

Mandates of the Special Rapporteur on the rights of indigenous peoples; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL THA 4/2020

20 April 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights of indigenous peoples; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 42/20, 36/6, 37/8 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged violations of the rights of the Karen indigenous communities in the Kaeng Krachan Forest Complex (KKFC), in view of the Government of Thailand's decision in January 2020 to resubmit the KKFC file for consideration by the World Heritage Committee in June 2020. Allegations have been received regarding the persistent impunity for past violations against the Karen, the lack of measures to address their land rights, their concerns about the World Heritage designation process and their right to participate in the future forest management plan, in line with international human rights standards, including United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international environmental law.

We wish to recall the previous related communications on this situation, sent in February 2019 to the Government of Thailand, the IUCN World Heritage Panel and the UNESCO Heritage Committee (AL THA 2/2019, OL OTH 7/2019, OL OTH 8/2019).¹

According to the information received:

Human rights violations of a continuing nature

The past human rights violations are of a continuing nature, notably the failure to address the land rights concerns of the Karen in the KKFC as well as the impunity for the killings and enforced disappearance of human rights defenders and the forced evictions of members of the Karen community.

1) Mr. Tatkamol Ob-om, a human rights defender who was supporting Karen villagers to report allegations of abuses, violence, and illegal loggings in the Kaeng Krachan National Park, was shot and killed in September 2011. Mr.

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

██████████ the then Kaeng Krachan National Park chief, and three other persons were charged for premeditated murder but were acquitted by the Phetchaburi Court. In October 2014, the judgement was confirmed by the Appeal Court Region VII, which stated that evidence adduced could not prove the guilt beyond reasonable doubt. The family failed to lodge an appeal to the Supreme Court within the legal stipulation of 30 days. According to the Article 216 of the Criminal Procedure Code, the Appeal Court's judgement is now final, and the case is closed. The family of the victim failed to access truth, justice, remedy and protection. Furthermore, there has been no attempt from the duty bearers to continue its investigations, in order to ensure the provision of justice to the family and to end the cycle of impunity regarding violations of the Karen's rights.

2) Mr. Porlachee Rakchongcharoen (also known as Billy), a prominent Karen land rights defender from Kaeng Krachan District, Petchaburi province, was last seen on 17 April 2014 in the custody of four state officials including the former chief of the Kaeng Krachan National Park, Mr. ██████████, who later claimed that Mr. Rakchongcharoen was released the same day.

On 17 April 2018, the Department of Special Investigation (DSI) took up this case and have provided witness protection measures to Ms. Pinnapa Pruksaphan, wife of Mr. Rakchongcharoen. On 6 September 2019, the DSI announced that human skull fragments found near a dam in Kaeng Krachan National Park belonged to Mr. Rakchongcharoen. Later, on 11 November 2019, the DSI obtained warrants from the Central Criminal Court for Corruption and Misconduct against four suspects, including the former chief of Kaeng Krachan National Park, Mr. ██████████. The suspects were charged with premeditated murder, coercion, deprivation of liberty and extortion. In November 2019, the DSI submitted the case to the Attorney General Office (AGO) to consider issuing an indictment.

However, on 27 January 2020, the AGO announced the indictment of the four suspects including Mr. ██████████ for only one charge: for failing to perform duties and hence causing damages to a person. The AGO issued a non-prosecution order against the four suspects on the six more serious charges requested by the DSI, citing insufficient evidence. This omits prosecution under different laws including the Articles 83 and 157 of the Criminal Code and under the Articles 123/2 and 172 of the 2009 Organic law on Prevention and Suppression of Corruption. It was mentioned that the DNA tests linking the skull bone fragments to Mr. Rakchongcharoen's mother is not enough to verify the remains. The DSI had until 28 February 2020 to submit additional evidence to appeal the decision of the AGO. Reportedly, the DSI is still working on the case.

As a result of the AGO's decision, the Ministry of National Resource and Environment ordered that Mr. ██████████ be moved back from the provincial office in Pattani to the post of the Director of the Administration Office of the 9th Conservation Area in Ubon Ratchathani province.

The wife of Mr. Rakchongcharoen, who is still under the witness protection program of the DSI, received a letter from the AGO informing her about this decision. The AGO stated that it could not investigate further based on the weak evidence submitted by the DSI. The rejection of the DNA evidence means that Mr. Rakchongcharoen's whereabouts remains unclear. This not only impairs the victim's family right to truth but also entrenches impunity. The victim's wife can lodge a criminal case directly with the relevant court, however that is extremely onerous as it places the burden on an individual to collect robust admissible evidence on a complex and protracted criminal case.

Currently, representatives of the victim, with the assistance of pro-bono legal advice, are preparing to submit a request to the Phetchaburi Provincial Court to consider the status of Mr. Rakchongcharoen on the basis of the DNA test report of the DSI. If the Court rules that Mr. Rakchongcharoen was killed, his family could lodge a complaint directly with the Phetchaburi Provincial Court for premeditated murder against the four suspects.

3) Mr. Wut Boonlert, a prominent Karen human rights defender, who filed a complaint regarding the KKFC with the National Human Rights Commission in 2009, was charged for criminal defamation in the Min Buri Provincial Court. He posted on his Facebook page a comment regarding the alleged personal use of National Park land by Mr. [REDACTED]. The court dismissed the charges on 18 November 2019. The AGO is now considering an appeal against this decision.

Concerns regarding the meaningful participation of the Karen community in the process of the World Heritage Status application for the KKFC

The Elders of Pong Luek-Bang Kloy village in Huay Mae Preang Sub-District, Kaeng Krachan District, Phetchaburi province, have raised concerns regarding the meaningfulness of the government's consultation with villagers in the KKFC on land issues, their participation in the management of forests, and the World Heritage nomination.

According to the Elders of Pong Luek-Bang Kloy who participated in the meeting held by the Department of National Parks, Wildlife and Plant Conservation (DNP) on 21 December 2019 and signed the Memorandum of agreement to support the inscription of KKFC as a World Heritage Site, around 60 Karen villagers were called for the meeting. The Officials of the Department of National Parks informed the villagers that the meeting was called in context of the consultation on land allocation for villagers under the government policy called "Land

Management and Allocation for the Poor” which was launched in December 2018².

The Elders claim that the officials from the Department of National Parks misled the villagers into thinking that the consultation and the Memorandum were only about land allocation for the villagers. The villagers were reportedly not given the time to read the Memorandum carefully, and voluntarily inscribed their fingerprints on the Memorandum as they thought they were giving their consent to the agreement on land allocation for villagers under the “Land Management and Allocation for the Poor” policy.

In January 2020, members from Pong Luek-Bang Kloy villages submitted a complaint letter with the Chairperson of the House of Representative’s Standing Committee on Land, Natural Resources and Environment. It asked the Committee to investigate the process of the World Heritage Status application for the KKFC.

While the letter did not oppose the designation of KKFC as a World Heritage Site, it did however raise concerns over the potential negative impact that World Heritage status may have on the traditional livelihoods of the Karen, their exercise of land rights, their potential exposure to forced evictions³ and the negative impact of increased tourism on Karen culture and environment. The letter urged the Government to resolve the land problems and to acknowledge the economic and cultural dimensions as part of the rights of the indigenous peoples who are living in the National Forest before applying to the World Heritage Status for KKFC. It also urged the Government to stop arresting and prosecuting indigenous peoples under trespassing charges and to investigate and prosecute the enforced disappearance and killing of Karen human rights defenders.

² Reportedly this policy has been initiated by the Prime Minister Gen. Prayuth Chan-O-Cha and it has been launched in December 2018. The objectives of this policy include 1) to conduct a survey and documentation on land and 2) to allocate the empty land to the Poor for farming. This policy has been launched as response of the strong criticisms about the forced eviction of the poor under the National Council for Peace and Order (NCPO)’s Order No.66/2014 on suppression and cessation of encroachment and the destruction of forest resources. The Land Management and Allocation to the Poor Policy of 2018 was used as a remedy to the poor who were accused of trespassing on the public and national forest land. The NCPO Order NO. 66/2014 was repealed after the general election was held in March 2019.

³ The Karen in the KKFC have been engaging in rotational (shifting) cultivation, a complex agricultural approach that relies on a seven-year circle. They cut down trees without using heavy machinery, leaving tree roots and stumps. On the cleared land, they would plant crops, including rice and vegetable. They would move on to another location in the following year, leaving the vegetation in the cultivated area to regrow. They would repeat this for the seven times, returning to the same location in the seventh year. The Karen people in KKFC earn living by growing rice that requires them to have only a small lot of land. Cash income is not predominant, and can come from exchange of chili into cash, although this has not been done as a business. Not many forest items are found in the area, largely due to its geographical nature.

Concerns regarding the investigation of the National Human Rights Commission of Thailand in the process of the World Heritage Status application for the KKFC

According to the information received, on 7 September 2016, Mr. Wut Boonlert, a prominent Karen human rights defender and the leader of the Network for Culture and Environment in Karen Community in Tanowsri Mountain Area, filed a complaint⁴ with the National Human Rights Commission of Thailand (NHRCT)⁵. The complaint, which raised the violations of the rights of the indigenous peoples in the World Heritage Status application-process for the KKFC.

The complaint accused the Cabinet, led by the Prime Minister, General Prayuth Chan-O-Cha, the Ministry of the Natural Resources and the Environment, and the Department of National Parks, Wildlife and Plant Conservation⁶ of:

- (1) Pushing the process of the World Heritage Status application forward without consultation with the indigenous communities;
- (2) Ignoring the complaint letters and the recommendations of the Network; and
- (3) Failing to conduct adequate consultations with indigenous peoples on their participation in the natural resource management process.

The complaint further requested the NHRCT to visit the Karen communities and conduct a prompt and thorough investigation of human rights violations against indigenous peoples in the KKFC, as required in the reply of the UNESCO on the postponement of the World Heritage Status application for the KKFC in July 2016. The NHRCT took up the complaint to investigate under the Art. 15 of the 1999 NHRCT Act.

On 20 November 2019, Mr. Boonlert received a letter from NHRCT informing about the result of NHRCT's investigation. According to NHRCT's investigation report, the NHRCT first referred the complaint to the NHRCT's Sub-Commission on Community Rights and National Resources for investigation under the 1999 NHRCT Act. However, when the 2017 Organic NHRCT Act came into force⁷, the practice of Sub-Commissions was abolished.

According to the NHRCT report, the case was only investigated by interviewing Mr. Boonlert (two times in January 2017 and December 2018), meeting with the International Union for Conservation of Nature (IUCN) in January 2017, and

⁴ The number of the complaint is No.583/2016 and was lodged with NHRCT on 7 September 2016.

⁵ The NHRCT was restructured under the 2017 Organic Law, which was adopted by the military-appointed National Legislative Assembly (NLA).

⁶ A department of the of the Ministry of the Natural Resources and the Environment,

⁷ The 2017 Organic National Human Right Commission Act changed the working methods of the Commission.

meeting with the representatives from the Office of Policies and Planning in 2017. The report mentioned that NHRCT also obtained evidence from relevant agencies.

The investigation took nearly three years and the NHRCT found that the Department of National Parks, Wildlife and Plant Conservation had conducted several public hearings in four areas of forests in KKFC between 2016 and 2018; and that the public forums were attended by representatives of ethnic communities. The NHRCT concluded that the Department of National Parks fulfilled several of their requirements, including consultation with the communities on joint conservation, joint-management, and on the sharing of benefits from the potential status of the KKFC becoming a World Heritage Site.

The NHRCT also found the authorities to have conducted several programs; including, in 2019, a population survey in Pong Luek-Bang Kloy, and a survey on land used in the KKFC area as well as consultation forums with ethnic communities on their livelihood and development. In terms of participation of indigenous peoples in natural resource management, the NHRCT noted the amendment of the composition of the Advisory Board of the Protection Area Committee (PAC)⁸ to look after the four forests in KKFC. NHRCT also found that Thailand's legal framework is sufficient to promote and protect the rights of the ethnic groups in Thailand. The NHRCT stated that the Ministry of the Natural Resources and the Environment has taken all steps as advised by the UNESCO.

Therefore, on 20 November 2019, the NHRCT decided to close the complaint filed by Mr. Boonlert and to only send the recommendations regarding the measures and guidelines in promotion and protection of human rights to the Ministry of the Natural Resources and the Environment.

According to the information received, the NHRCT assessment does not appear to be based on thorough investigations of the allegations. In addition, it appears that the NHRCT only considered the actions taken by the Ministry of the Natural Resources and Environment in response to the UNESCO letter and did not address the main concerns. Alleged concerns regarding the NHRCT investigation methodology include the following;

(1) The lack of interviews of the representatives from the Cabinet or relevant authorities who have direct responsibilities for the Ministry:

⁸ The Advisory Board of the Protection Area Committee (PAC) has been set up by the Department of National Park, Wildlife and Plant Conservation, Ministry of Natural Resource and Environment under its Regulation No. Tor Sor 0905.201/ 12931 since 16 July 2009 to encourage and to ensure the participation of population and all stakeholders in natural resources and environment management towards better understanding and good relationship among government and the affected communities. The PAC has been set up at each National Park level and it reports to the Office of National Parks of Natural Resources Division of the Participation Promotion Section of the Department of National Park, Wildlife and Plant Conservation, Ministry of Natural Resource and Environment.

(2) A single field-visit to the KKFC undertaken by a Commissioner leading the Sub-Commission on Community Rights and National Resources, which is deemed insufficient;

(3) The excessive duration of the investigation, which lasted almost three years; and

(4) The narrow focus of the Sub-Commission consultations, which reportedly only looked into the issue of nationality of some the key members of the Karen communities. For example, Mr. Koei Mimi, a 107 years-old prominent Karen human rights defender and the victim of the forced eviction by the National Park's officials in June 2011, received a Thai national identification card in July 2018 as a result of the consultation.

The NHRCT has reportedly not, since the initial visit, visited the concerned communities to more thoroughly investigate the complaint.

Concerns regarding the national legal framework and the exclusion of indigenous peoples from forest management in Thailand

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

The National Park Act of 2019 (sections 64 and 65) envisages that persons registered as inhabiting in National Parks could potentially participate in conservation projects. The elaboration and control of such projects would however remain under the Department of National Parks, Wildlife and Plant Conservation. Details of such measures are, according to the National Park Act, are to be further elaborated in Royal Decrees with the 'objective to help people who are landless to inhabit or earn a living in the National Park'.

Furthermore, the National Park Act (section 64) requires a survey of persons inhabiting in National Parks within 240 days after the Act entered into force. It is alleged that the stipulated time-frame of eight months is much too short, also considering that a previous survey conducted in National Parks by officials took almost 12 years. The consequences for communities that cannot be recorded in the period set out for the survey are unclear, and there are concerns that they may risk being charged with trespassing.

The National Park Act explicitly excludes land rights (section 64). Conservation projects are foreseen for a period not exceeding twenty years and must be in

accordance with the Government's policy of National Park management and the plan of the area management of the National Park.

The National Park Act does not refer to consultations, co-management or benefit sharing with indigenous communities.

Concerns over incompliance with requirements set out in the Operational Guidelines for the Implementation of the World Heritage Convention

In 2019, the World Heritage Committee amended its Operational Guidelines for the Implementation of the World Heritage Convention⁹. The amendments¹⁰ now stipulate the following in relation to indigenous peoples:

Para. 64. ...*'In the case of sites affecting the lands, territories or resources of indigenous peoples, States Parties shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before including the sites on their Tentative List.*'

Para. 117. *'States Parties are responsible for implementing effective management activities for a World Heritage property. States Parties should do so in close collaboration with property managers, the agency with management authority and other partners, local communities and indigenous peoples, rights-holders and stakeholders in property management by developing, when appropriate, equitable governance arrangements, collaborative management systems and redress mechanisms.'*

Para. 123. *'Effective and inclusive participation in the nomination process of local communities, indigenous peoples, governmental, non-governmental and private organizations and other stakeholders is essential to enable them to have a shared responsibility with the State Party in the maintenance of the property. States Parties are encouraged to prepare nominations with the widest possible participation of stakeholders and to shall demonstrate, as appropriate, that the free, prior and informed consent of indigenous peoples has been obtained, through, inter alia making the nominations publicly available in appropriate languages and public consultations and hearings.'*

Para. 211 Objectives..*'d) to increase equitable, inclusive and effective participation of local and national populations, including indigenous peoples, in the protection and presentation of heritage.'*

⁹ Operational Guidelines for the Implementation of the World Heritage Convention, WHC.19/01, 10 July 2019; <https://whc.unesco.org/en/guidelines/>

¹⁰ Decision 43 COM 11A, <https://whc.unesco.org/en/decisions/7353/>

Para. 214bis. *‘States Parties are encouraged to develop educational and capacity-building programmes that harness the reciprocal benefits of the Convention for heritage and society. The programmes may be based on innovation and local entrepreneurship, and aimed in particular at medium/small/micro scale levels, to promote sustainable and inclusive economic benefits for local communities and indigenous peoples.’*

At the 43th meeting of the World Heritage Committee in July 2019, it was decided to ‘refer the nomination of Kaeng Krachan Forest Complex, Thailand, back to the State Party in order to allow it to: ... demonstrate that all concerns have been resolved, in full consultation with the local communities, in accordance with paragraph 123 of the Operational Guidelines’.¹¹

The Thai Government decided in January 2019 to again re-nominate the KKFC for consideration by the World Heritage Committee. The consideration of the re-nomination of the KKFC will take place at the upcoming 44th session of the World Heritage Committee (initially scheduled for June- July 2020, but postponed due to the Covid-19 pandemic).

As previously outlined above in this communication, concerns have been raised that to date, the nomination of the KKFC is not in line with UNDRIP and does not comply with paragraph 123 of the Operational Guidelines, notably due to:

- The lack of effective and inclusive participation in the nomination process of indigenous peoples;
- Indigenous peoples have still not been provided shared responsibility with the State Party in the maintenance of the property;
- The nomination was not prepared with the widest possible participation of stakeholders and does not demonstrate that the free, prior and informed consent of the indigenous peoples concerned has been obtained, through, *inter alia* making the nominations publicly available in appropriate languages and public consultations and hearings.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern over the attacks against and harassment of the Karen by the National Parks, Wildlife and Plant Conservation Department, and over the failure to ensure the accountability of park officials for these violations. This includes the apparent failure to fully investigate and prosecute the perpetrators of the killing of Mr. Tatkamol Ob-om and the enforced disappearance of Mr. Porlachee Rakchongcharoen. The steps taken to criminalise and otherwise intimidate Karen community members and human rights defenders appear to constitute deliberate measures intended to restrict their peaceful and

¹¹ Decision: 43 COM 8B.5

legitimate work in defense of human rights. The situation regarding the land rights of the Karen remain unresolved.

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

We wish to recall that the Special Rapporteur on the rights of indigenous peoples has previously addressed the situation of the Karen in the Kaeng Krachan National Park in her 2016 report to the General Assembly which explored how conservation measures impact on indigenous peoples.¹² Her report notes that increasing evidence supports the correlation between secure indigenous land tenure and positive conservation outcomes in protected areas and emphasizes how conservation can be carried out in accordance with human rights standards on indigenous peoples' rights. The report underlines that the participation of indigenous peoples is a key condition for conservation to be sustained and that the management capacity of indigenous peoples is now well-recognised as part of the 'new' conservation paradigm. Specifically, the report notes that *'if the designation of World Heritage sites is done constructively and with the consent of the indigenous peoples affected, such status could provide an effective contribution to conservation and the protection of indigenous rights'*.¹³

We would also like to reiterate the provisions in the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.' In addition, UNDRIP sets out in Article 29 that indigenous peoples have the right to the conservation and protection of the environment.

UNDRIP affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources' and that

¹² A/71/229, 2016, para. 63 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/71/229

¹³ Ibid. para. 64

States shall provide effective mechanisms for just and fair redress for any such activities. Article 10 affirms that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

We also wish to recall that under international environmental law, the Conference of the Parties to the Convention on Biological Diversity adopted a decision in 2014, which highlighted the requirement that protected areas and management regimes must be consensual and participatory if indigenous peoples' rights are to be respected.¹⁴

With regards to the investigations and court proceedings in relation to the enforced disappearance of Mr. Porlachee Rakchongcharoen, we would like to refer to Human Rights Committee General Comment no. 36 and the Declaration on the Protection of all Persons from Enforced Disappearance, and underline that enforced disappearance should be punished with appropriate criminal sanctions, that cases should be promptly, thoroughly and impartially investigated and perpetrators brought to justice and that suspected perpetrators should be suspended from any official duties during the investigation.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please submit an update to your response of 24 April 2019 and provide any additional information or any comments you may have on the above-mentioned allegations.
2. Please provide information on the criminal investigations that the Government has carried out in order to investigate and bring to justice the perpetrators of the attacks on the Karen communities in the KKFC in May and June 2011, the murder of Mr. Tatkamol Ob-om in September 2011 and the enforced disappearance of Mr. Pholachi Rakchongcharoen in April 2014. Kindly also indicate what reparation measures have been provided for the same cases.
3. Please provide information regarding the measures taken to comply with the decisions of the World Heritage Committee in 2015 and 2019, respectively (39 COM and 43 COM). Specifically, please advise:

¹⁴ UNEP/CBD/COP/DEC/XII/12

- a) What consultations have been undertaken to seek the prior, informed consent of the Karen communities in the KKFC in the review process of the application for World Heritage status;
 - b) What measures have been adopted to address land rights of the Karen and their participation in the management of the KKFC, including benefit sharing;
 - c) How have regulations, rules and practices by the Department of National Park, Wildlife and Plant Conservation been brought in line with international human rights standards;
 - d) Whether a mechanism to solve disputes in the KKFC in an impartial manner has been established and how such a mechanism is accessible for the affected communities;
 - e) What measures have been taken by the Government to ensure to improve the livelihoods of the Karen community, including their access to cultivable land according to their traditional practices.
4. Kindly advise what measures have been taken to ensure that indigenous human rights defenders are able to carry out their legitimate work, without fear of threats or acts of persecution and harassment of any kind.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that letters on the same matter have also been sent to the IUCN World Heritage Panel and the UNESCO World Heritage Committee.

Please accept, Excellency, the assurances of our highest consideration.

Victoria Tauli-Corpuz

Special Rapporteur on the rights of indigenous peoples

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David R. Boyd

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

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we wish to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. Attacks against individuals who are peacefully exercising human rights activities are in contravention of Articles 6, 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Thailand on 29 October 1996, which state that every human being has the inherent rights to life, liberty and security of the person, and freedom of expression and association.

The Human Rights Committee General Comment no. 36 and the Declaration on the Protection of all Persons from Enforced Disappearance underline that enforced disappearance should be punished with appropriate criminal sanctions, that cases should be promptly, thoroughly and impartially investigated and perpetrators brought to justice and that suspected perpetrators should be suspended from any official duties during the investigation.

Under Article 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, all peoples have the right of self-determination, by virtue of which they are entitled to 'freely pursue their economic, social and cultural development'.

We would also like to refer to the Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007 with a favourable vote by your Excellency's Government. The provision on self-determination under the two Covenants has been explicitly re-asserted by UNDRIP to apply to indigenous peoples (Article 3). UNDRIP sets out that indigenous peoples have the rights to the full enjoyment of human rights under international human rights law (Article 1) and that indigenous peoples have the right to life and security and shall not be subjected to any form of violence (Article 7).

With respect to their rights to property in the form of land and natural resource rights, Article 26 of UNDRIP asserts the right of indigenous peoples to 'the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired' and for legal recognition of those rights 'with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.'

In addition, UNDRIP furthermore sets out in Article 29 that indigenous peoples have the right to the conservation and protection of the environment and in Article 24 that indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.

UNDRIP furthermore affirms in Article 32 that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources and that 'States shall consult and cooperate in

good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources’.

Furthermore, the same Article 32 of UNDRIP underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Article 10 affirms that indigenous peoples shall not be forcibly removed from their lands or territories and that no relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

We would also like to highlight that, as recognised by the Human Rights Committee, enforced disappearances constitute an interference in the right to life of individuals, and constitutes a violation of the right to life by the State. We recall that States should ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions, introduce prompt and effective procedures to investigate cases of disappearances thoroughly, by independent and impartial bodies, bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation (General Comment no. 36 on the right to life para 58).

We further refer to the Declaration on the Protection of all Persons from Enforced Disappearance, in particular article 3, 4, 13 and 16 which provide that states should take effective steps to prevent and terminate acts of enforced disappearances, that acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties, that complaints of enforced disappearance should be promptly, thoroughly and impartially investigated by an authority holding the necessary powers and resources to conduct the investigation effectively and that suspected perpetrators shall be suspended from any official duties during the investigation.

Finally, we would also like to refer your Excellency’s Government to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realisation of human rights and indicates State’s prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (Articles 1 and 2) and details the States’s obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders (Article 12). In addition, all those that are victims to human rights violations are to benefit from an effective remedy (Article 9).