

Thailand's response
to the Joint Communication from HRC Special Procedures
No. AL THA 4/2020 dated 21 April 2020**

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Criminal proceedings concerning cases of human rights defenders for ethnic Karen communities:

(1) Mr. Tatkamol Ob-Aom

- A review of the circumstances surrounding the case have revealed that the relevant authorities exerted their utmost efforts to ensure that those involved had access to justice and protection.

- Following the shooting incident in September 2011, the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice coordinated with the Royal Thai Police to provide protection for one of the key witnesses in the case during the period spanning 2012 – 2015, so as to ensure his safety and enable him to cooperate in the legal proceedings without fear of intimidation or reprisal.

- The public prosecutors pursued the case all the way up to the Appeal Court. But because doubts remained after the evidence was presented, the judiciary was duty-bound to uphold the principle of *in dubio pro reo*. Therefore, as the case of Mr. Tatkamol has reached its final verdict as announced on 16 February 2016, the Government is not in a position to intervene in judicial proceedings.

- Regarding remediation, the RLPD has many mechanisms in place to support families in these cases, according to the Damages for Injured Persons and Compensation and Expenses for Alleged Offenders in Criminal Cases Act, B.E. 2544 (2001) and its second amendment, B.E. 2559 (2016), so long as such remediation is requested.

(2) Mr. Pholachi Rakchongchareon (Billy)

- Notable developments regarding this case have taken place.

- Following the public prosecutor's issuance of non-prosecution orders on certain offences¹ (e.g. premeditated murder, extortion, illegal detention, and corpse concealment) in relation to the four suspects involved in the case of Mr. Pholachi, the file of inquiry was further submitted to the Department of Special Investigation (DSI) for its consideration on whether to advance dissenting opinions. Based on its rigorous and carefully conducted review of the evidence, including witnesses, documentary witnesses, physical evidence and in particular forensic evidence supported by expert testimony, the DSI decided to challenge the non-prosecution orders. On 10 August 2020, the DSI submitted to the Attorney General its dissenting opinion by asserting that existing evidence to pursue the case was indeed adequate. At present, the case is under the consideration of the Attorney General.

- As for compensation and remedy, the Sub-committee on the Remedy related to Torture and Enforced Disappearance under the RLPD has been consistent and steadfast in following up on the case. It has also met with the statutory heirs of Mr. Pholachi in order to notify them further of their rights and to receive a petition for financial compensation.² On 12 September 2019, the Sub-committee approved this petition for compensation and expenses³ and on 30 September 2019, compensation was delivered to the statutory heirs of Mr. Pholachi.

- The relevant authorities have been in close contact with and kept the family of Mr. Pholachi abreast of the progress made in the investigation. For example, on 25 June 2020, the Director-General of the DSI visited the wife of Mr. Pholachi at her house in Kaeng Krachan District to give her and the family moral support and to reaffirm the commitment and determination of the authorities to perform their duty in accordance with the law and to bring them justice. At present, all members of Mr. Pholachi's family are under the witness protection program of the DSI.

(3) **Mr. Wut Boonlert**

- The following important developments regarding this case have taken place.

- Following the ruling of the Min Buri Provincial Court on 18 November 2019 to dismiss the criminal defamation charges against Mr. Boonlert and Mr. Samak Donnapee, the public prosecutor of the Office of the Attorney General did not appeal the court's ruling. However, the co-plaintiff *did* decide to pursue an appeal and on 22 December 2020, the Court of Appeal upheld the Min Buri Provincial Court decision to dismiss the charges against Mr. Boonlert and his co-defendant, by asserting that the opinion in question was fair, done in good faith, was regarding a person that was subject to public criticism; therefore, both shall not be guilty of defamation.

¹ Offences subject to Sections 83, 86, 147, 148, 289 (4) and (7), 309, 310, 337, 340 and 340 ter of the Criminal Code and Sections 150 bis of the Criminal Procedure Code.

² Financial compensation is provided in accordance with the Damages for the Injured Persons and Compensation and Expenses for the Alleged Offenders in Criminal Cases Act B.E. 2544 (2001) and its second amendment B.E. 2559 (2016).

³ i.e. remuneration for the death 80,000 Baht, funeral expenses 20,000 Baht, and the maintenance for the statutory heirs and relatives of the victim 40,000 Baht, with a total amount of 140,000 Baht.

- **Sanctions and punishment against perpetrator(s)**: On 25 February 2021, the Public Sector Anti-Corruption Commission decided that Mr. Chaiwat Limlikhitaksorn, former Chief of the Kaeng Krachan National Park was guilty of malfeasance in office for his involvement in the burning of Karen houses in the KKFC in 2011. On 26 March 2021, the Civil Service Sub-Commission of the Ministry of Natural Resources and Environment formally took a decision to dismiss Mr. Limlikhitaksorn from the civil service.

Consultation with local communities to seek the prior, informed consent of Karen communities in the KKFC in the review process of the application for World Heritage status:

- The Government has put in place many mechanisms to ensure that local communities can participate in the review process of submitting the application for World Heritage status. Since 2015, the authorities have organised numerous public hearings to inform the villagers about the World Heritage Site nomination process and to listen to their concerns and perspectives in this regard. During 2017-2018, Kaeng Krachan National Park (KKNP) and IUCN Thailand carried out a conservation project with the participation of local communities to enhance the nomination process.

- Since the establishment of a Protected Area Committee (PAC)⁴ in each of the constituent areas of the KKFC as from 2019, efforts have been made to enhance the meaningful participation of Karen communities in the management of KKFC. The PACs have served as a neutral dispute resolution mechanism for KKFC, consisting of representatives from government agencies, the local communities and non-governmental organisations. To date, 2 of the 25 representatives of the PAC for the KKNP are ethnic residents from Ban Pong Luek and Ban Bang Kloi. Moreover, the villagers are encouraged to join the PAC to work alongside other stakeholders in the management and development of the area.

- To increase the engagement between the Government and the communities, the DNP has assigned officials to visit each household and attend all public fora to

⁴ The role of the PAC consists of: (1) participating in a planning process by giving advice, recommendations and support to the management of protected areas as well as critiquing projects submitted for financial support from the Community Activity Promotion Fund; (2) participating in the implementation, consultation, recommendation and promotion of activities related to natural resources and environmental conservation and community livelihood development, organizing a public hearing for the public and private sectors on policies related to the management of protected areas, establishing community organizations on natural resources and environmental conservation and developing a network system to assist the management of protected areas and the staff operation, promoting conservation and participation; reviewing the community's agreements, rules and regulations; implementing community development projects in the protected areas, presenting comments on issues and obstructions regarding the operations in the protected area; (3) participating in monitoring and evaluating, consulting and recommending a monitoring and evaluation process for the agency's implementation in accordance with the national parks management plan or other related projects; and (4) facilitating the monitoring and evaluation processes.

*If the Kaeng Krachan Forest Complex is inscribed as a World Heritage Site, the DNP would proceed to develop a Forest Complex management plan with public participation. All stakeholders, especially local communities, would have an opportunity to get involved in developing the plan and assisting in area-based issues identification leading to participatory management approaches for the Forest Complex.

further inform the villagers about the nomination process, as well as the benefits and impacts of gaining World Heritage status.

- With regard to the concerns raised by the Special Procedures on the consultations conducted in December 2019, the Government reaffirms that the process was transparent and in accordance with the World Heritage Convention to ensure that the community's acknowledgement of the notification was received in an independent and transparent manner. Each consultation session to disseminate information and promote understanding of the KKFC Nomination conducted during December 2019 and January 2020 was organized through community leaders in order to gain their advance acknowledgement. The sessions were also communicated in a local language to ensure the residents' full comprehension and to avoid any possible confusion or misunderstanding. The authorities also took opportunities to gather the concerns raised by the residents with a view to addressing them further. As a result, the polls indicated that 42 out of 55 villages, accounting for a total of 2,078 people which included ethnic minorities, pledged full support for the nomination.

- Still, the DNP fully understands and is aware of the concerns raised by those who have not yet expressed their support for the nomination, particularly on the issue of land allocation, because at the time the consultation took place, the land survey was still ongoing. It is expected that, with more clarity on the issues of concern following the completion of the land survey in 2020, those who hesitated previously may decide to express their support for the nomination at a future opportunity.

- Looking ahead, the authorities already have plans in place to ensure the meaningful participation of the local communities in the further development of the KKFC when it is inscribed as a World Heritage Site. The DNP would adopt participatory management approaches by ensuring that the local communities are involved in developing a Forest Complex management plan and assisting in problem identification for the area.

Measures to address the land rights of the Karen Communities and public participation in the management of the KKFC and benefit sharing / Mechanism to solve disputes in the KKFC and its accessibility for the affected communities/ Compliance of the regulations, rules, guidelines and practices by the DNP with international human rights standards / Measures to ensure the improvement of the livelihoods of the Karen community, including their access to cultivable land according to their traditional practices:

- The Royal Thai Government attaches priority to the right to enhance the quality of life of the local communities residing in the area without compromising their traditional way of life. **Their rights to life, security and participation in resource management are also respected and protected in accordance with international human rights law.** This commitment is reflected in Sections 64 and 65 of the National Park Act, B.E. 2562 (2019) which state that the DNP must conduct an inventory of categories of renewable natural resources in the national parks and the land possessed by people residing or working on the land in each national park before the enactment of the

Act. The DNP would then develop a project regarding natural resource conservation and protection with the aim of assisting the people to be able to continue to reside and make a living on the allocated lands under a timeframe approved by the Cabinet Resolution of 30 June 1998.

- The authorities have continued to put a number of initiatives into action to improve many facets of the quality of life of local communities and to ensure that their traditional practices and livelihood are protected, as follows:

(1) Resolving issues of land ownership in the Karen community

- Land tenure surveys in the KKFC conservation zone in accordance with the National Park Act B.E. 2562 (2019) and the Wildlife Preservation and Protection Act B.E. 2562 (2019) have been conducted. This action demonstrates the implementation of the Royal Thai Government's long-term strategy to strike a balance between conservation, sustainable utilization of natural resources and the rights of local communities across the country in a fair and non-discriminatory manner.

- The land tenure survey and land parcel identification for the communities of Ban Pong Luek – Bang Kloi in the KKNP, one of the constituent national parks included in the KKFC, was completed in conformity with Article 64 of the National Park Act. This Article stipulates that land allocation shall be a part of the conservation management zone under the Act, in which the DNP, Ministry of Natural Resources and Environment (MNRE), as the competent authority, shall develop a joint conservation management project with the aim of assisting the communities to be able to reside and to make a living in the allocated land plots. The concerned local communities and related stakeholders were actively involved and well informed throughout the entire process. The results of the survey and map were given to the local communities, including the Karen communities, on 16 December 2019. Details on the latest status are, as follows:

- Ban Bang Kloi: As of January 2021, the community covers 136 households with 832 residents. There are 97 residents verified to be in possession of land parcels numbering 143 land plots, with a total area of 627 Rai, 3 Ngan and 93 square Wa (approximately 100.4772 hectares). These land plots have been identified as a conservation management zone under Article 64 of the National Park Act B.E. 2562 (2019).

- Ban Pong Luek: As of January 2021, the community covers 106 households with 520 residents. There are 122 residents verified to be in possession of land parcels numbering 160 land plots, with a total area of 1,320 Rai, 0 Ngan and 93 square Wa (approximately 211.2372 hectares). These land plots have been identified as a conservation management zone under Article 64 of the National Park Act B.E. 2562 (2019).

- At present, the DNP is holding public hearings to gather views for the enactment of the Royal Decree in conformity with Articles 64 and 65 of the National Park Act B.E. 2562 (2019). The Royal Decree aims to ensure the rights of the local communities in the KKFC as well as to improve their well-being in a sustainable manner. Although the process has been delayed due to restrictions imposed by public health measures to cope with the COVID-19 pandemic, significant developments have been made.

(2) Mechanisms to solve disputes in the KKFC

- To date, the Government continues to address the concerns of the local communities, placing their rights and well-being at the centre of its efforts. This was illustrated on 3 February 2021 when the relevant authorities established a working group chaired by the Deputy Permanent Secretary of the Ministry of Natural Resources and Environment to specifically address the problems of the Karen community in Bang Kloi, Phetchaburi province.

- On 16 February 2021, further progress was made when representatives from the Ministry of Natural Resources and Environment, the Ministry of Agriculture and Cooperatives, #SaveBangKloi activists, the People's Movement for a Just Society (P-Move) and Bang Kloi-Jai Pan Din community signed an MOU to address the concerns of the local communities including their rights to maintain their traditional way of life without fear of intimidation or violence.

- To address specific concerns regarding land use and the living standards of the Karens in Bang Kloi, the Government also appointed another committee chaired by the Deputy Minister of Agriculture and Cooperatives on 16 March 2021 to identify the challenges faced by local Karen communities and to provide recommendations for the relevant agencies to ensure that their approaches in addressing the issues are in line with the law.

(3) Improving the quality of life in accordance with their culture and traditional way of life

- The authorities have continued to provide basic infrastructure for people in the area, including electricity and water supply while access to education and healthcare is also ensured. Moreover, through career development initiatives, the residents have earned higher incomes per family from activities related to agriculture and ecotourism.

Development Programme

- The Royal Thai Government continues to attach importance to the preservation and promotion of local community cultures and traditional ways of life. A budget has been allocated to promote the quality of life of the local communities in the KKFC since 2011. The DNP and its core agencies have been working closely with at least 22 government agencies including the Royal Initiative Discovery Foundation (Pid Thong Lang Phra Foundation); Huay Mae Phriang Subdistrict Administrative Office; Kaeng Krachan District Office of Community Development at Phetchaburi Province; Chulalongkorn University; Phetchaburi Provincial Agricultural Extension Office; Kaeng Krachan District Agricultural Extension Office; Phetchaburi Inland Fisheries Research and Development Center; Phetchaburi Land Development Station; and Phetchaburi Public Health Office on the implementation of 88 development projects to promote the quality of life. These projects cover six major areas, namely, agriculture and livestock, infrastructure, social and culture, education, public health, and career development to build stronger and more resilient local communities while preserving the culture and traditional way of life. Moreover, these projects are in line with efforts on the preservation and conservation of KKFC's natural resources, biological diversity and ecosystems to ensure balanced and sustainable use of natural resources, as enshrined in the World Heritage Convention.

- Representatives of local communities from Ban Pong Luek and Bang Kloi have also mentioned in a presentation for a diplomatic mission's visit to the area that through Area-based Rural Development Programmes (applied from His Majesty the Late King Rama IX's initiatives), participants of 154 out of 184 families from Ban Pong Luek and Bang Kloi (84 percent) had been provided with skills development on water management and sustainable agriculture (i.e. New Theory Agriculture and Integrated farming) as well as opportunities to form groups on career development in their communities and to promote the principle of people and forest cohabitation in a sustainable manner and in accordance with their traditional way of life. As a result, the incomes of the villagers who participated in such programmes have increased by approximately 14 times higher than the rate they received prior to their participation in the programme. Moreover, 91 percent of the participants now earn an income which is above the country's poverty line.

- The DNP also attaches importance to providing opportunities for Karen residents to be a crucial part of conservation efforts by offering them employment at the KKNP. Currently, there are a total of 41 Karen staff working at the National Park, with 33 people working as forest protection staff and 8 working in office administration.

- In the fiscal year 2021, the DNP will be implementing a sustainable tourism strategic plan for the KKFC. The plan provides a framework for the management and development of sustainable tourism potential within the KKFC areas. The implementation will be in accordance with and reinforce the DNP's national park and wildlife sanctuary management strategies and UNESCO's tools for sustainable tourism in World Heritage Sites.

COVID-19 Responses

- The Royal Thai Government is fully conscious of the public health as well as economic impacts and social disruption from the COVID-19 pandemic on vulnerable households. The DNP has strictly implemented preventive measures in line with the World Health Organization (WHO)'s public health and social measures in national parks across the country, including the KKFC.

- For public health measures, visitors must submit a letter informing the DNP of the details regarding their planned activities, including the number of participants, dates, and times. The DNP also has social distancing and screening policies to prevent those at risk of COVID-19 from entering the area.

- The local communities have been kept well-informed of the situation and the Government's preventive measures to control and prevent the spread of the COVID-19 as a result of the effective implementation of the national park management plan jointly developed by the KKNP and the local communities, and through the various channels used in disseminating information. Amidst the resurgence of a local COVID-19 outbreak, the KKNP received a letter from the local communities in Ban Pong Luek-Bang Kloi on 25 December B.E. 2563 (2020) calling for a temporary closure of tourism activities and the implementation of preventive health measures in the communities. The KKNP issued a notice dated 26 December B.E. 2563 (2020) to suspend tourism activities in Pong Luek-Bang Kloi as per the communities' request.

- To date, despite no reported cases of COVID-19 infection among the local communities in the KKFC, the DNP continues to closely monitor the situation and rigorously follow public health measures.

Measures to ensure that human rights defenders, including the Karen ethnics, are able to carry out their legitimate work, without fear of threats or act of persecution and harassment of any kind:

- The Government recognizes the role of human rights defenders and includes them as one of our priority target groups in the 4th National Human Rights Plan (2019-2022). The plan provides specific measures and a framework for concerned agencies to ensure the appropriate protection and promotion of the rights, safety and well-being of human rights defenders.

- The Ministry of Justice has implemented a series of measures regarding human rights defenders, including jointly developing a human rights defenders' manual with the Office of the United Nations High Commissioner for Human Rights, Regional Office for Southeast Asia.

- The relevant government agencies continue to establish and develop legal tools and relevant mechanisms to protect human rights defenders. For example, the Court of Justice has amended two Sections of the Criminal Procedure Code in order to safeguard the right to freedom of expression against the invocation of Strategic Litigation against Public Participation (SLAPP). The RLPD is also putting forward a number of initiatives in this regard, including: (1) proposing an amendment to the Witness Protection Act B.E. 2546 (2003) to extend protection to persons who are at risk of being endangered, threatened, or intimidated even *before* the criminal proceedings are initiated, which would benefit human rights defenders who are a target of threats or harassment; and (2) cooperating with the United Nations Development Programme (UNDP) on the research and development of guidelines and measures to protect human rights defenders in a more concrete and practical manner.

- To prevent the enforced disappearance of human rights defenders, the RLPD has also drafted the Prevention and Suppression of Torture and Enforced Disappearance Bill in order to criminalise enforced disappearances and torture as discrete offences under domestic law. The draft proposal is currently following legislative procedures and being deliberated by the Coordinating Committee of the House of Representatives which held a meeting on 25 January 2021. While the draft law is not yet enacted, the National Committee for Managing Cases Relating to Torture and Enforced Disappearance has been established to monitor enforced disappearance cases and to ensure that the victims' relatives have access to justice, protection and remediation.

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