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Updates on the Sai Thong National Park Case

14 Land Rights Defenders unfairly treated as 'criminals'

Update of 13 August 2019



All you need to know on the Sai Thong National Park Case, from charges, convictions, trial monitoring to national & international advocacy efforts, is available on our dedicated webpage:

<https://www.manushyafoundation.org/sai-thong-np-case>

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The criminalisation of the 14 Sab Wai villagers in the Sai Thong National Park is a representative case of the false climate solution adopted by Thailand and the misuse of the Forest Reclamation Policy and NCPO orders related to its enforcement (NCPO orders 64/2014 and 66/2014), targeting poor communities and land rights defenders to evict them from their lands, rather than recognizing them as key caretakers and protectors of the forest.

Summary & Pictures on the Appeal and Release on Bail, as of 19 July 2019 available here:

EN: <https://tinyurl.com/y4dtywnj> & TH: <https://tinyurl.com/y6354zz3>

Summary & Pictures on the Appeal and Release on Bail, as of 25 July 2019 available here:

EN: <https://tinyurl.com/y4y7phap> & TH: <https://tinyurl.com/y38sp4j2>

Summary & Pictures on the Appeal and Release on Bail, as of 31 July 2019 available here:

EN: <https://tinyurl.com/y5r5pt5p> & TH: <https://tinyurl.com/y37ltojz>

Summary & Pictures on the Appeal and Release on Bail, as of 14 August 2019 available here:

EN: <https://tinyurl.com/y6cz6yzs> & TH: <https://tinyurl.com/yytfgj54>

1. Submission of Appeal Petition to the Supreme Court

To follow up on the cases of the villagers, their lawyer Mr. Somnuek Tumsupap has submitted 13 appeal petitions to the Supreme Court on 2 July and 15 July 2019. This submission was made within 30 days from the date of the appeal court judgment by the Chaiyaphum Provincial Court, along with an application for bail for 12 of the human rights defenders (HRDs) in jail. In the appeal before the Supreme Court, the lawyer questioned the validity of the exclusion of the poor villagers from NCPO Order 66/2014 which should protect them from being charged under NCPO Order 64/2014 (please refer to section 4, related to the legal framework misused to criminalise the 14 HRDs, at page 10).

1.1. Submission of the Appeal Petition to the Supreme Court for 5 WHRDs, 2 July 2019

On 2 July 2019, the lawyer submitted the appeal petition before the Supreme Court for Ms. Nittaya Muangklang following an appeal court judgment of 15 May 2019 in once case (case 1739/2017) against her; for Ms. Seenuan Phasang following an appeal court judgment of 4 June 2019; and for Ms. Sunee Nalin, Ms. Pattama Komet, and Ms. Suphaphorn Seesuk following appeal court judgments of 12 June 2019.

The Supreme Court accepted the petitions submitted for Ms. Pattama, Ms. Seenuan, Ms. Suphaphorn, Ms. Sunee, and in one case against Ms. Nittaya (case 1739/2017). These appeal petitions were approved by the Court of First Instance and Chaiyaphum Provincial Court with respect to questions of law and fact, as provided by Section 221 of the Thai Criminal Code.

It must be noted here that the appeal petition for Ms. Nittaya Muangklang in another case (case 1738/2017) for which the appeal court judgment was given on 5 June 2019 was submitted before the Supreme Court only on 26 July 2019. This is because all judges of the provincial court at first did not certify the appeal petition, without which the submission to the Supreme Court cannot be processed. After a meeting with Ms. Nittaya on 26 July 2019, the judges of the

Provincial Court approved the appeal petition but only allowed for arguments with respect to the law in question, before the court.

1.2. Submission of the Appeal Petition to the Supreme Court for 8 HRDs, 15 July 2019

On 15 July 2019, the lawyer submitted the appeal petition before the Supreme Court for the 8 remaining HRDs, including Mrs. Thongpan Monggang, Mr. Wanchai Arphonkao, and Mr. Samon Somchitr following appeal court judgments of 25 June 2019; Mr. Put Sukbongkot following an appeal court judgment of 2 July 2019; Mr. Sompitr Taennok following appeal court judgments on 2 and 3 July 2019; and Ms. Narisara Muangklang, Ms. Suwalee Phongam, and Mr. Suwit Rattanachaisi following appeal court judgments of 3 July 2019. So far, the Supreme Court has accepted the petitions submitted by Mr. Put, Ms. Suwalee, Ms. Narisara, and Mrs. Thongpan. With respect to the other defenders, before their cases are considered by the Supreme Court, they will need to be certified by judges from the Court of First Instance and the Appeal Court. Unfortunately, none of their cases have been certified by either of the courts as of yet.

1.3. Submission of the Appeal Petition for Mrs. Sakl Prakit

In the case of Mrs. Sakl Prakit, her husband has stated that he does not want the lawyer of the other 13 villagers, Mr. Somnuek Tumsupap to submit the appeal to the Supreme Court. Instead, he wants his wife to be separated from the others and for her to submit her appeal separately to the Supreme Court, using a different lawyer. Community members suspected that government officials tried to convince Mrs. Sakl's husband to do so as he has relatives in the military. They suspect that the person is attempting to 'steal money' from Mrs. Sakl's family, as the person had requested 30,000 THB for lawyer fees alone. The lawyer, Mr. Somnuek Tumsupap, has taken a step back and has not filed the appeal petition for Mrs. Sakl before the Supreme Court. Her case is now handled by a different lawyer. Due to pressure received from various actors, Mrs. Sakl has confessed to have encroached the land. Consequently, she has been released on bail on 19 July 2019.

SAI THONG NATIONAL PARK CASE
14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

Communities do not destroy the forest; they protect it better than anyone else!

MRS. SAKL PRAKIT
42 years old

“It's so sad because it's unfair to charge the villagers who have farms and land in the national park. I want the government to help the villagers who do not have a place to live.”

COURT HEARING

CASE 1732/2017	18 June 2019
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CONVICTED TO

	ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
CASE 1732/2017	46 rais, 3 ngan and 3 square wah	Jail time 4 years	Fine - each one with 7.5% interest per year 1,587,211 THB

+ LAND EVICTION

Within 15 days from the date of the court judgment

*1rai = 0.16 hectare *1ngan = 400 square meters *1square wah = 4 square meters

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1.4. Land eviction notice for Ms. Seenuan Phasang

On 7 July 2019, a court notice was sent to enforce the order of the appeal court, asking Ms. Seenuan Phasang to vacate her land within 15 days. She was also asked to pay 150,000 THB to the Department of National Parks, Wildlife and Plant Conservation (DNP). However, with respect to vacating the land, it has been concluded that no action will be taken until the final

judgment of the Supreme Court is provided. However, if the villagers lose their case and the Supreme Court upholds the Appeal Court’s decisions, the land eviction will be enforced, and no compensation or alternate land will be provided to them.

More info please see here in EN: <https://bit.ly/3156lc6> and TH: <https://bit.ly/2KaYckZ>

1.5. Submission of the Appeal Petition for Mr. Wanchai Arphonkhaeo

On 15 July 2019, the lawyer, Mr. Somnuek Tumsupap, submitted the Appeal petition of Mr. Wanchai to the Supreme Court. However, shortly after that, due to family pressure and the expectation to have his sentence of 6 months and 20 days of imprisonment, and a compensation of damages of 300,000 THB reduced, Mr. Wanchai confessed to have encroached the land. However, according to the lawyer, Mr. Somnuek Tumsupap, it is unlikely that the Supreme Court will reduce Mr. Wanchai’s charges, as the Appeal Court already decreased the punishment of 10 months of imprisonment, given by the Court of First Instance, by one third, according to the Criminal Code section 78. Moreover, as Mr. Wanchai has confessed, it is likely that the Supreme Court will take a long period of time to consider the Appeal petition submitted. Moreover, if the Supreme Court will accept the case, Mr. Wanchai’s chances to win the case have been reduced due to the confession. Since the confession, the case of Mr. Wanchai is handled by a different lawyer. Mr. Wanchai has been released on bail from the Chaiyaphum Provincial Prison on 6 August 2019.

SAI THONG NATIONAL PARK CASE

14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

MR. WANCHAI ARPHONKHAEO
28 years old

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COURT HEARING

CASE 1733/2017	25 June 2019
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CONVICTED TO

	ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
CASE 1733/2017	14 rai, 3 ngan and 73 square wah	Jail time 6 months and 20 days	Fine - each one with 7.5% interest per year 860,395 THB

+ LAND EVICTION

*1 rai = 0.16 hectare *1 ngan = 400 square meters *1 square wah = 4 square meters

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2. Approval of Bail Application by the Supreme Court & Release from Jail

All 14 villagers were found guilty and casted as criminals. 13 villagers (9 women and 4 men) were given prison sentences, while 1 villager, Mr. Samon Somchitr, is being monitored. Therefore, bail applications were submitted along with the appeal petition before the Supreme Court, for the 12 villagers represented by the lawyer, Mr. Somnuek Tumsupap.

2.1. Granting of Bail by Supreme Court for 3 WHRDs on 18 July 2019 & Release from jail on 19 July 2019

On 18 July 2019, the Supreme Court granted bail to Ms. Seenuan Phasang with the bail amount set at 180,000 THB; to Ms. Pattama Komet with the bail amount set at 500,000 THB; and to Ms. Suphaphorn Seesuk with the bail amount set at 180,000 THB. On 19 July 2019, after the payment of the bail amounts as provided under the Justice Fund, Ms. Seenuan, Ms. Pattama and Ms.



Suphaphorn were released on bail from the Chaiyaphum Provincial Prison, until their trial by the Supreme Court at a later date.

SAI THONG NATIONAL PARK CASE

14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS



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MRS. SUPHAPHORN SEESUK
38 years old

She's Nittaya's and Narisara's sister. She has a lot of debt and worries about how it will be paid. She also takes care of her child when her husband is farming. She doesn't know who will take care of their child if she goes to jail.

It affects the livelihoods and economy of the community and discourages me from fighting. I do not feel like doing anything, because it's like I'm fighting for nothing. No matter how much I fight, nothing is getting better so far.

COURT HEARING

CASE 1731/2017	12 June 2019
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CONVICTED TO


ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
	Jail time	Fine - each one with 7.5% interest per year
CASE 1731/2017	6 rais, 3 ngan and 31 square wah	5 months and 10 days 381,010 THB
+ LAND EVICTION		

*1rai = 0.16 hectare *1ngan = 400 square meters *1square wah = 4 square meters

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SAI THONG NATIONAL PARK CASE

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MRS. SEENUAN PHASANG
60 years old

After 33 years of marriage, her husband asked for divorce because he was ashamed of the fact she was facing criminal charges.

I am concerned that my children won't have land to live on because it belongs to the national park, and they are not allowed to live there. I am fighting for those who don't have a place to live and for all of my friends who face the same situation.

COURT HEARING

CASE 1736/2017	4 June 2019
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CONVICTED TO


ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
	Jail time	Fine - each one with 7.5% interest per year
CASE 1736/2017	6 rais and 4 square wah	5 months and 10 days 150,000 THB
+ LAND EVICTION		

*1rai = 0.16 hectare *1ngan = 400 square meters *1square wah = 4 square meters

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SAI THONG NATIONAL PARK CASE

14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS



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MS. PATTAMA KOMET
47 years old

She's taking care of her disabled mother, and has young children that she had to put in boarding school. If she is jailed, she doesn't know who will take care of her mother.

We are not investors, just poor people who either farm on the land or do nothing. If we do not farm there, our family cannot survive. We are human too. Although we are poor, we still have rights that should be equal to any other Thai people's rights.

COURT HEARING

CASE 1744/2017	12 June 2019
CASE 1745/2017	

CONVICTED TO

ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
	Jail time	Fine - each one with 7.5% interest per year
CASE 1744/2017	8 months	200,000 THB
CASE 1745/2017		
+ LAND EVICTION		
<i>Within 15 days from the date of the court judgment</i>		

*1rai = 0.16 hectare *1ngan = 400 square meters *1square wah = 4 square meters

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Summary & Pictures on the Appeal and Release on Bail, as of 19 July 2019 available here:

EN <https://tinyurl.com/y4dtywnj> TH <https://tinyurl.com/y6354zz3>

2.2. Granting of Bail by Supreme Court to Mr. Put Sukbongkot on 18 July 2019 and release from jail on 25 July 2019

On 18 July 2019, the Supreme Court granted bail to Mr. Put Sukbongkot with the bail amount set at 200,000 THB. However, Mr Put continued to be detained and was only released from Chaiyaphum Provincial Prison once he was granted the bail amount under the Justice Fund on 25 July 2019.



SAI THONG NATIONAL PARK CASE
14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

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MR. PUT SUKBONGKOT
47 years old

COURT HEARING
CASE 1734/2017 2 July 2019

CONVICTED TO		
ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
CASE 1734/2017 14 rai, 3 ngan and 8 square wath	3rd time 6 months and 20 days	Fine - each one with 7.5% interest per year 370,000 THB
+ LAND EVICTION		

* 1 rai = 0.16 Hectare * 1 ngan = 400 square meters * 1 square wath = 4 square meters

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Summary & Pictures on the Appeal and Release on Bail, as of 25 July 2019 available here:

EN: <https://tinyurl.com/y4y7phap> & TH: <https://tinyurl.com/y38sp4j2>

2.3. Granting of Bail by Supreme Court for Ms. Sunee Nalin on 24 July 2019 and release from jail on 25 July 2019

On 25 July 2019, the Supreme Court granted bail to Ms. Sunee Nalin. After payment of the bail amount set at 160,000 THB as provided under the Justice Fund, Ms. Sunee was released on bail from Chaiyaphum Provincial Prison, until her trial by the Supreme Court.



SAI THONG NATIONAL PARK CASE
14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

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MS. SUNEEN NALIN
71 years old

She has a lot of health issues, and she's taking care of her youngest son who is mentally disabled. She doesn't know where he will live if she is jailed.

"I'm worried about my grandchildren. Who will take care of them? Their mother has to work, and their father already passed away. Without me, their lives will be tough. This situation I am in is not my bad karma, it is a bad law."

COURT HEARING

CASE 1735/20 17	12 June 20 19
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CONVICTED TO

ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
	Jail time	Fine - each one with 7.5% interest per year
CASE 1735/20 17	11 rai, 3 ngan and 73 square wah	5 months and 10 days 439,027 THB

+ LAND EVICTION

*1rai = 0.16 hectare **ngan = 400 square meters ***square wah = 4 square meters

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Summary & Pictures on the Appeal and Release on Bail, as of 25 July 2019 available here:

EN: <https://tinyurl.com/y4y7phap> & TH: <https://tinyurl.com/y38sp4j2>

2.4. Granting of Bail by Supreme Court for Ms. Suwalee Phongam on 26 July 2019 & Release from jail on 13 August 2019

On 26 July 2019, the Supreme Court granted bail to Ms. Suwalee Phongam with the bail amount set at 150,000 THB. However, the Provincial Justice Board only approved her bail amount during a meeting which was held on 5 August 2019. Consequently, Ms. Suwalee was released on bail on 13 August 2019 from Chaiyaphum Provincial Prison, until her trial by the Supreme Court.

SAI THONG NATIONAL PARK CASE
14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

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MS. SUWALEE PHONGAM
36 years old

She's worried about her daughter, who is very young.

I am concerned about many things such as my children, my parents, my husband, expenses for food, water and electricity, school and my previous husband's debt. Basically I am responsible both for taking care of my family and working to earn money every month.

COURT HEARING

CASE 1748/2017	3 July 2019
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CONVICTED TO

ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
CASE 1748/2017	Jail time	Fine - each one with 7.5% interest per year
5 rai, 3 ngan and 9 square wah	5 months and 10 days	160,000 THB

+ LAND EVICTION

*rai = 0.16 hectare *ngan = 400 square meters *square wah = 4 square meters

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Summary & Pictures on the Appeal and Release on Bail, as of 13 August 2019 available here:
EN: <https://tinyurl.com/y6cz6yzs> & TH: <https://tinyurl.com/yytfgj54>


2.5. Granting of Bail by Supreme Court for Ms. Nittaya Muangklang and release from jail on 31 July 2019

On 31 July 2019, the Supreme Court granted bail to Ms. Nittaya Muangklang in both cases, with case number 1738/2017 and 1739/2017 that were filed against her. After payment of the bail amount set at 350,000 THB for both cases as provided under the Justice Fund, Ms. Nittaya was released on bail from Chaiyaphum Provincial Prison, until her trial by the Supreme Court.



SAI THONG NATIONAL PARK CASE

14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS



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MS. NITTAYA MUANGKLANG
36 years old

“One day, the Reclamation of the Forest Policy came up, claiming that this would not affect poor people, but the ones who suffered were only poor people. I realize that this is an inequality between the rich and the poor.”

COURT HEARING

CASE 1738/2017	5 June 2019
CASE 1739/2017	15 May 2019

CONVICTED TO

ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
	<i>Jail time</i>	<i>Fine - each one with 7.5% interest per year</i>
CASE 1738/2017	8 months	150,000 THB
CASE 1739/2017	4 months	40,000 THB
TOTAL	12 months	190,000 THB

+ **LAND EVICTION**

*1 rai = 0.16 hectare *1 ngan = 400 square meters *1 square wah = 4 square meters

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Summary & Pictures on the Appeal and Release on Bail, as of 31 July 2019 available here:
EN: <https://tinyurl.com/y5r5pt5p> & TH: <https://tinyurl.com/y37ltojz>

2.6. Granting of Bail by Supreme Court for Ms. Narisara Muangklang and Mrs. Thongpan Monggang and release from jail on 13 August 2019

On 13 August 2019, the Supreme Court granted bail to Ms. Narisara Muangklang and Mrs. Thongpan Monggang, both with the bail amount of 200,000 THB. The Provincial Justice Board had already approved their bail amount during a meeting held on 5 August 2019. Consequently, Ms. Narisara and Mrs. Thongpan were released on bail on 13 August 2019 from Chaiyaphum Provincial Prison, until their trial by the Supreme Court.



SAI THONG NATIONAL PARK CASE
14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

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MS. NARISARA MUANGKLANG
33 years old

She is Nittaya's and Suphaphorn's sister. She worries a lot about her father who has serious health issues and needs someone to take care of him.

"I am worried about the amount of debt that we have. If I really have to go to jail, how could my father live alone as every woman in my family has been charged? I am so stressed that I cry all the time. My mental health is really affected."

COURT HEARING

CASE 1742/2017	3 July 2019
CASE 1743/2017	

CONVICTED TO

	ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
		Jail time	Fine - each one with 7.5% interest per year
CASE 1742/2017	3 rai, 1 ngan and 87 square wah	9 months and 10 days	607,161 THB
CASE 1743/2017	8 rai, 3 ngan and 51 square wah		

+ LAND EVICTION

*1 rai = 0.16 hectare *1 ngan = 400 square meters *1 square wah = 4 square meters

SAI THONG NATIONAL PARK CASE
14 LAND RIGHTS DEFENDERS UNFAIRLY TREATED AS CRIMINALS

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MRS. THONGPAN MONGGANG
58 years old

She is Nittaya's, Narisara's and Suphaphorn's mother.

"I am thinking about my daughters and my family. My grandson needs to go to school, while my son in law has to work for his wife, Nittaya, who is now in jail. My head is always heavy and my heart hurts."

COURT HEARING

CASE 1740/2017	25 June 2019
CASE 1741/2017	

CONVICTED TO

	ALLEGED ENCROACHED SURFACE	CRIMINAL CHARGES	CIVIL CHARGES
		Jail time	Fine - each one with 7.5% interest per year
CASE 1740/2017	5 rai, 3 ngan and 11 square wah	8 months	100,000 THB
CASE 1741/2017	2 rai, 2 ngan and 50 square wah		

+ LAND EVICTION

*1 rai = 0.16 hectare *1 ngan = 400 square meters *1 square wah = 4 square meters

Summary & Pictures on the Appeal and Release on Bail, as of 13 August 2019 available here:
EN: <https://tinyurl.com/y6cz6yzs> & TH: <https://tinyurl.com/yvtfgj54>

2.7 Consideration of the Bail Application for the 2 remaining HRDs

The bail application submitted by the lawyer for the other 2 HRDs, Mr. Sompitr and Mr. Suwit, on 19 July are still to be accepted by the Supreme Court. Regarding the process, once the application has been accepted, the Supreme Court will have to give its decision on the granting of bail within 3 days.

3. Provision of Bail Amount through the Justice Fund

In Thailand, the Justice Fund Act of 2015 provides legal aid to assist indigent persons being tried by the court system. The justice fund supports access to justice and justice procedures, by financially supporting legal assistance in litigation, temporary release for the defender on bail, compensation for human rights abuses, and for legal education of the public. The Justice Fund is managed, approved and disseminated by the Rights and Liberties Protection Department (RLPD) of the Ministry of Justice at the National level, and by Provincial Justice Boards in each province across the country.

3.1. Provision of Bail Amount through the Justice Fund for 4 WHRDs

Following continuous engagement by OHCHR and civil society organisations with the RLPD, the bail amounts of 180,000 THB for Ms. Seenuan Phasang; 500,000 THB for Ms. Pattama Komet; and 180,000 THB for Ms. Suphaphorn Seesuk were approved under the Justice Fund by the Provincial



Justice Board. This amount was transferred by the Provincial administration on 18 July 2019, with the oversight of civil society organisations, and the coordination of the Provincial Justice Officer and the Provincial Court Officer the bail amount was submitted and processed. Additionally, a bail amount of 160,000 THB for Ms. Sunee Nalin was approved under the Justice Fund by the Provincial Justice Board and transferred to the Provincial Court Officer on 25 July 2019 for the processing of her bail.

3.2. Provision of Bail Amount through the Justice Fund for Mr. Put Sukbongkot

For Mr. Put Sukbongkot, an application was submitted to the Justice Fund, for the provision of the bail amount of 200,000 THB. Although Mr. Put was granted bail on 18 July 2019, the Provincial Justice Board first asked him to provide anything of value as a guarantee, in order to get access to the fund. This was later reconsidered and the bail amount was granted under the Justice Fund on 25 July 2019.

3.3. Provision of Bail Amount through the Justice Fund for Ms. Suwalee Phongam

An application was submitted to the Justice Fund for the provision of the bail amount of 200,000 THB for Ms. Suwalee Phongam. Although Ms. Suwalee was granted bail by the Supreme Court on 26 July, the Provincial Justice Board only approved her bail amount during a meeting which was held on 5 August 2019.

3.4. Provision of Bail Amount through the Justice Fund for Ms. Nittaya Muangklang

An application was submitted to the Justice Fund, for the provision of the bail amount of 350,000 THB for Ms. Nittaya Muangklang. This application was processed by the Provincial Justice Board and the amount was transferred as soon as Ms. Nittaya was granted bail on 31 July 2019.

3.5. Provision of Bail Amount through the Justice Fund for the 4 remaining HRDs

During the meeting held on 5 August 2019, the Provincial Justice Board did not only approve the bail amount of Ms. Suwalee, but also approved the bail amounts for Mrs. Thongpan Monggang; Ms. Narisara Muangklang; Mr. Suwit Rattanachaisi; and Mr. Sompitr Taennok. Although at the time of the meeting the Appeal petitions were not yet accepted by the Supreme Court, the Provincial Justice Board had approved the granting of bail amount for these cases in advance. However, the amount had not yet been received from the provincial administrative authorities. Therefore, another meeting was scheduled on 9 August 2019, to discuss the receipt of this amount from the Centre and it had been suggested that a contract with the defenders' family members needed to be established, stating that they will not leave the country. Resulting from the meeting of 9 August, the money had been received, and the three women have been released on bail on 13 August 2019.

All those assisting in the process of obtaining the bail amount under the Justice Fund are working tirelessly in the process, to ensure quick approval and so that this develops into a good practice. This is due to the fact that there are several thousand such cases pending against land rights defenders all over Thailand and such a practice could (1) guarantee legal aid support in individual



cases; and (2) prevent complacency from the authorities involved and it could be used to hold these authorities accountable.

4. Solutions proposed by Sab Wai villagers to resolve land disputes

After the 14 Sab Wai villagers were sued by Royal Forest Department officers for encroaching and trespassing on Sai Thong National Park in 2015 and 2016; the villagers and the People's Movement for a Just Society (P-Move), a network of grassroots communities and forest dwellers advocating for land rights, undertook various actions to address the land disputes in Sai Thong National Park. In 2016, they engaged with the Ministry of Natural Resources and Environment and other relevant government agencies and it was agreed to (1) temporarily halt the eviction of villagers from the national park area and (2) establish a 'provincial working group to resolve land issues in Sai Thong National Park'.

From 2016 to 2018, meetings were held between government agencies and local representatives to resolve land disputes in the area and affected villagers in Sai Thong National Park proposed a 'sustainable land and natural resources management plan through participatory approach' as a solution to the dispute. The villagers' plan was accepted by the 'provincial working group to resolve land issues in Sai Thong National Park' in March 2018, during a meeting held in Korat. Unfortunately, as of yet, the plan has not been approved or adopted by the Chaiyaphum provincial administration. Moreover, members from the Chaiyaphum Provincial administration who attended the meeting in Korat have in the meantime left their positions without having done a proper handover. Consequently, the current Provincial administration is not aware of what was discussed and agreed on during the meeting. Therefore, the plan proposed by communities has not yet been implemented.ⁱ Once the community's plan will be approved by the provincial administration of Chaiyaphum, it will then be sent to the Ministry of Natural Resources and Environment or the Cabinet for its approval. If approved, the villagers will be able to continue living in Sai Thong National Park area; pass on the land to their children, and they will be protected from being sued in the future. However, villagers will not be able to expand their land outside the permitted area.ⁱⁱ

Further, in November 2018 the last meeting with the provincial working group to resolve land issues in Sai Thong National Park was held. However, even though a request has been made several times, the villagers have still not received the meeting minutes from this meeting. This is problematic as these meeting minutes could strengthen the defendant villagers' cases, since they could have been utilised as evidence to show their collaborative approach and prove to the Appeal Court that discussions and solution-seeking procedures were ongoing.

The lawyer of the Sab Wai villagers, Mr. Somnuek Tumsupap, presented the abovementioned ongoing procedures to the Court; but the Court has not considered them at all.

From the above, it can be concluded that the villagers of Sab Wai village have undertaken various actions to seek solutions for the land dispute in Sai Thong National Park and that they are willing to engage and collaborate with relevant government agencies at the provincial level to seek and reach solutions together. However, until now the provincial authorities lack the political will to implement the solutions proposed by the villagers, such as the 'sustainable land and natural resources management plan through participatory approach,' and the provincial authorities have



also not provided the villagers with the necessary documents and materials stating that discussions on resolving land disputes were ongoing, which they could have utilised as evidence in the Appeal Court to strengthen their cases.

5. Overview of the Legal Framework misused to criminalise 14 HRDs

5.1. Thailand's false climate solution & the misuse of forest conservation policies to criminalise rural communities rather than capitalist investors

Thailand is one of the developing countries participating in the Forest Carbon Partnership Facility (FCPF), which is a global partnership of governments, businesses, civil society and indigenous peoples focused on reducing emissions from deforestations and forest degradation, forest carbon stock conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries (activities commonly referred to as REDD+).ⁱⁱⁱ The FCPF hosted by the World Bank has created a framework and processes for REDD+ readiness, which helps participating countries get ready for future systems of financial incentives for REDD+.^{iv} Thailand was selected as one of the REDD participant country in 2009. Its REDD+ readiness preparation proposal was approved in 2013 with a condition to undertake additional consultations with the concerned stakeholders, in particular indigenous peoples and local communities that have been monitoring the REDD+ implementation in the country.^v Subsequently, in 2014, the Forestry Master Plan, the 'Forest Reclamation Policy', was issued based on NCPO Order 64/2014.

5.2. The Forestry Master Plan: 'Forest Reclamation Policy' as a strategy to evict the Poor

With this policy, the Thai government, specifically the Internal Security Operations Command (ISOC), the Ministry of Natural Resources and Environment (MNRE),^{vi} and the Royal Forest Department (RFD), aims to combat problems such as forest destruction and trespassing on public land, while intending to increase Thailand's national forest area by 26 million Rai or upto 40% of the total area of the country. The Master Plan was around the discourse that commercial investors' exploitation of Thailand's natural resources is responsible for deforestation and must be stopped. The government appeared sincere in its intentions to target only wealthy investors after it released Order 66/2014, a supplemental directive which states that government operations must not impact the poor. However, implementation of the Master Plan has overwhelmingly targeted impoverished villagers and indigenous peoples who lived on their lands for decades as "investors" or alleged that local communities were being funded by wealthy investors, while it was found that in ISOC's operations, no organisations or capitalists have been arrested or charged for conducting illegal logging or encroachment.^{vii} This has resulted in a complete disregard of the protection measures set out by Order 66/2014. The Royal Forest Department does so by misusing laws and policy by confiscating land and evicting villagers from their land, by enforcing various forests and national park related laws such as (a) the Forest Act B.E. 2484, (b) the National Reserved Forests Act B.E. 2507, and (c) the National Park Act B.E. 2504.

Focus on the controversial NCPO orders operationalizing the Forest Reclamation Policy

To operationalise the forest reclamation policy, orders were also passed by the National Council for Peace and Order (NCPO) consisting of the military *junta*. The two most relevant orders include NCPO Order No. 64/2014 and 66/2014.



- *NCPO Order 64/2014* related to the suppression and cessation of encroachment and destruction of forest resources, provides that authorized state agencies are to suppress violations and arrest those who encroach on, seize, possess, destroy, or act in any manner that may cause damage to the forest, specifically on protected land. The aim of the NCPO Order 64/2014 is to stop deforestation which has been caused by commercial investors' exploitation of Thailand's natural resources.
- *NCPO Order 66/2014* suggests that the primary targets of these measures must be investors or large-scale outside developers, whereas the poor, landless and those who have settled in the land before it was declared as a protected area, should not be affected by the NCPO order 64/2014. NCPO Order 66/2014 establishes a list of such people who are permitted to use the land. The Order 66/2014 appeared to focus only on wealthy investors. However, during its implementation of the Forestry Master Plan, the government has persistently identified impoverished villagers who lived on their lands for decades as "investors" or alleged villagers as being funded by wealthy investors, resulting in the loss of protection as set out by Order 66/2014. Five strategies have been followed by the NCPO to evict people, namely stopping illegal logging, stopping forest encroachment, seizing encroached areas, destroying villagers produce while filing lawsuits, and conducting area surveys.

Discrepancies in the application of NCPO Order 66/2014, meant to protect poor people from being evicted for forest land

In order to target HRDs protecting their land and protesting against land evictions, the government has purposely excluded villagers from the protection guaranteed to poor people under NCPO Order 66/2014. The Sai Thong National Park case clearly demonstrates the discrepancies in the application of NCPO Order 66/2014: the Royal Forest Department said that NCPO Order 64/2014 is meant to target investors and NCPO Order 66/2014 is meant to exclude poor people from NCPO Order 64/2014 and protect them from being sued by the government. The definition of poor, according to the Royal Forest Department, is not properly defined and depends on the appreciation of the Thai authorities and judges. In the case of the 14 Sab Wai villagers currently prosecuted, the judges did not consider them as poor because they were allegedly owners of 2 to 3 plots of land^{viii} but villagers find themselves unfairly targeted as they are only small-scale farmers. This highlights the unequal application of the NCPO Order 66/2014, considering that those who were supposed to be protected, not only lost their land but also were found guilty of the charges of trespassing, having to pay a fine of between 40,000 THB to 1,6587,211 THB, together with jail time ranging from 5 months 10 days to 4 years. Finally, their criminalisation further put them in poverty situation, leaving their families, elders and children behind, with insufficient financial resources and care.

Unlawful usage of the Cabinet Resolution of 30 June 1998 which is by itself flawed in its implementation

Another reason why the 14 Sab Wai villagers were declined protection under NCPO Order 66/2014 is because the appeal judgment ruled that the villagers had newly moved into the area. The court concluded that the villagers had no proof that they had lived in the national park area before its' establishment in 1992 because their names are not listed in the survey, which was conducted under the Cabinet Resolution of 30 June 1998. Even though it is stipulated in NCPO Order 66/2014 that an investigation and rights-proving procedure would take place for new encroachers, verification methods of communities' land rights, such as examining the traditional, cultural, and historical context, have been neglected by law enforcers^{ix} and instead, the Cabinet Resolution of 30 June 1998 was utilised as a land-rights identification method. Under the Cabinet Resolution of



30 June 1998, aerial photographs and satellite images were taken and surveys amongst villagers living in national parks and reserved forest areas have been conducted. Based on the images and surveys, a list was created and those included in it were allowed to make a living in national reserved forest and national park areas.^x The lawyer, Mr. Somnuek Tumsupap, pointed out that the 14 prosecuted villagers of Sab Wai villagers were not on the list because survey data is missing, and even though they are heirs to the land, their names are not included on survey documents. This is due to the flawed implementation of Cabinet Resolution 30 June 1998 as: (1) authorities have limited time available to conduct surveys; (2) the number of personnel conducting surveys is limited, and (3) the budget allocated for surveying is insufficient. Therefore, in the case of the Sab Wai villagers, when authorities ran out of funds to survey, they did not continue the surveys but allowed villagers to continue living on the land.^{xi} The villagers also pointed out that surveys were not conducted fairly. Villagers had approached surveying rangers on various occasions to ensure that their land was surveyed and they would be included in the list, but the rangers made excuses not to survey their land and told them that another survey would take place after four years.

The lawyer of the 14 Sab Wai villagers, Mr. Somnuek Tumsupap also identified another flaw by questioning the usage of the Cabinet Resolution of 30 June 1998 as a land-rights identification method because the usage of this Resolution is not specified in either NCPO Order 64/2014 or 66/2014. NCPO Order 66/2014 states that an investigation and right-proving procedure would take place for new encroachers but in the case of the Sab Wai villagers, officials have chosen to utilise the Cabinet Resolution of 30 June 1998 as a land-rights identification method. According to Mr. Somnuek, the Cabinet Resolution of 30 June 1998 can only be utilised if the NCPO Orders require to do so. In the case of the Sab Wai villagers, the court has interpreted and applied the NCPO Orders as the primary source on which the charges are based. The NCPO Orders overrode the Cabinet Resolution and thus the intentions of the NCPO Orders should be followed, with (1) villagers being protected from eviction under NCPO Order 66/2014 of the Forest Reclamation Policy and (2) a right-proving procedure taking place. Mr. Somnuek Tumsupap had attempted to use this argument to fight the cases of the villagers, but it was not considered by the court.

The abovementioned existing laws, policies and NCPO Orders place limitations on community rights, while restricting land rights, management and utilisation of natural resources by local people, especially in protected areas. In this manner, authorities enforce strict legislative and implement coercive measures against those who have settled and sustained their livelihoods in forest areas. By December 2015, Order No. 64/2014 had impacted nearly 1,800 families, mostly in the north and northeast, home to large indigenous populations. At that date, 681 cases filed against exercise of powers under Order No. 64/2014 towards local and indigenous communities were recorded, and 168 of these cases amounted to judicial harassment.^{xii} Further, since the 2014 military coup, there are at least 226 women human rights defenders (WHRDs) from rural areas who have been subjected to judicial harassment by State and non-state actors.^{xiii}

5.3. Abolition of NCPO Orders 64/2014 & 66/2014 but misuse of forest conservation policies will remain with controversial National Park Act of 2019

An important development with respect to the law used to criminalise the 14 villagers has been the repeal of 70 NCPO Orders including NCPO Orders 64/2014 and 66/2014 on 9 July 2019.^{xiv} These orders were withdrawn using the newly issued NCPO Order 9/2019 by the Prime Minister of Thailand, Prayuth Chan-ocha in his capacity as the head of the National Council for Peace and



Order (NCPO). However, NCPO 64/2014 and 66/2014 will continue to criminalise the legitimate actions of communities and individuals as: (1) This new order will take some time to come into effect, during which NCPO Orders 64/2014 and 66/2014 will continue to be misused; and (2) The content of the NCPO Orders 64/2014 and 66/2014, particularly their bad aspects have already been embedded into other laws including the new amendments to the National Parks Act in 2019.^{xv}

Focus on the National Park Act 2019

In May 2019, the National Legislative Assembly in Thailand passed the National Parks Act 2019, which will be effective from November this year. This law is the continuity of NCPO orders 64/2014 and 66/2014 and is expected to affect the livelihoods of local communities, indigenous peoples and forest dwellers living adjacent and within national reserved forest areas and protected areas.

Article 65 of the new law allows communities who have traditionally lived in or near parks to access them and use some of the forest resources; however, the power to give permission to do so rests solely at the discretion of National Park authorities. Main concerns with the law are related to:

- **Restrictions on the amount to be harvested by the communities** allowed to live on the national park areas;
- **The use of natural and renewable resources from national parks can only be done legally through government-approved projects;** therefore the process to obtain the approval might be arbitrary and complicated;
- Forest officials will be provided with **'search and destroy powers'** without the need to acquire court orders. Such powers are likely to result in forced evictions of communities and destroying of their properties, such as houses and crops;
- The law will impose **stricter penalties** to further limit the rights of Thai farmers, indigenous peoples: Under this new law, the penalties for those convicted of encroachment are much higher compared to the National Parks Act of 1961. Whereas in the National Parks Act of 1961, the maximum punishment for encroachment is 5 years of imprisonment and a fine not exceeding 20,000 Thai Baht, in the New National Parks Act of 2019, those convicted might face imprisonment not exceeding 20 years, and fines not exceeding 2 million Thai Baht.
- **The law will impose the strict use of Cabinet Resolution of 30 June 1998 to prove land rights of those living in reserved forest areas and national parks.** As previously explained, the Cabinet Resolution of 30 June 1998 is problematic in its enforcement as forest officials tend to exclude community members who would need to be protected to remain on their lands. Additionally, it has been argued that the enforcement of the Resolution is flawed and has caused problems between authorities and local people. Communities' rights to manage forests are not given importance by the Resolution, and on aerial photographs taken under the Resolution, it is almost impossible to determine traditional farms of indigenous peoples.^{xvi}

Furthermore, imposing the strict usage of Cabinet Resolution of 30 June 1998 will prevent Thai courts from ordering forest agencies to abide by other Cabinet Resolutions which are more beneficial to local communities^{xvii}, such as the Cabinet Resolution of 3 August 2010. The Cabinet Resolution of 3 August 2010 reaffirms article 70 of the 2017 Constitution^{xviii}, and states that Karen people have the right to stay in their ancestral land and continue their traditional farm rotation



system. Moreover, the Resolution prohibits arrests of indigenous Karen forest dwellers.^{xxix} The Supreme Court referred to this Cabinet Resolution of 3 August 2010 in the case regarding the eviction of villagers belonging to the traditional Karen community, residing in Kaeng Krachan National Park, in 2012. The Court concluded that the eviction of the villagers and the destruction of their property through the application of the National Parks Act of 1961, the Forest Act of 1941, and the National Reserved Forest Act of 1964, was in violation of the protection guaranteed under the Cabinet Resolution of 3 August 2010.^{xxx}

Finally, the powers and functions of the NCPO are now also being slowly passed on to the Internal Security Operations Command (ISOC), established under the Internal Security Act.^{xxxi}

20-Year National Strategy: increase the country's forested area to 55 percent by 2037

As written in its 20-Year National Strategy, the Royal Thai Government (RTG) aims to increase the country's forested area to 55 percent of the total Thai territory by 2037. The forested area will include 35 percent of natural forest; 15 percent of forest plantations, and 5 percent of recreational areas.^{xxii} The RTG wishes to achieve this ambitious goal through the following strategies: (1) suppressing forest encroachment; (2) promoting the restoration of forested areas and the ecosystem; (3) communities' participation in protecting forest resources and planting forests; (4) developing a tourism strategy to limit the number of tourists;^{xxiii} (5) providing incentives to corporations doing business in the forest plantation industry,^{xxiv} and (6) enhancing natural resources management by amending natural resources legislation.^{xxv}

New Forest Plantation Model

In 2019, the Royal Forest Department noted that through its current model and budget it will not be possible to increase the country's forested area to 55 percent by 2037. The department blamed this on landless villagers who occupied newly planted forests, leading to a decreased rate of forested area despite replantation efforts made by the Royal Forest Department. Therefore, the Royal Forest Department introduced a new forest plantation model through which the cost could be reduced to 1,000 THB per Rai^{xxvi} and more forested area could be created. According to the Director of the Royal Forest Department, this new forest plantation model would economically benefit communities; solve problems of landlessness, and reduce income inequality.^{xxvii} Under the new model, the recently appointed military government introduced a land allocation scheme in which 1.21 million Rai of public land in degraded forests will be given to communities, to plant trees from which they will economically benefit. Communities who will be allocated land will be given sprouts and have to utilise 20 percent of their land to plant three types of trees: (1) native trees that they will not be allowed to cut; (2) economic trees that they can cut for personal use but must be replanted, and (3) edible trees.^{xxviii}

As noted, only 1.21 million Rai of public land of degraded forest will be given to communities under the new forest plantation model. Even though this may sound like a lot, it is only 0.37 percent of the Thai territory, which amounts to approximately 321 million Rai. 1.21 million Rai would not be sufficient to accommodate all those in need of land, and who rely on it for their livelihood.

Moreover, the government aims to achieve its goal of expanding forested area to 55 percent by 2037 by suppressing encroachment and promoting restoration of forested areas and the ecosystem, which has proved problematic.^{xxix} Consequently, the RTG makes significant efforts to increase the number of National Parks in the country and has established five parks, equal to 331,952 Rai,



between 2016 and 2019. Currently, the RTG is in the process of establishing additional 22 National Parks, equal to 44 million Rai.^{xxx} In total, Thailand will have 155 National Parks, which will together amount to 146,488,000 Rai^{xxxii} or 45 percent of Thai territory. The increase of national parks to 45 percent of the country will be problematic for local communities living within and adjacent to such areas as they will be subject to the restrictive National Parks Act of 2019 described above and face increased risks of being evicted from their lands and not being able to make a livelihood. Therefore, it can be concluded that the plan to increase the forested area to 55 percent by 2037 is more likely to worsen the issues of poverty, landlessness, and income inequality, rather than enhancing them not just for at present but also for generations to come.

6. Recommendations

In order to address the damage caused by legislations and policy on forest reclamation that affect the 14 villagers and land rights defenders of Sab Wai, we believe government authorities must constantly be urged to:

1. Immediately drop all criminal and civil charges against the 14 villagers for the legitimate use of their land;
2. Stop, without further delay, the abuse of forest conservation laws and policies, to evict local communities and individuals from land they have been living on for generations;
3. Address the impact of NCPO Orders 64/2014 and 66/2014 that disproportionately impacts the marginalised and poor local communities and their right to land, right to work and earn a livelihood, instead of targeting investors and large-scale businesses;
4. Provide a fair remedy and compensation to those who have been affected by the unjust use of the law, policies, NCPO Orders, and for protecting their fundamental rights under these;
5. Guarantee the prompt and effective implementation of the Sustainable Land and Natural Resources Management Plan, inclusive of community participation, which was approved by the Provincial Working Group (created to resolve land issues taking place in Sai Thong National Park) in March 2018.

All you need to know on the Sai Thong National Park Case, from charges, convictions, trial monitoring to national & international advocacy efforts, is available on our dedicated webpage:

<https://www.manushyafoundation.org/sai-thong-np-case>

Endnotes

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