(Rongvudhi Virabutr)

Ambassador and Deputy Permanent Representative
Chargé d'affaires a.i.

Mr. David R. Boyd,

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

Ms. Mary Lawlor,

Special Rapporteur on the situation of human rights defenders;

Mr. José Francisco Calí Tzay,

Special Rapporteur on the rights of indigenous peoples,

Office of the United Nations High Commissioner for Human Rights,

GENEVA.

Initial Comments on the Joint Communication

1. Thailand was dismayed at the Joint Communication from the UN Human Rights Special Procedures sent to members of the World Heritage Committee (WHC). Once again, the Special Procedures have chosen to address a communication to WHC members on the eve of a WHC meeting, **without any prior consultation with Thailand as State Party and country concerned**. The Joint Communication claims new information, which Thailand disputes, and its timing under World Heritage Convention Operational Guidelines does not allow Thailand as UN and WHC Member State to officially circulate its clarifications on an equal basis as the Joint Communication.

2. Thailand has in fact engaged in good faith with the UN human rights mechanisms. It believes that the mandates of the respective UN bodies should be upheld and respected. Thailand remains committed to dialogue on human rights dimensions in regard to ethnic communities in the Kaeng Krachan Forest Complex (KKFC). Nevertheless, certain concerns raised to the attention of the Special Procedures by the unidentified sources reveal a lack of understanding of the multifaceted nature of the World Heritage Convention and its mechanisms. They further contain a number of gross **inaccuracies which should have been verified with Thailand**, had we been given the opportunity. The Joint Communication further reinforces Thailand's view that the work of the human rights mechanisms should therefore be considered separately from the world heritage mechanisms.

3. We respect, *inter alia*, the mandate of the Special Rapporteur on the Rights of Indigenous Peoples, and had joined UN Member States in adoption of the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) in recognition of relevant situations around the world. Nevertheless, Thailand has consistently maintained the interpretation that the term "indigenous peoples" refers to those who are pre-settlers or had lived in the area in the pre-colonial period, which is not applicable in the case of Thailand. Moreover, all 62 ethnic groups residing in Thailand have been provided a firm legal recognition since the adoption of the 1997 Constitution and subsequent Constitutions.

4. Thailand therefore objects to the reference to members of the local community in Ban Bang Kloi in the KKFC as being "indigenous", including the attributes attached thereto. Accordingly, while Thailand has extended an open invitation to human rights procedures on issues under the purview of the Human Rights Council (HRC), the request for an official country visit by the Special Rapporteur on the Rights of Indigenous Peoples has not been responded to as we believe the mandate has no immediate application to the Thai context. Notwithstanding this, we have engaged in dialogue with the Special Rapporteur in good faith.

5. We wish to address certain issues addressed in the Joint Communication on a preliminary basis:

- a. Allegations of “militarization” and the presence of military personnel and armed national park officers in the KKFC are a deliberate misrepresentation of the situation on the ground. Indeed, the presence of armed officers should not come as a surprise as the KKFC is adjacent to Thailand’s borders with Myanmar. Given the porous border and potential for cross border movements, Army Rangers and officers of the Department of National Parks, Wildlife and Plant Conservation (DNP) often need to be protected and armed. This has no bearing on the relations with local communities. Indeed, **camera traps** have been positioned, not to track human movements, but to ensure **monitoring of the biodiversity** of the property, including identification and recording of numbers of valuable species such as tigers, constituting as such an essential element for protection and integrity under the World Heritage Convention.
- b. **The rights of the residents of Ban Bang Kloi have been recognized under land use arrangements and agreements** which have already been mentioned in detail in the additional information sent to the World Heritage Centre. It must be underlined that the community of Ban Bang Kloi is located in the centre of the Kaeng Krachan National Park (KKNP). However, should the residents move to settle in a different area within the KKNP, they would be in violation of the National Park Act.
- c. The understanding reached between the Minister of Natural Resources and Environment and the Save Bang Kloy Network and other representatives should be considered as constituting one initial reference point for further discussions. Additional measures and understandings have since been put in place. **The Minister has gone on record, most recently on 2 July 2021, to confirm the commitment to continue the work in progress on community livelihoods**, including through the work of the committee established by the Prime Minister and its 5 sub-committees, regardless of World Heritage status, as the KKFC is a valued part of the national heritage. Moreover, over 20 organizations have been conducting no less than 88 projects in Ban Bang Kloi, so there is transparency about activities for the local communities, again this is mentioned in information sent to the World Heritage Centre.
- d. The insinuation that local community members were harassed and even threatened is groundless. Kaeng Krachan Dam and Reservoir covers a vast area encompassing the nearest settled community outside of the KKNP, and is where the park offices are located. So the mere fact of the authorities moving some people for questioning at the park offices at Kaeng Krachan Reservoir should not be misrepresented.

- e. Following the events in early 2021, those community members charged with various offences in relation to encroachment at Upper Ban Bang Kloi were immediately released. DNA evidence taken of those charged has been to verify their identity or relationship to members of the local communities, as some do not yet possess ID cards. The Joint Communication chose also to refer to potential maximum penalties for violation of relevant legislation, whereas the courts have the discretion to impose a range of penalties.
- f. Implementation of the National Park Act of 2019 and the Wildlife Preservation and Protection Act of 2019 is work in progress. They enshrine the ethos of people living with the forest. The Joint Communication fails to do justice to the letter and spirit of the two pieces of legislation, in particular Article 18 of the National Park Act that embraces the principles of consultation with local communities. That this principle is enshrined in national legislation gives the lie to the suggestion that there is no engagement with the local communities nor any obligation to do so. Moreover, **double standards** seem to have been reflected in the comments referring to the delay in enactment of the decrees under the Act that would consolidate land tenure, while lamenting that the initial land survey was allegedly undertaken expeditiously.

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