

# RECLAIMING RIGHTS IN FORESTS



STRUGGLES OF  
INDIGENOUS PEOPLES  
IN THAILAND

# RECLAIMING RIGHTS IN FORESTS STRUGGLES OF INDIGENOUS PEOPLES IN THAILAND

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Produced by :

IWGIA and HPT with support from the Danish Ministry  
of Foreign Affairs



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United Nations Democracy Fund (UNDEF)  
United Nations Development Programme (UNDP), Thailand

ISBN : 978-974-16-5488-8

Printed in Bangkok, Thailand ; August 2008

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With special thanks to our interpreters and guides during the field trips,  
Worawuth Tamee (Lisu) and Songwuth Laeche (Akha)

ARTWORK by PeopleUniv.Publishing/Metha Matkhao,  
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# *P r e f a c e*

Indigenous peoples who have been residing in Thailand for years face many violations of their human rights. They have been subjected to racial discrimination. They face prejudice and are looked down upon by the society. They are labeled as drug traffickers, people who cause deforestation and are considered threats to national security. They are forcibly evicted from their dwellings in the forests and are subjected to abusive behavior, extortion, arbitrary detention and are excluded from accessing natural resources.

Indigenous peoples in Thailand have almost no power to struggle against the other forces. They are not able to advance on the road to justice. The road to justice is complex, costly and full of obstacles. This rough road to justice does not originate at the point the peoples got arrested - but much before - with the enactment of discriminatory laws and policies and their enforcement and implementation.



Today the indigenous peoples still have their dignity and rights because of our struggles. Throughout history the indigenous peoples have together fought and campaigned for the recognition of their demands and created a space for negotiation with the authorities. Many of us have faced threats of being under surveillance, killed or arrested. Many of them were extra judicially killed during the 'war on drugs'. And we have learnt that we have to protest and launch demonstrations to make our voices heard and to counter state power.

This book is a documentation of human rights violations against indigenous peoples in the north of Thailand. It also tries to present the root cause of these violations.

The existing system of laws and policies provides opportunities to the authorities to abuse or misuse their powers in this Buddhist land of peace. The book reflects on the facts gathered from the real stories of the people. The voices of the indigenous peoples help in providing a better understanding of the issues. It also hoped that these voices will be our conscience and guide us in our efforts to ensure that indigenous peoples no more face violations of their rights.

Wiwat Tamee  
Coordinator of Highland Peoples Taskforce  
(HPT)

# Preface



**60** years ago, over 60% of Thailand was forested. Today, forests cover only 28.4% of the nation's land area. The driving forces behind the massive deforestation over the past decades are manifold and closely interrelated: population growth and increasing demand for agricultural land, the logging industry, the promotion of cash-crop agriculture, the expansion of the road network that provided access to remoter areas and ambiguous land ownership rights. In public, however, the blame for deforestation has for many years and up till today been put above all on one particular group of people: Thailand's indigenous peoples. These people indeed live in or close to forest areas. Their livelihood depends to a large extent on forests and forest resources. But their presence in or near forests is seen as a threat to these forests. And by declaring certain forest areas as protected forests, wildlife sanctuaries or national parks, their settlements have become illegal, they are now called "encroachers".

It takes only a little reflection, however, to put all this into proper perspective. If one takes a map showing the present forest cover of Thailand, and overlays this with another map showing the distribution of indigenous peoples in the country, one will notice a striking correspondence. The conclusion drawn by the government is as mentioned: that this should not be, that the presence of people in these areas is a threat to the forests. But there is another way to look at it and one should maybe ask oneself: how comes that there is still a lot of forest in areas where indigenous peoples live, while there is hardly any forest left where the majority Thai people live? Couldn't we also conclude that these people have obviously found ways to live in and with forests without destroying it?

Since recent years, Thailand's indigenous peoples have tried to convince the government and the public that this is precisely the case. Together with other forest dependent people and with support of civil society organizations and academics they have proposed an alternative forest policy that recognizes people's right to forest and their capacity to sustainably use, manage and protect them.

Thailand's indigenous peoples are not alone in this. Indigenous peoples all over the world are presently engaged in a struggle to convince governments and conservation agencies to recognize indigenous communities' capacity to conserve forests. Over the past decades, millions of people, a majority of them belonging to indigenous peoples, have been forcefully evicted from their ancestral lands in the wake of the creation of protected areas. Sadly, however, the conventional approach in nature conservation has not proven very successful. In spite of all efforts, the world's biodiversity is rapidly being lost. Thus, for the sake of more effective nature conservation many conservationists are now calling for a change of policy towards a collaborative approach, in which communities play a crucial role.



Recognizing the potential role of indigenous communities in forest and biodiversity conservation, however, is only one side of the coin. The recognition of indigenous communities' rights to land and forests cannot be based only on the acknowledgement of their contribution to conservation. This would be mere utilitarianism. Ultimately and more important, the recognition of their rights to land and forests has to be based on the respect for human rights. Not only in Thailand, indigenous communities have in most cases lived in their ancestral lands long before these areas were declared protected forests or national parks. Denying them the rights to their land and forcefully evicting them amounts to an outright violation of basic human rights.

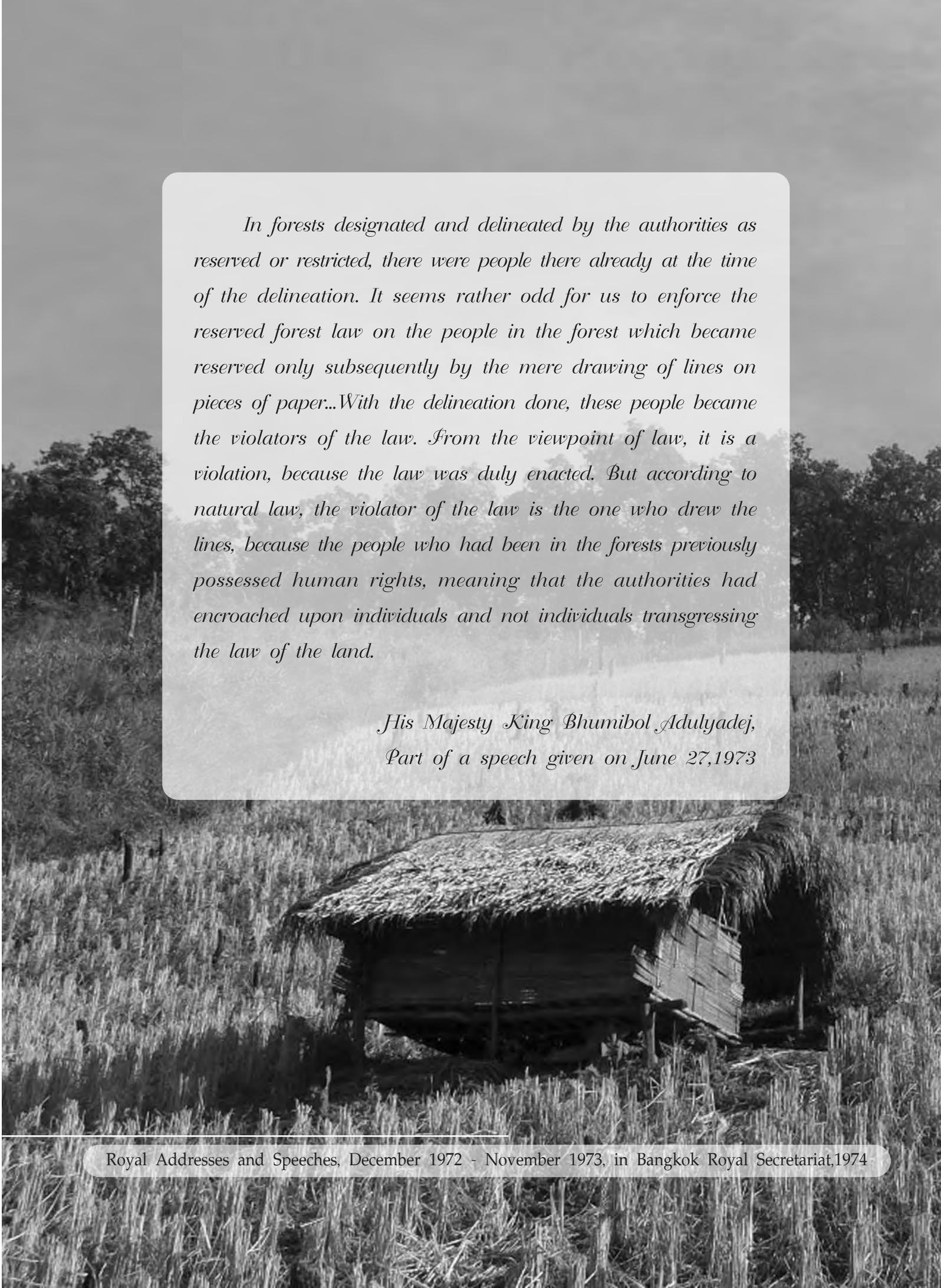
Fortunately, most countries, including Thailand, have ratified international conventions for the protection of human rights. And recently, Thailand has voted in support of the United Nations Declaration on the Rights of Indigenous Peoples in the UN General Assembly. There are also encouraging signs on the ground for a change of view and approach on the part of the responsible authorities. At least some officers in the Forest Department or the Department of National Park Wildlife and Plant Conservation have engaged in dialogue and are even experimenting with new approaches. Such initiatives need to be supported by the public. This book will certainly contribute significantly to a better understanding of the human rights dimension of the present forest policy in Thailand in general, and in particular of its impact on the country's indigenous peoples. IWGIA therefore feels privileged having been able to contribute to the successful completion of this project.

Christian Erni  
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# *C o n t e n t*

1. INTRODUCTION .....	7
2. RIGHTS OF INDIGENOUS PEOPLES IN THAILAND TO FORESTS AND NATURAL RESOURCES .....	12
a. Legal regime governing the rights to forest land and natural resources in Thailand	
b. Struggles of Indigenous Peoples to claim rights over land	
● Na-on	
● Huaykon	
● Pang Daeng	
c. Reviewing the stories of Na-On, Huaykon and Pang Daeng against international human rights standards	
d. Lisu of Huaysan village - ‘cursing ceremony’ to claim ancestral land	
3. DEVELOPMENT POLICIES AND PROGRAMS FOR SUSTAINABLE MANAGEMENT OF FOREST RESOURCES .....	41
a. Huay Plalod	
b. Paeksam	
c. Huay Jakhan	
d. Reviewing the policies against international human rights standards	
e. Reflection on real forest situation in Thailand	
f. Proceedings of Cabinet Meeting, 29 <sup>th</sup> April 2008	
4. COMMUNITY FORESTRY .....	52
a. Huayked	60
b. Interview with Anand Kanchanaphann (reproduced)	
5. CONCLUSION .....	





*In forests designated and delineated by the authorities as reserved or restricted, there were people there already at the time of the delineation. It seems rather odd for us to enforce the reserved forest law on the people in the forest which became reserved only subsequently by the mere drawing of lines on pieces of paper...With the delineation done, these people became the violators of the law. From the viewpoint of law, it is a violation, because the law was duly enacted. But according to natural law, the violator of the law is the one who drew the lines, because the people who had been in the forests previously possessed human rights, meaning that the authorities had encroached upon individuals and not individuals transgressing the law of the land.*

*His Majesty King Bhumibol Adulyadej,  
Part of a speech given on June 27, 1973*



## *Introduction*

Indigenous Peoples in Thailand live close to nature – the forests, mountains or sea coast. Their close relationship to nature is reflected in their way of life and belief systems. They have distinct traditions, language, culture, dress and cuisine. Not only are these different from Thai culture and language but there is a lot of diversity amongst different indigenous groups as well. Most of the indigenous people living in the hilly regions of north and west Thailand practice swidden agriculture, mainly growing rice and corn. Rice is the main crop and is grown for own consumption. The cherished goal is to be able to grow enough rice to meet the needs of the family for the entire year. Corn and tea, recently coffee, are crops that help in earning the cash income needed to purchase consumables from the

market and meeting basic needs such as education of children.

There is a system of exchange labour or shared labour – during planting and harvest time with people helping each other in their fields. Family members who have migrated to nearby towns in search of employment usually return to their villages during the busy seasons and help not only their family but also others in the community. Rice is the staple food and is supplemented by fresh vegetables grown in small gardens around the house and herbs gathered from the surrounding forests. Most families rear chickens or pigs. Barter economy is in practice - exchanging vegetables from one's gardens is quite common. The people in general are not wealthy but they are happy and contented in cultivating their land and live close to nature.

The year 2007 was a historic year for the indigenous peoples in Thailand. There were developments at the national and international level that would have an impact on their struggle for the recognition of their rights.

At the international level, after more than 20 years of negotiations, the United Nations finally adopted the Declaration on the Rights of Indigenous Peoples on 13th September 2007. The Declaration reaffirmed the equality of indigenous peoples to all other people. It affirmed that knowledge of indigenous peoples contributed to proper management of the environment and natural resources. It also recognized the need for indigenous peoples to of indigenous peoples to promote their development in accordance with their aspirations and needs. This Declaration marks the

## *Struggles of Indigenous Peoples in Thailand*

commitment of the international community to protect the individual and collective rights of indigenous peoples and sets a framework for the future.

At the national level, more than 40 indigenous peoples' organizations got together on 9th August 2007 to celebrate for the first time in Thailand, the International Indigenous Peoples Day. The idea of celebrating the indigenous identity was expanded, and again for the first time, a week long Indigenous Peoples Festival was held in Chiangmai in September 2007. Mr. Joni

O d o c h a o ,  
Chairperson of the  
O r g a n i z i n g  
Committee of the  
festival and a local  
Karen intellectual,  
remarked at the  
opening session;



“We have a distinct way of life, settlement and cultivation - practices that are intricately linked with nature, forests and wild life. Our ways of life is sustainable and nature friendly and these traditions and practices have been taught and passed on from one generation to the next. But now because of State policies and waves of modernization we are struggling to preserve and maintain our traditional ways of life. The objective of organizing this festival is to celebrate the diversity of Thai society and specially promote understanding about the culture and way of life of the Indigenous Peoples in Thailand.”



The government delegation present at the festival affirmed the commitment of the Thai State to the standards enshrined in the Declaration on the Rights of Indigenous Peoples, but added that the benefits flowing from the Declaration would be based on the laws and Constitution of Thailand.

This statement gives a glimpse of the problems faced by the indigenous peoples in Thailand. It also hides the complexity of the issue for there is no recognition of 'indigenouness' in Thailand. In multicultural societies where there are different ethnic groups, how does one identify indigenous communities or tribal

peoples? The ILO Convention 169 and the World Bank have given some indicators which are; a) close attachment to ancestral territories and to the natural resources in these areas; b) self-identification and identification by others as members of a distinct cultural group; c) an indigenous language, often different from the national language; d) presence of customary social and political institutions; and e) primarily subsistence-oriented production.

However there is no word or phrase in Thai vocabulary which captures these different elements. The 2 percent of the indigenous or tribal population in Thailand are known through

various terms such as Chaokao (Mountainous people), Chaokao Oppayob (Migrant mountainous peoples), Chao-Thai-pukao (Mountainous Thai peoples), Kum-Chat-tipan (Ethnic groups), Chon-kum-noy (Ethnic minorities), Bokkon Bonpun Ti Sung (Highland peoples) or people having entered Thailand illegally. All these terms which have been coined by the State define the people in relation to their place of living, their place of origin, their ethnicity or their numbers. These terms are used to further particular objectives - such as differentiating between indigenous people living in the highlands and those living in the low lands or differentiating

between indigenous people who have received Thai citizenship from those whose citizenship is still not recognised, thus, dividing the people into smaller sub groups.

But there is no term that reflects the common elements of their identity – their close relationship to land and nature, belief in animism and the wisdom and power of ancestral spirits, distinct culture, language and way of life.

This omission in language is not just a case of semantics. Laws enacted since the development of the Thai nation State such as the Forest Act 1941, the National Park Act, 1961, Wildlife Sanctuary Act 1992, the Community Forest Management Act 2007, completely ignores the fact that people have been living inside the forests in an harmonious relationship with it since a long time in history. Instead all these laws consider the forests and natural resources as national property, the control of which should rest with the State. Thus the State has unlimited power to manage these resources. Apart from these laws, the Thai State since the 1950s has been pursuing a policy of assimilation of the hill tribe people into the Thai State through control of their populations, reorganising their hamlets in proper villages so that its easy for the government officers to administer them and encouraging the people to identify with the Thai nation State and its culture. The general assumptions behind such policies is that the tribal people are ignorant,

uncivilised, vulnerable to anti national influences and thus are a threat to national security unless they are controlled and brought into the fold of Thai society. These perceptions of the Thai State are transmitted to the public through different communication channels, gradually making the hill tribe people – their language, way of life, objects of criticism and censure. With the enactment of each law, the people living in the forests have been divested of their natural rights to the land and natural resources, and their culture. There are some policies that have recognized the rights of the indigenous people. How have these policies being implemented? How have the laws affected the indigenous communities and their life? How has Thailand performed in terms of its international human rights obligations?

This report seeks to answer some of these questions through case stories of villagers affected by laws and development policies and projects specifically

on their rights in forest and rights to land. The case stories of Naon, Huaykon, Huaysan, Paksaem, Huay Jakhan and Huayked villages were documented through field visits and review of campaign and advocacy documents. The case story of Pang Daeng was documented through review of documents and interviews with lawyers connected with the case. The purpose of the document is not to provide a comprehensive analysis of laws and policies governing indigenous peoples. Instead the objective is to highlight the impact of the existing laws and policies on the lives of the indigenous peoples through the narration of the different struggles and identify the gaps in such laws and policies as measured against human rights standards.

The different case studies together with the analysis of laws and policies attempt to give some glimpses of the struggle of the indigenous people to reclaim their identity, rights and their dignity.





## UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

### *Article 26*

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

# *Rights of indigenous peoples in Thailand to forests and natural resources*

In Thailand there is no recognition of the 'indigenesness' of hill tribe people. Consequently there is no formal recognition of indigenous land such as in Sabah and Sarawak in Malaysia where the law<sup>2</sup> recognizes that indigenous peoples have native customary rights over the lands they have been cultivating and occupying. In Cambodia, the Cambodian Land Law defines land of indigenous communities as lands where indigenous communities have established their residences and carry on their traditional agriculture including land that is required for shifting of cultivation as required by the agricultural practice of indigenous people<sup>3</sup>. Similarly the Indigenous People's Rights Act in Philippines recognizes that indigenous people have a right of ownership to land and resources and the right to occupy and develop their lands.

In general, indigenous peoples in Thailand do not have a legal right to the forest land in which they live and over which they depend. A framework of laws and cabinet resolutions govern ownership of forest land. This framework of laws has given 'opportunities' for forest people to get legal recognition of their rights over the land which they have been using. However these 'opportunities' have largely been very narrow and restrictive, leaving the large population of the people living in the forests vulnerable to exploitation and abuse by different stakeholders.

## THE LEGAL REGIME GOVERNING THE RIGHTS TO FOREST LAND AND NATURAL RESOURCES IN THAILAND

### **Forest Act, B.E. 2484 (1941)**

Before the emergence of the nation state, the power of different rulers depended on the amount of resources they controlled. Teak and elephants were the symbols of power. Any person who wished to cut teak forests had to obtain a permit from the local Chiefs of the Forest. Permits were awarded in exchange for “the stump fees” or the local tax. During this period all efforts were directed towards collection of revenue and there was no control on the ‘working of teak’. Owing to partiality in granting permits and strong competition in obtaining the same, quite often disputes arose amongst the buyers (mostly British subjects) and the government was called in to mediate and settle the matter. As a consequence the government tried to exercise some control and the Royal Forest Department was established in 1896<sup>4</sup>.

The idea of State ownership over forest land which began

with the creation of the Royal Forest Department was strengthened by the enactment of the Forest Act in 1941. The purpose of the Act was to control and manage logging and collection of forest produce. Section 4 of the Act defined forests as land which was not acquired by any person under the Land Code. Under Part 5 of the Act, all forest produce was brought under State control. Forest produce could be collected only after obtaining license and payment of royalty. Section 54 of the Act prohibited any person from constructing, reclaiming, burning forest or doing any thing to destroy forest or possess forest. Penalty for violating Section 54 of the Act attracts a fine extending from fifty thousand baht to one hundred thousand baht and possible imprisonment between two and fifteen years<sup>5</sup>.

Thus with the enactment of this Law, indigenous peoples living inside the forests were

made illegal. Since they had no legal titles, their settlements, cultivation fields on land which had now being declared as ‘forests’ was deemed illegal and the people became encroachers on their own land.

### **National Park Act, B.E. 2540 (1961)**

Section 6 of the Act gives authority to the Government to prescribe any land that it thinks should be maintained and reserved for the benefit of ‘public education and pleasure’, as a ‘National Park’. Such land, determined as ‘National Park’ becomes State property and can not be owned or legally possessed by private persons. Once a national park is determined, the authorities are required to provide boundary posts or other signs to enable the public to know the boundaries of the national park<sup>6</sup>.

As per Section 16 of the Act, within the boundaries of the National Park, no person is

<sup>2</sup> Land Ordinance 1930 (Sabah, Malaysia) sec 15; Land Code 1958 (Sarawak, Malaysia) sec 5; Also see Land Rights of Indigenous People in South-East Asia, Alexandra Xanthaki, Melbourne Journal of International Law, Volume 4, 2003

<sup>3</sup> Land Law, Royal Decree No NS/RKM/0801/14, art 25-26

<sup>4</sup> In the initial 25 years of its establishment, the Department was under the charge of the Ministry of Interior, and it was only in 1935, that it came under the Ministry of Agriculture. To read more consult the website of the Royal Forest Department: [http://www.forest.go.th/home/default\\_e.asp](http://www.forest.go.th/home/default_e.asp)

<sup>5</sup> Chapter VII, Section 72 of the Act

<sup>6</sup> Section 8 of the Act

allowed to

1. occupy or possess land including build in, or clear or burn the forest
2. collect or take out natural forest produce or take any action that endangers such natural resources
3. take out wildlife or do any act that endangers wild life
4. take any action that changes the course of waterways or causes them damage
5. take in cattle or allow them to enter
6. carry on any activity of benefit without permission from the competent authorities
7. take in or out any vehicle without written permission from the competent authorities.

The competent officer has the power to order any person violating the provisions of Section 16 to be evicted from the National Park<sup>7</sup>. While arresting and taking action against the offenders, the Competent Officer would have the powers of a police officer in accordance with the Criminal Procedure Code<sup>8</sup>. Occupying, possessing land or clearing or burning the forest, collecting or taking out natural forest produce attracts a penalty of imprisonment upto 5 years or a fine upto 20,000 baht or both<sup>9</sup>.

As per Section 5 of the Act, the Ministry of Agriculture is vested with the authority for execution of the Act. A National Park Committee<sup>10</sup>, consisting of the Permanent Secretary of the Ministry of Agriculture as Chairman, Director – General of the Royal Forest Department, one representative of the

Department of Interior and Department of Land each, and other members appointed by the Cabinet, are to advise the Minister on determination of national parks and their protection and maintenance.

**National Reserved Forest Act, B.E. 2507 (1964)**

National Parks had been demarcated to satisfy the interests of ‘public education’ and ‘pleasure’ and the objectives of setting up national parks were not to ‘conserve’ or ‘protect’ the natural resources. These interests were included in the National Reserved Forest Act.

Section 6 of the Act brought all forests protected or reserved under law within the purview of national reserved forests. Section 6 gave the government the authority to declare by a ministerial regulation, if it considered appropriate, any forest to be ‘national reserved forest’ so as to conserve the forest condition, timber, forest produce and other natural resources. As per Section 14, within the national reserved forest area no person is allowed to

1. possess land
2. make any construction, destroy or burn forest
3. do logging



4. collection forest product
5. or any other act which harms or decays the condition of the national reserved forest.

However use of land within the national reserved forest area is not absolutely prohibited. Under Section 15 and 16 a person can obtain license or permission to do logging, collect forest produce or to utilize the land or to live in the said land.

Section 16 also lays down that if an area of national reserved forest was declared to be ‘deteriorated forest’, a person could obtain written permission to continue utilizing or living in that area subject to the terms and conditions specified in the Act. Under Section 20, a person could obtain permission to ‘restore forest condition, or do forest or

<sup>7</sup> Section 21 of the Act

<sup>8</sup> Section 20 of the Act

<sup>9</sup> Section 24 of the Act

<sup>10</sup> See Section 9 and Section 15 of the Act



offending person would have to pay compensation or bear the burden of such costs.

The Ministry for Natural Resources and Environment is responsible for implementing the provisions of the Act.

#### **Wild Animal Reservation and Protection Act, B.E. 2535 (1992)**

A National Wildlife Preservation and Protection Committee under the Minister of Agriculture is given the authority to designate areas for conservation of wildlife and list the species that are to be protected. The different provisions of the Act make it unlawful to do any act that destroys or endangers wildlife and their habitat. Thus under Sections 37 and 38, no persons can enter, possess or occupy sanctuaries.

### **WINDOWS OF OPPORTUNITY**

tree plantation' in an area declared to be 'deteriorated forest'. As per Section 13 (duo) of the Act, a state agency could make a request for use of land within the national reserved forest area for its work or for public benefit. Under Section 20, if area demarcated as national reserved forest became a 'deteriorated forest', the authority could grant written permission with approval of the Minister to any person to restore forest condition or grow tree plantations in such deteriorated forests.

Section 25 gives authority to the competent officer to order eviction of any person, seize, destroy or demolish any object which is found to be violating the provisions of the Act. If the authorities have to incur any costs for destroying or demolishing such object, the

Thus with enactment of each law, the forests gradually became state property and traditional rights of the people were ignored. At the same time, there were some 'windows of opportunity' for the people to get their claims recognized.

#### **Land Code 1954**

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

#### **National Reserved Forest Act**

*Compensation against claims:* A person who had claims over the land or rights to utilize the land declared as national reserved forest could submit a written request to the District

Office within 90 days from the date the ministerial regulation became effective. If a claim was not made within that period of 90 days, it would be assumed that the person had renounced his or her claim<sup>11</sup>. A person whose claim was recognized by the National Reserved Forest Committee appointed under the Act would be entitled to monetary compensation determined by the Committee<sup>12</sup>.

*Permissions to live in land or utilize it:* Under Section 16 of the Act, a person who has been utilizing or living in the land for 5-30 years could apply for permission to continue doing so within the national reserved forest. As per Section 16 duo, if

an area of national reserved forest land could be described as 'old abandoned plantation or meadow, or forest without

<sup>11</sup> Section 12 of the Act

<sup>12</sup> Section 13 of the Act

economically valuable timber or with a minimal number of economically valuable timber', and there is feasibility to rehabilitate the natural condition of the forest, then a person could apply for permission to utilize or live in such area. Permission would be granted for a maximum period of 30 years, if the competent authority considered that such land was necessary for the 'living condition' of the applicant. Under this clause 2 of Section 16 duo, a person could also apply for permission to use such land for a 'tree plantation'.

The Act also provided the scope for obtaining permissions to live in the land or to utilize it.



### **Cabinet Resolutions**

A series of three Cabinet Resolutions dated 17th, 22nd and 29th April 1997, gave some recognition to the rights of the people who had been living inside the forests. Under the Resolutions, a Sub-Committee at the provincial level would examine petitions made by people to revoke the declaration of forest land or national park over a certain area. After investigation, the Committee could give suggestions to the Cabinet to amend the Declarations of Forest Land or National Park with respect to the particular areas. Thus for the first time, rights of people living in forests prior to the declaration of reservation areas was taken into consideration. However in 1998, forest fires broke out in many parts of northern Thailand. The Deputy Agricultural Minister publicly held the hill tribe people responsible for causing the forest fires with their 'slash and burn' cultivation practices. As a

result the Cabinet Resolution of 30 June 1998 was promulgated canceling the effects of the April 1997 resolutions. Under the June 1998 Resolution, the government could not allocate 'conservation forests' demarcated under law for land reform. It further stipulated that if land claimed by the people was critical for ecology, the people living therein should be relocated. Also any action that could be regarded as 'forest encroachment', or damaging forest resources and environment was to be strictly dealt with under law.

The Cabinet Resolution of 30 June 1998 provided for the surveying of land usage in the forests, verification of such usage and consequently granting approval for such usage. The criteria used for granting such approval were very restrictive in nature. For example the land had to have been used continuously for a period of sixty years. Army

maps of 1952 were used to cross check with army maps of 1998. Even if the villagers could provide proof that they were using a piece of forest land before such land was declared to be protected forest area, still they could be evicted if such land was considered to be a watershed area or conservation forest.

Highland People's Assembly and the Northern Farmers Federation were of the opinion that under the Cabinet Resolution, 85% of the people living inside the forests would be considered to be violating the laws relating to forests. This led to thousands of highland people and their organizations to demonstrate in front of Chiangmai Town Hall for a month in April – May 1999.

The demonstrations led to the promulgation of a new Cabinet Resolution and the Cabinet in its meeting on 11th May 1999 approved the proposal presented by the Ministry of Interior to



solve the problems of the northern farmers and highland peoples. The 11th May Cabinet Resolution provided that:

1. All villages in the communities in the forest area can be registered. The announcement shall be displayed 7 days before the registration date.

2. Registration

2.1 To assign officers to do registration for village communities living in the forest areas. The announcement shall be displayed 7 days before the registration date.

2.2 To register villagers living in the forest areas within 30 days (official working days and at the designated office only).

2.3 The applicants to be eligible should have Thai citizenships

2.4 The application should be made in the official form provided

2.5 The applicants should submit the following documents with the application form; (1) Copy of ID, (2) Copy of house registration

3. Land identification

3.1 Forestry Department shall hold a meeting to consider details of process of land identification.

3.2 Officers from the Provincial Office and from the Regional Forest Department shall be responsible for implementing the process

3.3 After the completion of the registration, the forestry department shall present a report to concerned offices.

4. Verification of land rights

4.1 Forestry

Department shall organize the meeting in order to consider the verification process.

4.2 Verification process shall be according to Cabinet Resolution on 30 June 1999 titled "Resolution of land (rights/dispute) in the forest.

5. In order to implement (2) and (3), the government through the Cabinet has agreed to provide temporary protection.

6. If there is any act of encroachment over forestry lands after that, legal action against such acts will be taken strictly.

But these opportunities could not be taken by the indigenous

people because of lack of information about the law, lack of awareness as well as inability to understand the Thai language and sometimes because of their lack of citizenship status. No action was taken by the government to make the indigenous people aware of such opportunities and enable them to make their claims or apply for permissions. At the same time, people with money and power took advantages of these opportunities and sought permissions for planting fruit orchards, gardens and building holiday resorts.

*If the Forest Department declares that a piece of land is part of a forest reserve area, villagers must file an objection within 30 days. But sometimes villagers do not know about such declarations, which are always posted at the district office. The hilltribe villagers seldom go there. However, they are hardly aware if land is in a forest reserve area or a land reform area or is land that that they can cultivate<sup>13</sup>.*



<sup>13</sup> Dr. Banjerd Singkaneti, A Tale of Intrigue in the Forest, Supara Janchitfah, Bangkok Post, 3rd October 2004



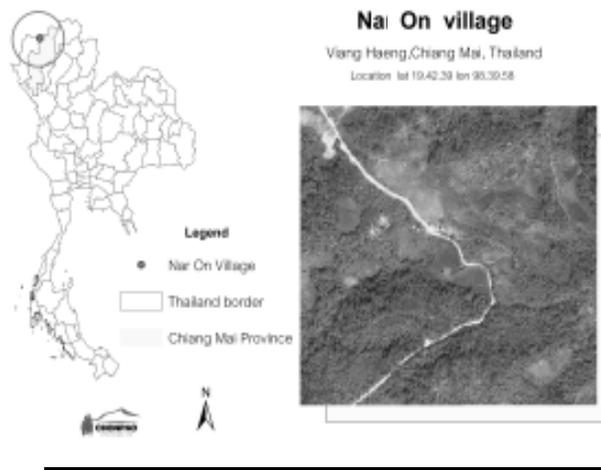
## STRUGGLES OF INDIGENOUS PEOPLES TO CLAIM RIGHTS OVER LAND

### 1. THE STORY OF NA-ON

Does not forest mean - land, trees and people?

Na-on is a small sub-village of Paksaem village located in Vienghang District of Chiangmai Province. The village surrounded by forests has 13 households. The huts are built in the traditional Lisu style. A spirit house is situated at one end of the village. There is no electricity or modern sanitation system. There are water taps, but no toilets. When we arrived at the village on a November afternoon in 2007, we found it empty except for a few persons taking care of the small children playing around. All the villagers were busy with harvesting their fields. Towards the late afternoon, the villagers started coming back slowly and soon we were surrounded by inquisitive but smiling

faces. After the initial greeting, the villagers hurried back to their huts to finish the remaining chores for the day before daylight faded completely. Not wanting to be a burden on the villagers we had brought packets of instant noodles with us but the packets were dismissed laughingly. Soon a simple but delicious array of dishes was spread before us and a hut



## *Struggles of Indigenous Peoples in Thailand*

complete with beds and warm blankets was offered to tide over the chilly night. And it was only after they made sure that we were well fed and comfortable, we all sat around a fire under the open sky to discuss the issue of eviction being faced by them. Hesitant at first, the villagers gradually opened up and started talking about their lives. Noticing us taking notes by the wavering fire light, someone fashioned a lamp out of a candle and plastic bottle and sat holding

it above our note books. We protested thinking of their inconvenience, but they said –

*'it is important for us that our story is carried beyond this small village and is heard by others'.*

The conversation stretched past midnight. They explained that Paksaem village comprised of the sub-villages of Paksaem, Na-on and Hintaew. They had been cultivating in this area for

more than 30 years before they settled down in Na-on in 1993. They practice shifting cultivation in the sense that they plant rice on some fields and corn on another and alternate it after a few harvests. The rice grown is for home consumption while corn is for sale in the market. They are able to grow enough rice to feed a small family for a whole year. But now their food security is being threatened by eviction.

### ***A chronology of events relating to the notice of eviction***

1995	The Government declares the Chang Dao National Park
2001	A development project is initiated under the Ministry of Natural Resources and Environment, called the Paksaem Agricultural Study and Dissemination Center <sup>14</sup> . The project area included area under the Chang Dao National Park. In effect, the entire village of Na-on fell either within the boundaries of the Chang Dao National Park or the development project.
4 p.m. 16 Nov 2006	25 government and military officers, armed with heavy weapons arrived at Na-on village and informed the people that the Governor of Vienghang District had ordered the eviction of 13 families totaling 52 villagers.  The people were asked to leave by 1st December 2006, otherwise their houses would be burnt down and they would be penalized for violating orders.  The villagers were not given a written copy of the order. They were just informed that such action was being taken because they had caused destruction of the forests.
23 Nov 2006	Two villagers of Na-on together with activists from IMPECT <sup>15</sup> and HPT <sup>16</sup> filed a petition with the National Human Rights Commission (NHRC) of Thailand.  The petition requested NHRC to investigate the allegation of authorities that Na-on villagers had caused deforestation and destruction of the watershed area. They also complained that the authorities had not provided any site for relocation – both for living and cultivation and requested the NHRC to ask the authorities to delay the eviction till appropriate investigations were carried out.
29 Nov 2006	The eviction order was stayed.

<sup>14</sup> Discussed in detail in the next section of the report

<sup>15</sup> Inter- Mountain People Education and Culture Centre, Chiangmai Thailand

<sup>16</sup> Highland People's Taskforce, Chiangmai, Thailand

## *Reclaiming Rights in Forests*

Nov-Dec 2006	NHRC issued a number of letters requesting for more information about the order of eviction. Letters were written to the District Governor, Provincial Governor, Ministry of Interior and the Secretary of the Paksam development project.
12 Dec 2006	<p>NHRC set up a sub-committee on 'Land and Forest Management' to investigate the matter further. The NHRC sub-committee organized a meeting inviting all the concerned agencies including representatives of the development project, the forest department, the district office, the village headman and villagers of Na-on.</p> <p>At the meeting it was decided that a joint committee would be set up to discuss an appropriate solution for the Na-on case. The joint committee would contain representatives of the government agencies, NHRC and villagers.</p> <p>In the meanwhile the eviction order would not be implemented. The villagers were asked not to expand the land under their use. They were allowed to harvest the existing crops. The villagers agreed to abide by these conditions and co-operate.</p>
24 Jan 2007	<p>A meeting was organized at the Provincial Office. The villagers presented that they had been cultivating these plots of land for more than 30 years and before the Chiang Dao National Park had been declared or the Development Project had been initiated. The allegation that Na-on villagers were involved in drug trafficking was not true. The villagers also stated that if the police had any evidence that a villager from Na-on was involved in drug trafficking, they should take action against that person instead of penalizing the whole village.</p> <p>The government authorities stated that Na-on was not a registered village. It was an extension of Ban-Paksam village and the Na-on villagers should return to the main village and leave Na-on so that it could be part of the Development Project activities.</p>
7 Feb 2007	The official order for setting up the Joint Committee as proposed earlier was issued. However there was no official meeting held with the members of the Joint Committee
20 Feb 2007	<p>The District Governor called a meeting with 12 villagers of Na-on and proposed that the villagers who did not have Thai citizenship would be given citizenship status if the villagers agreed to move from Na-on.</p> <p>The villagers disagreed. Instead they urged the Joint Committee to investigate and present its report as planned.</p>
10 Mar 2007	The district authorities called for a meeting at the Vienghaeng District Office. At the meeting it was agreed that the GPS mapping system would be used to identify the boundaries of the areas of residence and cultivation so that an appropriate solution with respect to the case of Na-on villagers could be formulated.
27-28 Mar 2007	<p>Through the GPS system it was identified that Na-on villagers held 28 plots of land that totaled to 221 rai or 88.4 acres (2.5 rai = 1 acre). 184 rai or 73.6 acres of these plots of land fell within the boundaries of Chang Dao National Park while 37 rai or 14.8 acres was under the land earmarked for the Development Project.</p> <p>The District Officer also alleged that some evidence of logging had been found in the area under Na-on villagers.</p>

## *Struggles of Indigenous Peoples in Thailand*

3 April  
2007

District Governor of Vienghaeng called for a meeting with the villagers at his office. A representative of HPT attended the meeting with Na-on villagers. They urged that the Governor should take a decision on the eviction as per the basic human rights standards and the rights of indigenous peoples living in Thailand. At the meeting it was agreed that the livelihood of the villagers would be respected and they would be given appropriate alternative land for residence and cultivation. Also they would be assisted in constructing new houses with appropriate sanitation system. A school would also be set up in the alternate site. Also there would be security over use of such land. The Na-on villagers agreed to relocation on these conditions.

5 April  
2007

The Villagers of Na-on were invited to see two relocation sites – one at Hintaew village and another at an abandoned area in Piengluang Sub-district of Vienghaeng District. The villagers were not satisfied with both as they were not suitable for cultivation, even though these areas were closer to the towns.

The eviction is pending till the villagers accept a relocation site offered by the district authorities.



In its concluding report on the fact-finding, the NHRC observed that the people have been living in Na-on for more than 30 years. The villagers had the right to live and cultivate the land in the area and NHRC recommended the Ministry of Interior to rescind the order of eviction and speed up the process of settling the

ownership rights of people over forest land.

More than a year has passed since the villagers were threatened with eviction. It is more than a year since the villagers agreed to move to an alternate land if such land was culturally appropriate and adequately developed for their

living. However the matter has not been settled yet. Na-on villagers continue to live in uncertainty. They are not sure whether they will be able to harvest crops the next year. They are afraid of what would happen to them and their families if they are not allowed to cultivate the land. Where would they go? How would they survive? And they are confused about why their village is facing the threat of eviction.

The villagers also point to the sprawling orange orchards in the valley and ask, *'Why only us? These orchards are also situated in land belonging to the National Park – don't they cause deforestation?'*

## Voices of the people of Na-on

(Interviews during the field trip in November 2007)

*We at one point of time lived in Paksaem and cultivated land in Hintaew and Na-on area. About 30 years ago, during the communist insurgency, a Development Project*

*was initiated in the area to grow flowers and fruits. Since the Development Project was established over the land on which we were living, we had to move to Hintaew and then Na-on village. I have lived in the forests all my life. I did not know these forests had become protected area till the authorities threatened to evict us. The authorities want to plant more trees in the forests. They take away our cultivable land to build offices and nurseries. If, forests are understood to mean only land and trees, then what about us - the people living inside the forests? How will we people survive? We have always co-existed with the forests and would like to continue to do so. We would like to help the authorities in their reforestation efforts. But the persons administering the development projects inside the forest area do not seem to understand our needs. They pass by our villages all the time, but have never consulted us or taken our opinion about the implementation of these projects. We are invisible to them. The insecurities surrounding our lives have had an impact on the younger generations also who are*



*migrating to bigger towns and cities in search of employment. If the younger generation leaves, then what will happen to our community? Our traditions will slowly die with us.*

*We have been living in this area for so many years. We now would like to have some recognition of the fact that this is our land and we can cultivate it. Or we would like to know – which is the land that we can cultivate. We together with other communities living inside the forest have our own internal rules about how to manage the forests. We do not cause deforestation.*

*My parents live in village that is only three hours away by road. They are old and have sent me several messages requesting me to come and visit them. But I have not been able to do so since my marriage 5 years ago. I do not have full citizenship and cannot travel to that village. If I do so, I might be arrested or the authorities may charge me a fine. What will I do if I am arrested? How will I pay the fine?*

*You ask us about our future plans. I am so scared that I am unable to think beyond the present. I do not even know whether I can cultivate my land in the next season. I do not know if we can continue to stay in this area or not. I do not know how I will support my family in the future.*

## 2. STORY OF HUAYKON

**We were made to confess that we are encroachers on our own land**

Huaykon sub village is situated 750 feet above sea level and to reach Huaykon one has to travel 11 kms of dirt road from Phrao District of Chiangmai province. Not only is it fertile, rich in natural resources but also has a beautiful landscape – there are four waterfalls on the way to the village. The sub village set up around 50 years ago has 34 households of 195 villagers – 99 men and 96 women. The people in the village belong to Akha and Lisu tribes.

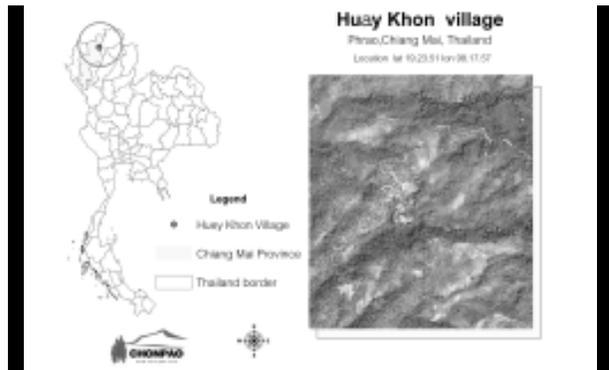
Huaykon villagers earlier lived in village Huaysai, in Viengpapao District of Chiangmai province. The villagers explained that when they lived in Huaysai, they had to walk about 4-5 kms every day to reach their agricultural land. There were no proper roads and it became difficult to commute when it rained. So they set up small huts near their fields to stay overnight. Gradually they started living longer in these huts, going back to their village only after harvesting their fields. About 36 years ago, they moved their homes to ‘Ban a bone’ about 4-5 kms from Huaykon. Ten years later they settled in Huaykon and at that time the authorities did not raise any objections.

Around 20 years ago, the Doi Viengpha project was initiated in the area. The project which received support from a United Nations funding agency was coordinated by a number of government departments including the Ministry of Interior, the Ministry of Agriculture, the Ministry of Foreign Affairs and Ministry of

Education. The objective of the project was to improve the living standards of the villagers. It sought to achieve this objective by teaching them to grow temperate fruits and vegetables and to raise pigs, chickens and fish. A non formal school was established under which the villagers learnt to speak Thai.

During this period there were 17 families in Huay Kon village. The villagers working under the project took part in the reforestation activities. The project wrapped up in 1992 because of lack of funds. Now there are 34 households. The number of households increased with the children marrying and setting up their own houses. Community relations are strong in the village, even amongst the Akha and Lisu tribes. The elders are respected and the villagers seek their advice to resolve any dispute amongst themselves. The villagers sustain themselves through subsistence farming of rice, corn and beans. Rice is the main crop and the grains are not sold in the market but are kept for home consumption. Rice is the staple food and is supplemented with fish, vegetables, mushrooms and other forest produce. Corn and beans are sold in the market for cash income. During the harvest time, the villagers practice exchange labor amongst themselves. Some also work as

wage labor in fields in the low lands. Their average income is about 10,000 baht a year, and it is not enough to meet the education



needs for children. The nearest school is in Ban Tungkoo village. As it is not possible for the children to commute the long distance everyday most children stay with their relatives in Ban Tungkoo and come back home during their holidays. Some children attend missionary schools in Phrao district or in other cities.

At about 6 kms away from the village, there is a Royal Project initiated under Her Majesty, the Queen’s ideology.

On 11th September 2006 a convoy of 300 government officials including military officers armed with heavy weapons broke the peace of Huaykon village and arrested 21 villagers on charges of encroachment of land belonging to the Sri Lanna National Park. Cases were filed before the Court and eventually 14 villagers confessed to their crime. Consequently they were barred from cultivating their land. It was only then the villagers understood the significance of their confession.

## *Reclaiming Rights in Forests*

Why are the villagers being evicted? Why did they confess?

### **Chronology of events relating to the eviction**

1992	The Sri Lanna National Park is declared. The area of the national park covers most of Phrao district. The entire area of Huaykon village falls under the national park.
30 Oct 1992	<p>Huaykon villagers signed a MoU with Mae-ngad Watershed management unit of the Forest Department. The MoU stated that</p> <ol style="list-style-type: none"><li>the villagers would cooperate with the Unit in planting of trees for special occasions</li><li>the villagers would cooperate with the Unit's plantation project</li><li>villagers would cooperate with the unit to preserve trees and the forest</li><li>villagers would strictly follow all rules</li><li>villagers would cooperate with the authorities in abiding by the Forest Act 1941, National Park Act, 1961 and National Reserved Park Act 1964.</li></ol> <p>Later the villagers realized that the watershed management project in practice reduced their cultivation land as they were asked to plant trees for reforestation purposes on the land that they had been cultivating.</p>
May 1999	Huaykon villagers present their claims for registering their land for their residence and cultivation under the Cabinet Resolution of 11th May 1999. As a result they received temporary permission to use the land till their claims were reviewed.
2002	Officers of Sri Lanna National Park came to conduct a survey of Huaykon village. Even though the villagers informed the officers that they had received temporary permission to use the land, the officers arrested one villager and imposed fine on another for encroaching on land protected under the National Park Act.
20 June 2004	A 250 million baht project known as 'Maesum Reservoir' project in Phrao district was announced in a Provincial Administrative Organisation meeting. After the announcement land speculation in the area boomed.
2005	The Maesum Reservoir project was approved by the Ministry of Agriculture. The project would affect around 1000 rai (approx 400 acres) of land falling under the Sri Lanna National Park. The government announced that compensation would be paid to owners whose land would be affected by the project.
2005	During this period soil from the river basin was being taken out and sold. However the authorities seemed to ignore this illegal activity as wealthy influential business people were behind it. Complaints of logging of trees in the area had also been received and some authorities suspected Huaykon villagers to be responsible for it.
3 and 15 Feb 2006	An 'Assembly of Maesum River Users' (hereinafter called the Assembly) was formed in cooperation with villagers from three sub-districts – Patum, Vieng and Tungluang. The Assembly also had members from the lowlands. Two meetings of the Assembly were held in February 2006.

## *Struggles of Indigenous Peoples in Thailand*

	<p>In both these meetings it was reaffirmed that as per the findings of a survey Huaykon villagers were not expanding their cultivation on new forest land and were not causing any deforestation.</p>
28 June 2006	<p>The Patum District Office issued an order of eviction against villagers of Huaykon</p>
9 July 2006	<p>Villagers of Huaykon and another two villages wrote a petition to the Assembly saying that they were not responsible for deforestation and destruction of the watershed area.</p>
10 July 2006	<p>The Assembly held a meeting and concluded that the villagers of Huaykon should be evicted</p>
26 July 2006	<p>A meeting was held in Patum District Office. At the meeting the villagers from Huaykon stated that they had been living in the area since a long time. The allegations against them with respect to logging and deforestation were not true. Rather logging was being done by villagers from the lowlands. However it was concluded at the meeting that the villagers should be evicted from Huaykon<sup>17</sup>.</p>
July 2006	<p>Officers of the National Park Department came to Huaykon village to do a re-mapping of the land under cultivation of the villagers. The officers also said that according to the minutes of the meeting held on 26th July at the District Office, 9 Akha families who did not have ID cards had agreed to relocate to another village. However the villagers denied making such an agreement and there was a big argument between the villagers and the officers. At the end the villagers still refused to relocate.</p>
22 Aug 2006	<p>A meeting was held at Patum District Office. There was a big debate over the issue of logging and deforestation and the persons responsible for it. At the meeting it was concluded that Huaykon villagers should leave the area by end of the month or they would be evicted by force between 1st – 7th September 2006 and legal action taken against them<sup>18</sup>.</p>
28 Aug 2006	<p>Phrao District Office issued a letter on the matter<sup>19</sup>. The letter referred to the complaints of the Assembly that the Huaykon villagers were logging trees and causing destruction to the watershed area. It further said that 40 families (105 villagers) were encroaching upon the National Park and destroying forest resources by their ‘slash and burn’ cultivation practices.</p>
4 Sept 2006	<p>The Huaykon villagers submitted a petition to the Chiangmai Provincial Office. The Chiangmai Provincial Office conducted an informal enquiry into the matter and asked for clarifications from the Phrao District Office</p>
5 Sept 2006	<p>Phrao District Office issued a letter<sup>20</sup> stating that as per its prior decision, eviction operations would be conducted against 40 families of Huaykon village on 10th September.</p>

<sup>17</sup> Patum District Office, Document No 3/2549

<sup>18</sup> Patum District Office Document, No 4/2549

<sup>19</sup> No. Chor.Mor.1017/Vor.1644, subj: Eviction of Huaykon villagers from National Park

<sup>20</sup> No. Chor.Mor.1017/1752, dated 5th September 2006

## *Reclaiming Rights in Forests*

10 Sept 2006	<p>300 armed and unarmed officers came to Huaykon village at around 11 a.m. The officers divided into six groups and asked all the villagers to identify the land under their cultivation. The officers said they wanted to take their photographs together with their land so that they could register their land.</p> <p>After the photograph taking, 36 villagers were arrested on charges of encroachment on national park land and sent to Phrao Police Station. There were no arrest warrants.</p>
10 - 12 Sept 2006	<p>15 villagers, who had received temporary permission under the Cabinet Resolution of 11th May, 1999 were released. For the remaining 21 villagers, the amount required to secure bail was as enormous as 3.6 million baht. 12 Lisu and 9 Akha villagers spent a few days in jail before they received a loan from a local politician and they were able to deposit money for their bail. Later on cases against 7 more villagers were dismissed.</p>
14 Sept 2006	<p>Huaykon villagers with the support of IMPECT, HPT and Northern Farmers Federation submitted a petition to NHRC and Lawyers Council of Thailand, requesting them to investigate the matter and help them in seeking justice.</p> <p><b>Withdrawal of bail money:</b> sometime in the course of the next few months, the politician who had loaned money for depositing the amount needed for securing bail wanted to take his money back. The lawyers from the prosecutor office informed the villagers about this and advised them to confess to the charges against them or they would be sent to prison again. The villagers had to take a decision within a very short time. They were not able to arrange for money from alternative sources. At the end 11 villagers confessed to the charges. The court imposed a fine of about 4,500 baht for 4 rai of land and asked them not to enter the land of Huaykon.</p> <p>3 villagers denied the charges. They are now fighting the case in the court with legal assistance from HPT.</p>

### **After the arrest and confession...**

On receiving a petition from the villagers, the NHRC conducted a fact finding into the issue together with some civil society organizations. The NHRC found out that the allegations of the Assembly and Forestry Department that villagers of Huaykon were causing destruction of forests and watershed area was not true. The villagers were in occupation of only 49 rai (19.6 acres) of land belonging to the National Park – land that they had been using since more than 20 years. The NHRC also discovered records

of an official meeting held in August 2006, which stated that local investors including local influential persons and members of the Assembly had encroached upon over 1000 rai or 400 acres of land in the Sri Lanna National Park. Further since the announcement of the Maesum Reservoir project, influential people had been cutting down trees and farming sand from the river. These interests through these activities

were trying to transform the character of the forest land so that they could claim rights over



it. This would enable them to

## *Struggles of Indigenous Peoples in Thailand*

seek compensation from the State when it sought to acquire land for the Reservoir project. Because of large scale farming of sand, the river banks had become weak and fallen into the river. Thus the charges that the Huaykon villagers were destroying forests and watershed area were baseless as the authorities already had information to the contrary.

Activists from HPT pointed out that another plausible reason for the eviction could be the scenic beauty of the valley in which the village is located. They said that there are rumors that the District Administrative Council was interested in evicting the villagers so that they could develop it as a tourist destination for 'home stay' or rock climbing. It is also rumored that the Department of Irrigation which is one of the implementing agencies of the development project - Paksam Agricultural Study and Dissemination Centre, is interested in setting up a project office in the Huaykon area. This rumor has gained credence as the Director of the Department of Irrigation played a leading role in trying to get the villagers evicted.

The evicted villagers continue to live in Huaykon. The present District Governor has given a verbal assurance that no

action would be taken against them. But in the absence of settlement of rights, the people of Huaykon village remain vulnerable to the manipulations of vested interests. They continue to live a life of insecurity not knowing when

they might be forced to leave their land again. They are not sure whether they would be allowed to plant rice in the next season. They do not know how they will survive if the land is taken away from them.



### **Voices of the people of Huaykon (Interviews during the field trip in November 2007)**

*We have been living on this land since a long time. The Sri Lanna National Park was not in existence then. Now with the declaration of the National Park we have become encroachers upon our own land. If we are supposed to leave this land, then we must be given some alternate land. And we should be informed about such alternate land before the authorities evict us. We not only need a house to live in but also land that we can cultivate. The authorities treat us as if we are not humans.*

*Why do only the people in the low lands get the benefits of development program? During the time of the Doi Viengpha Project, there used to be a school here. But now the school has closed since the project has wrapped up. It is very difficult for the children to go to the nearest school, 12 kms away. So they have to stay with their relatives to continue education. What about our family life? What about the future of our children?*



*Many times the authorities do not tell us about any plan but we come to know of it only at the stage of implementation. Under the Development Projects, only one member of the family is given employment, but what about the other members of the household? The land gave us food security, without it we do not know how to make both ends meet.*

*We will not forget the day we were arrested. The village was surrounded by so many officers in uniforms. We were terrified that our houses would be broken down. Women and children were in shock to see the men being taken away. If the authorities evicted us like that, where did they expect us to live? How would we eat?*

*When we were informed that the politician wanted to withdraw the bail money, we were very confused about what we should do. Some friends advised us against confessing. But if we did not confess, we would have to go back to jail. What option did we have? We remembered the case of a villager who had been arrested for possessing opium and later was released once he had confessed and paid the fine. We thought that if we confessed we too would be released after paying a fine. So we agreed to confess. It was only later when the Court barred us from staying in Huaykon and cultivating our land, we understood the significance of our confession.*

*We had to pay a fine as well. It was not easy, we took loans to pay the fine. If we do not have any security, how are we going to repay the loans?*

*We have presented our demands for alternative land to the District Governor, but we have not had any response. We are not sure what we are going to do next, but we know we have to fight to get our land back or to get our rights to cultivate recognized.*

One of the persons who has filed an appeal

*I have spent more than 50,000 baht in trying to defend myself against the charges of encroachment. Many days I cannot go to work in the fields because I have to follow up on my case. Even though we are not guilty we ended up confessing before the court, only because we did not have money to deposit against our bail. It is hard to accept that I have been accused of destroying the forests. I love the forests, it is my home. National Park was declared much after we settled in this area. Moreover Huay Kon is not the only village located in the National Park. Most of Phrao District falls within the boundaries of the National Park. So, why are only we being evicted?*

**Joint Statement by Huaykon Villagers and IMPECT/HPT**

Released on 15 Sep 2006

On 10 Sep 2006, District Governor of Phrao District, Forestry Department Officers of Sri Lanna National Park, Pamuang Army Force, Border Petrol Police officers of 3354 unit including heavily armed volunteers, all together 300 personnel surrounded the village of Moo 11, Huaykon, Patum Sub-district, Prow District, Chiangmai. Thirty-four villagers, both men and women were arrested. The villagers belonged to the Lisu and Akha tribes. They were charged with the offence of encroachment on National park land and were evicted from their village in violation of their basic rights.

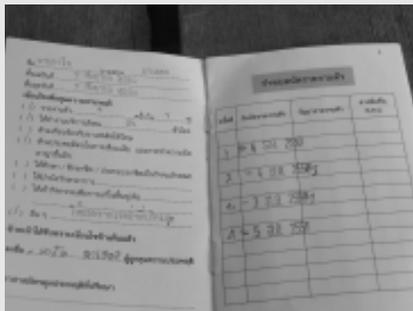
The forced eviction of 34 families had a great impact on their human security and their right to livelihood. The families were evicted overnight and no alternate settlement site was provided to them. Their shelter, source of livelihood and above all their way of life was taken away from them in the most arbitrary manner possible.

**Background :**

The 34 families of Huay Kon village were indigenous people who have been residing in this area for more than 50 years. They have Thai citizenship. Their land had been registered according to the Cabinet resolution on 11 May 1999. The project planned for fruit plantations, vegetable gardens, rice fields, corn plantation and also animal husbandry. Since 1989, some forest conservation plans were carried out in the area. The area is very fertile and rich in ecological diversity. There are a number of waterfalls which attract a lot of tourists. The State declared this forest as Sri Lanna National Park in 1992. The declared area covered the residence and cultivation land of Huaykon and other villages. With the declaration of the National Park all these villages became illegal.

In 2004, the Provincial Council of Chiangmai proposed to construct a Mae Salum Small Dam as a State sponsored project. Prime Minister Thaksin Shinawatra approved the 500 million baht project, the construction of which would start in the next 3-4 years. Hoping to receive compensation for acquisition of land by the State, the land inspectors, local investors, influential persons, and officials tried to purchase land from the villagers at a cheap price. These vested interests were also trying to encroach on forest land and turn them into cultivated land. Almost 1000 rai of forest land has been destroyed in this process. Tambon Administration Office – TAO of Patum Sub-district has issued several resolutions in order to investigate about the forest

encroachment over the watershed by investors. Instead of initiating an enquiry or investigation of such investors, the State authorities in collaboration with the armed forces focused their attention on the villagers of Huaykon making them scapegoats.



**“ We, HuayKon Villagers, call for justice and in the process need you to know the true facts and bring the guilty before law such as the real encroachers who destroyed watershed and forest, did illegal logging and destroyed national park. The official and local influential**

**groups work hand in hand and intimidate innocent villagers in leaving our home,”**

**With hope that justice will come,  
Huaykon villagers.**



### 3. STORY OF PANG DAENG

**This is not the first time...this is the third time they have arrested us even though we have done nothing wrong.**

Pang Daeng village is located in Chiang Dao forest of Chiang Mai province. Hill tribes such as the Akha, Lisu, Lahu and Palaung have been living in the village for more than 20 years now.

In 1973, the Chiang Dao forest was declared to be National Reservation Forest Area. But in 1982, parts of the National Reserved Forest Area that included the Chiang Dao District were brought under the Land Development for Agriculture Bureau<sup>21</sup>. In the 1980s the Palaung people came into Fang district of Chiang Mai to escape the fighting between the Shan army and the Burmese soldiers.

Around 1983, they along with other indigenous peoples such as the Akha, Lahu and Lisu migrated into the area to work as wage labour in the Royal Forestry Department's reforestation projects. Since then the people have settled in the Pang Daeng village and the Royal Forest Department has continued to use their labor in the reforestation projects. In 2004, a villager from Pang Daeng said,

*“Last year the Royal Forest Department provided the Pang Daeng villagers with 1000 saplings of teak and other*

*species and told us to replant in the surrounding forests. The villagers walked long distances to reach the forest areas and used about 5 days for replanting. We got some money for our food but not for our labor. A few days later, the Minister of Natural Resources visited the area and said that the villagers were a good example of cooperation with the government.”<sup>22</sup>*



<sup>21</sup> Ministry Law No. 988, in accordance with Royal Act, 1964

<sup>22</sup> World Rainforest Movement Bulletin, Issue Number 86, September 2004

**Chronology of events leading to the arrests in 2004 and thereafter**

26 Jan 1989	27 villagers were arrested from Pan Daeng village on allegations of illegal encroachment <sup>23</sup> . The charges were later dropped on the condition that the villagers would leave the area.
1997 - 1998	Relatives of a well known politician wanted to initiate a new quarry project on the Palai mountain in Chang Dao district of Chaingmai province. The Palai mountain is not very far from the Pang Daeng village. Work on construction of a road to the Palai mountains was started. The road was completed in July 1998. Around this time 600 logs were reported to be found in the Chang Dao forest reserve area. The illegal logs were found near the newly constructed road <sup>24</sup> . Forest Fires broke out in the Doi Inthanaon National Park, Chiangmai Province. The Deputy Minister of Agriculture conducted a survey of the forest fires and went on record in saying that the fires had been caused by the hilltribe people who practiced 'slash and burn' system of agriculture. Soon after 56 villagers from Pang Daeng were arrested.
26 March 1998	Around 100 armed officials of the Royal Thai Forestry Department together with the police entered Pang Daeng village, a predominantly hilltribe Community in Chiang Mai Province in Northern Thailand, and arrested all the male villagers, including 50 adults and 6 children. This mass arrest was conducted without warrants between 4 p.m. – 5 p.m. in the evening. The amount required to secure bail was set at 150,000 Thai Baht, approximately US\$ 3,750 and till 12th June 1998, only 10 persons were able to secure bail by paying the amount <sup>25</sup> . A 14 year old boy from a nearby village who had just been visiting the Pang Daeng community was also arrested.
4 April 1998	The Deputy Minister of Agriculture in an interview to the Thai language newspaper, Khao Sod, said – “I want to ask if those 56 hilltribe people can make up for such huge damage to the national forest. Those who are trying to defend this small group of people – do you care for the other 60 million in the country?” <sup>26</sup>
1998-1999	The arrests of the Pang Daeng villagers sparked off huge protests from human rights activists and academics. The charges against the villagers were subsequently dropped on the condition that they would leave the area. However the villagers returned to live there as they had no other place to go. As a response to the protests, the Royal Forestry Department accepted the principle that allowed the co-existence of humans and forests. Consequently the Conservation and Rehabilitation of Chiang Dao National Forest Reserve Project (Ban Pang Daeng) was established with representatives of the villagers sitting in the project committee <sup>27</sup> .

<sup>23</sup> E/CN.4/2005/NGO/60, written statement submitted to Commission on Human Rights, by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

<sup>24</sup> A Tale of Intrigue in the Forest, Supara Janchitfah, Bangkok Post, Sunday 3rd October 2004

<sup>25</sup> Hotline Asia Urgent Appeals, UA980612(4)

<sup>26</sup> Watershed Vol 4, No 1, July – October 1998

<sup>27</sup> Pangdaeng...repeated nightmare, by Pu Chiangdao, 23rd October 2007, can be accessed at <http://www.prachatai.com/english/news.php?id=321>

## *Reclaiming Rights in Forests*

23 July 2004	<p>Around six in the morning, more than 200 armed forestry, border petrol police and military officers raided the Pan Daeng village. The officers asked the villagers to show their ID cards and household registration papers. Without giving any explanation, the officers then took photographs of the villagers standing in front of their houses. They then told the villagers that they would be taken to the District Office for training and given free blankets. If the villagers refused to listen to the officers, they were beaten. At the District Office, they arrested 48 villagers from different ethnic groups: 19 Palaung, 25 Lahu, 1 Lisu and three local persons. The 48 villagers were charged with 54 counts of encroachment on 47.3 rai (17.2) acres of land, on which they allegedly caused damage to state land to the amount of about 3.2 million baht.</p>
2004 - 2008	<p>The case against the villagers was brought before the Court. The lawyers defending the villagers tried to prove that the physical characteristics of the land comprising of the Pang Daeng village was not of a 'reserved forest'. There were concrete roads, buildings and electricity poles around the village as well as public facilities such as a temple and school. Thus the villagers were not encroaching on reserved forest land.<sup>28</sup></p>
May 2007	<p>During the hearing the Court asked whether the case had been negotiated with the government authorities or not. The Court observed that the villagers had been staying in the area since a long time forming a community amongst themselves. The fact that the villagers had been arrested three times showed that a court verdict could not provide a sustainable solution to the problems. The Court asked the officers of the Royal Forest Department about their plans to resolve the issue and when the officers could not provide any answer, the Court issued a summons to the Head of Provincial Forest Office to inform the Court about the plans to solve the recurring problem affecting the Pang Daeng villagers. The Head of the Provincial Forest Office informed the Court that the solution with respect to the Pang Daeng villagers and their claims to the land could be derived from Section 16 and 16 (bis) of the National Reserved Forest Act, 1964. In such case the Director General of the Department of National Park was the person authorized to send a proposal to Ministry of Natural Resources and Environment for consideration<sup>29</sup>.</p>
28 Feb 2008	<p>The Court proposed to the 48 defendants that they should confess to the charges imposed on them, but the defendants denied to do so. They stated that they were innocent and it was the third time they had been unfairly arrested. The Court observed that since the villagers were residing in the Chiang Dao reserved forest they could not deny the charges of encroachment even though the Pang Daeng village was situated in an area that could be called 'deteriorated forest'. The Court therefore suggested that the defendants should confess to the charges and state their reasons for encroaching on reserved forest land. After confessing, the defendants should talk to the forest officers and ask them to provide the forest land that the officers considered to be already degenerated. The Court said that if the defendants agreed with the above proposal, the Court would postpone its hearing till a solution is reached by the Committee set up by the Provincial Office. However the defendants insisted on denying the charges and confirmed their innocence<sup>30</sup>.</p>

<sup>28</sup> Trial Observation Notes, 6th March 2007, and interview with Lawyer Sumitchai Hattasan, Law Society of Thailand

<sup>29</sup> Trial Observation Notes, May 2007, and interview with Lawyer Sumitchai Hattasan, Law Society of Thailand; With respect to Section 16 and 16 (bis) of the National Reserved Forest Act, check the section on Forest Laws in the present document

<sup>30</sup> Trial Observation Notes

## *Struggles of Indigenous Peoples in Thailand*

March  
2008

A solution was formulated that was acceptable to all the parties. Since the villagers of Pang Daeng did not have citizenship status their claims to the land could not be recognized. Therefore it was agreed that a private Foundation would be set up. The Foundation, a legal entity, would be given the right to utilize or live in the land in Pang Daeng village. The Foundation would in turn allow the Pang Daeng villagers to do the same. The Foundation would also help the villagers in constructing new houses. As on June 2008, the Foundation is in the process of being set up<sup>31</sup>.

After a long struggle the villagers in Pang Daeng were able to get some recognition of their claims. However it is still relevant to examine as to why the Pang Daeng community was being repeatedly targeted. It has been suggested that a range of commercial interests were involved. Chiang Dao Mountains are very picturesque

and there are limestone caves and tunnels in the mountains. Tourism in the area has expanded since 1995. Business groups wanted to build resorts and other tourist facilities in the area. The Royal Forestry Department was interested in initiating commercial plantations of teak in the area. Apart from that illegal logging is also

rampant in the area.

All these factors acted as motivations for taking repeated action against the Pang Daeng community which was doubly vulnerable – first, because of lack of citizenship status and second, because they had no legal claims over the land on which they had been living since more than two decades.



<sup>31</sup> Interview with Lawyer Sumitchai Hattasan, Law Society of Thailand



## **REVIEWING THE STORIES OF NA-ON, HUAYKON AND PANG DAENG AND INTERNATIONAL HUMAN RIGHTS STANDARDS**

The stories of Na-on, Huaykon and Pang Daeng have some common strains. In all three cases, influential vested interests have colluded together and used their power to initiate eviction proceedings against the villagers. There have been no discussions on alternate relocation sites before villagers are threatened with eviction.

Arrests of have been made under special laws and by using disproportionate amount of force. The Pang Daeng case highlighted the inability of the legal system to respond to claims of indigenous people over their land.

This section looks at the international human rights standards governing these issues.

### **A. RIGHTS OF INDIGENOUS PEOPLES TO LAND**

Though Thailand has not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, it provides very clear standards with respect to land issues. Article 14 provides that the State should

a. recognize the right of the peoples to ownership and possession of the land which they have traditionally occupied, take necessary steps to identify such land and guarantee effective protection of their rights of ownership and possession

b. take measures to safeguard rights of peoples to use land which is not exclusively used by them, but which they have traditionally accessed and used for their subsistence activities

c. take special measures to address the claims of peoples engaged in shifting cultivation

d. establish adequate procedures within the national legal system to resolve land claims by the peoples concerned.

These standards have also been reiterated in General Comment 23 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that has been ratified by Thailand. Article 26 of the United National Declaration on the Rights of Indigenous Peoples which came into force in 2007 also echoes these standards.

## **B. RIGHTS AGAINST FORCED EVICTION**

The Committee on Economic Social Cultural Rights in its General Comment 7 on the right to adequate housing guaranteed in Article 11.1 of the International Covenant on Economic Social Cultural Rights (ICESCR) has held that forced evictions are incompatible with the rights guaranteed under the Covenant. The term “forced evictions” is explained by the Committee as

“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

The Committee has pointed out that where eviction is allowed under law, evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. Furthermore the eviction should be carried out in

strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality. The procedural protections which should be applied in relation to forced eviction include

- a. an opportunity for genuine consultation with those affected
- b. adequate and reasonable notice for all affected persons prior to the scheduled date of eviction
- c. information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected
- d. especially where groups of people are involved, government officials or their representatives to be present during an eviction
- e. all persons carrying out the eviction to be properly identified
- f. evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise
- g. provision of legal remedies; and
- h. provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

## **C. RIGHTS TO DUE PROCESS OF LAW**

The ICERD states that a State cannot discriminate against persons on the basis of race or ethnicity in enjoyment of all human rights. The rights not to be deprived of liberty without the due process of law is guaranteed under Article 32 of the 2007 Constitution of Thailand and reaffirmed in Article 9 of the International Covenant on Civil Political Rights.

The State arrested hilltribe villagers without a warrant, justifying its actions by stating that the villagers were caught in the act of encroaching on the forest land.

Dr. Banjerd Singkaneti, Thammasat University has pointed out that the villagers had been living in the area for a long time and so it could not be called a situation where they were caught ‘red-handed’. The proper procedure in such circumstances would be to show a court warrant to the villagers before arresting them<sup>32</sup>.

## **D. ACCESS TO JUSTICE – RIGHT TO GET BAIL**

In the case of Huaykon as well as Pangdaeng, the amount needed to secure bail was prohibitively large. A hilltribe villager does not have the capacity to put together the amount. The issue of bail is an important issue that determines the right to fair trial. For example in Huaykon the villagers were forced to confess because they were not able to secure the money needed for bail, while in Pangdaeng, the community was able to push the authorities towards negotiations by refusing to confess.

The Committee under ICERD has suggested that the State should consider the possibility of giving exemption to the indigenous peoples with respect to payment of legal fees and other costs to facilitate their access to justice which may be hampered because of high cost of judicial procedures<sup>33</sup>.

<sup>32</sup> A Tale of Intrigue in the Forest, Supara Janchitfah, Bangkok Post, Sunday 3rd October 2004

<sup>33</sup> El Salvador, 68th – 69th Session, para 90

At a meeting held in Chiangmai in December 2007 organized by the Highland People's Taskforce, the indigenous peoples complained that the people living inside the forests were never informed about the demarcation of the National Park, till they were charged with offences of encroachment. They were not consulted when the boundaries were being drawn and there was no discussion about how the people could continue to reside in the reserved area and at the same time contribute towards furthering the interests the reserved areas sought to protect. Further in many

areas, no clear boundaries were outlined leading to lack of clarity with regard to land that could still be cultivated. Since the State has not been able to provide any solution, communities are going back to their traditions to look for justice. The story of Huaysan Lisu village shows the helplessness of a community whose rights to forest land is being denied, the frustrations of a community which is being excluded from participating in the management of natural resources and the disenchantment of a community whose traditional knowledge is being disregarded...

## **LISU OF HUAYSAN VILLAGE: CURSING CEREMONY TO CLAIM ANCESTRAL LAND**

**Pornpen Khongkachonkiet<sup>34</sup>**

During the Songkarn Holiday of 2008, I made my journey to visit a Lisu village in Huaysan, Chiangrai Province. This was my second visit to this village. My first visit in 2006 was related to the case of Mr. Akapa Tamee who had been charged of encroaching into National Park protected area. I had then accompanied the legal aid team of Highland Peoples Taskforce to do the preliminary fact finding. It was the results of this case that brought me to this village again.

The villagers said that "Juya" ('cursing the

sin' when translated in English) ceremony was a Lisu traditional ceremony. The ceremony is performed when an individual or family faces a difficult situation causing the individual or family to break down in tears three times and there is no other option left to call for justice from human beings. This ceremony is held to communicate their hardships to their ancestors and seek their help in crushing their oppressors. In this way the persons who committed sin against them would be punished. The punishment would reduce only if the oppressors confessed to their wrong doings.

### **Lisu Village of Huaysan**

My friends and I went to the village a few days before the ceremony was to be organized. I learnt from an NGO working in the village that according to verbal history that has been passed on through generations, the Huaysan Lisu settlement has been there since the year 1857. As per official records the village was registered in the year 1914. The first village headman was appointed around 100 years ago.

There are now 100 households in the village, around 500 villagers. All the people belong to

the Lisu tribe. Most people believe in animism and ancestral spirits. There are believers of Buddhism and Christianity as well. The villagers use Lisu language in their daily life and there are many people in the age group of 30-40 years who cannot speak proper Thai.

On our first night, we joined the discussion on the preparations for Juya ceremony to be held on 19 April 2008. The preparation meeting was joined by official village headman, spiritual leaders and elderly of the village.

<sup>34</sup> Most of the Thai version of this article was reproduced in the website of Princess Maha Chakri Sirindhorn Anthropology Centre, [www.sac.or.th](http://www.sac.or.th) <http://www5.sac.or.th/downtoearthsocsc/modules.php?name=News&file=article&sid=106>

### **What was the need for the Juya ceremony?**

The villagers told us that they needed to organize the ceremony as they were suffering because of their conflict with the Forest Department. The Maelao National Park was declared on 23rd October 1973. Huaysan village was located within the boundaries of the declared national park. In addition on 27th July 1982, the Huaysan-lisu village was declared to be specially protected under Forestry Protected Area Zone C and Watershed Protected Area Zone 1A. The villagers lost control over their land with the announcement of all these Declarations. The villagers were not consulted before these zoning operations and they were informed only after the Declaration was announced. The villagers did not have any chance to present their objections.

Since the Declarations came into effect, the villagers have become trespassers in their own land. They have very frequent arguments with the officers of the Forest Department who have set up a Watershed Protected Area nearby Huaysan village. Since 1982, the Department has implemented many projects relating to 'forest plantations' and planted a kind of Fern trees on the land of villagers. The villagers claimed that more than 1,000 rai of land (400 acres) was taken over under these forest plantation projects.

The villagers complained that the Fern trees were not good for the growth of the forests. These fern trees sucked a lot of underground water and did not encourage the growth of other plants around it. There is no undergrowth of

mushrooms or bamboo shoots which are considered to be valuable forest products by villagers and used by them. The leaves of these trees also did not decompose well and easily catch fire during the dry season. Forest fires can spread easily during the dry season since there is no undergrowth to arrest the fire as in a natural forest.

The villagers tried to object to these forest plantation projects in 1992 and 1996 but it is not possible to oppose them as they are 'mega projects' backed by a lot of funding. Some families still resisted by pulling out or cutting down the fern trees. They believed that once the fern trees grew big and tall, their ancestral land would be taken away – they would lose control over their land and would not be allowed to cultivate it or shift their cultivation fields.

A few years ago, two Lisu women were arrested for encroachment upon 2 rai (less than 1 acre) of land belonging to the protected forest area. Not long after that, the villagers had an argument with District Governor and Forest Department Officers while they were trying to plant trees on the cultivation land of the villagers. At the end of 2006 a third incident happened in Huaysan village. Mr. Akapa was charged for encroaching upon reserved forest land. The Forestry Officer(s) came to his plot and put up a sign saying that his land had encroached upon protected forest area. The damages for the encroachment was valued at 600,000 baht.



## **Court Process**

*“Police and Pamai (Forest Officer-The literal translation of ‘pamai’ in Thai is ‘forest’). came to my land and put up the sign. I did not know what the sign said as I cannot read Thai. I asked my nephew to explain it to me. The sign said that I had cut down trees in the forest and caused damages of 600,000 baht. I only plant vegetables and coffee. If this is an offence, they can arrest me. I have received this plot of land from my parents and we have been cultivating it for more than 50 years. How could it become State land? I don’t speak Thai and I don’t understand Thai. I don’t know how to read and write Thai. What to do next? What will be the outcome of the court case? Should I run away?”*

**Mr. Akapa Tamee**, complaints to Highland Peoples Taskforce on learning about the sign put up on his own land in 2006.

Mr. Akapa testified before the Chiangrai Provincial Court in 2007. The examination before the court went like this:

**Lawyer:** Do you know how long ago Moo (village) 1 Huaysan-lisu was established?

**Mr. Akapa:** 160 years (he gave evidence in Lisu language and was translated by an interpreter)

**Lawyer:** How long have you owned the land?

**Mr. Akapa:** Since the last 50 years

**Lawyer:** Do you know that the land was under the National Park protected area?

**Mr. Akapa:** I don’t know about this law. How could I encroach upon my own land? My father gave the land to me to cultivate. My land is separate from the forest plantation area of the Forest Department. A road in between separates the two plots of land.

**Lawyer:** Do any other villagers have their land next to yours?

**Mr. Akapa:** they only arrest me? What about the other villagers?

Mr. Akapa’s 80 year old father also testified before the Court, saying “I had started to cultivate this plot of land by myself before they even declared the National Park. My family for more than two generations has been growing rice and vegetables. This plot of land gives me

and my family food and income. Our livelihood is according to our traditions and cultural belief”.

However on 13th March 2008, the Court pronounced its decision and held that Mr. Akapa had committed the offence of destroying reserved forest area. He was given a punishment of one year imprisonment with two years probation and ten thousand baht fine. The court also ordered that Mr. U-jupa should leave the area immediately.

While the documentation work in the Court room was being completed, the Judge explained to Mr. Akapa that

*“police(s) are like the fisherman, you are like the fish in the big pond. The fisherman could not catch every fish but you are the one that they caught”*

The lawyers representing Mr. Akapa said that the written law does not recognize that there are people living inside forests. The law understands forests only to be comprising of trees, natural resources and wild life and protects them. If the Court considers only the written laws while considering such cases, Mr. Akapa cannot give any arguments that can convince the Court. This is the situation with many other indigenous peoples communities who are living in protected forest areas in Thailand. All these peoples are considered to be illegal who can be forced to evict the land even if their settlements predated the Declarations that gave ‘protected’ or ‘reserved’ status to the forests.

It is because of these reasons the Lisu of Huaysan village felt that they did not receive proper justice. They did not think they would get justice in the courts of law, and they decided to hold the ‘Juya’ ceremony.



### The Juya Ceremony

The ceremony was performed in the land of Mr. Akapa that he had allegedly 'encroached'. The person performing the ceremonies started



to recite prayers. A person holding a sacrificial cock also started to recite prayers and slit the throat of the cock. The blood from the cock was

poured in cups of bamboo placed over a bamboo platform. The cock was burnt so that its feathers could be plucked after which it was boiled in a pot placed near the bamboo platform. The cock represented the "Pamai" or officer(s) from the Forest Department.

The ceremonies were carried out by the men. However it was a woman who prepared the wood for starting the fire. She also put a heavy rock on top of the pot so that it would boil with more heat. The villagers said that because it was the women who often had to argue with the forest officers and so they wanted the "Pamai/chicken" to boil faster. After the "Pamai" was cooked, it was brought to the platform and the 'cursing' part of the ceremony started. The leader of the ceremony started to recite prayers again. The prayers were in Lisu language. The villagers explained that they were calling their ancestors. We could hear the word 'Pamai' being repeated many times and suddenly the women present at the ceremony started calling out the names of the Forest Department Officers who had harassed them while they were cultivating their fields.

The last part of the crusting was the fortune telling. The two legs of the chicken were taken and the bones made bare. The leader then put sticks into the bones. One leg represented the 'Pamai' while the other leg represented Mr Akapa or the community. The chicken leg representing the 'Pamai' showed that it had two holes on one end. It signified that the 'Pamai' were not strong and they did not have any power to do what they were doing such as arresting the villagers. The leg

representing the villagers had two holes on the opposite ends, but the sticks could not stand firmly when inserted in these holes. This meant that the villagers including Mr. Akapa were not yet confident and were afraid of the developments.



Though the fortune telling was the last part of the ceremony, yet the ceremony was not over. The villagers came back, cooked together and had a meal together. The meal started with the famous 'corn whisky' brewed by the Lisu people.

In a way the 'Juya' ceremony was a way of bringing together the people of the village. Though Mr. Akapa was the only person to be charged, yet the whole community was at risk of being arrested. The ceremony helped to show solidarity towards Mr. Akapa as well as empower the community in dealing with the issues affecting them.



*“We have to understand deeply that forests are crucially important for the people of Thailand. The forests are the providers, the watershed areas that give moisture to the lands. The wildlife in the forests is just as crucial, for without wildlife the forests cannot regenerate and the balance of nature is lost. People, forests and the animals, birds and insects that reside there have a special relationship. Each cannot survive without the other. We need to respect these relationships and safeguard the forests and wildlife.”*

Part of a speech given by Her Majesty,  
Queen Sirikit, 7th October, 1984; Reproduced in; No.  
14, August -September 2005,  
National Park Bulletin, National Park Office

**UNITED NATIONS DECLARATION ON THE RIGHTS OF  
INDIGENOUS PEOPLES, 2007**

The General Assembly (of the United Nations)

*(is) Convinced* that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

*Recogniz(es)* that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment



# *Development Policies and Programs for sustainable management of forest resources*

His Majesty, King Bhumibol Adulyadej and Her Majesty, Queen Sirikit have always shown a keen interest in the sustainable management of forest and natural resources. They have undertaken frequent field trips to the forest areas and their portraits can be found in houses of hilltribes living in remote villages. In Na-on, a 75 year old Lisu man proudly showed us the coin that he received from His Majesty around 40 years ago.

The ideology of the monarch has inspired the executive branch in formulating its policies on management of natural resources. Over the years many projects such as ‘The Forest

Loves Water Project’, ‘The Small House in the Forest’ have been designed. In 2001, the Ministry of Natural Resources and Environment initiated a pilot project, ‘people live with forests’, based on the principles of good governance and public participation. The aim of the pilot project was to allow people to participate in management of resources of their local forests and to solve conflicts between people and state agencies with regard to forest encroachment and farmland occupation. The achievements and lessons learnt from this project were used to design another project called, ‘the project to promote public participation for the sustainable

management of national parks’. The project was initiated in 30 national parks and would gradually be introduced to all national parks. Under this project, local people or their communities would have the right and duty to participate in managing, protecting and supervising the sustainable use of natural resources in the environment<sup>35</sup>.

The project has the following strategies

- \* Replace the philosophy of applying laws strictly
- \* Create collective agreement among all parties concerned through meetings, negotiations, visits and the acknowledgement of problems and the proposition

<sup>35</sup> Taken from National Park Bulletin, No 14, August – September 2006

of solutions based on local wisdom

\* Create the process of sharing opportunities and benefits to communities, state agencies and social groups through education, information, dissemination and job creation so that people or communities will have sufficiently good and stable life according to the principle of sufficiency economy

\* Classify and determine clearly land use zones in national parks in line with academic knowledge and suitability and through public participation

\* Set criteria to select the people who will benefit from forest reserves and form the networks of alliances to protect and rehabilitate natural resources and the environment

\* Form joint committees of communities and the government to establish rules that govern the management and use of natural resources and the environment of communities concerned and to conduct activities / development projects that facilitate conservation and prevent the deterioration of

natural resources and the environment.

In August 2004, as per a Cabinet Resolution, the 'New Plan of Forest Village Project' was initiated with the objective of lessening the incidence of encroachment on forests and creating collaborative management practices with the communities living inside the forests to protect, conserve and promote sustainable use of forest resources. The project activities included creating employment and establishing a network to support knowledge and build awareness of the community to have a role as the owner of the resource<sup>36</sup>. The two projects 'People and the Forest' and the 'New Plan of Forest Village Project' would compliment each other in achieving the goals of management of natural resources in a sustainable manner.

The 10 year National Integrated Forest Management Strategic Plan developed in 2004 by the Ministry of Natural Resources and Environment, also recognized that the

declaration of reserved areas took away rights of communities who had been settled in the protected areas before it was so declared<sup>37</sup>. It admitted that non-recognition of their rights had given rise to many conflicts between the local people and the civil servants concerning access to and benefits from the forests. As solution, the ten year plan gave responsibility to the National Forest Policy Committee to set up appropriate mechanisms for ensuring constructive participation of all the stakeholders. The implementation measures under the plan included, promotion of culture and indigenous knowledge related to forest management and providing trainings to the communities with respect to modern and useful knowledge and techniques for conservation. The expected output from these measures was that communities have strengths, conscience, understanding and ability to give co-operation in forest conservation.



<sup>36</sup> Cabinet Meeting Synopsis, February 6, 2007, accessed from <http://spokesman.go.th/e-cab99/cab1005e.txt> in June 2008

<sup>37</sup> Check the website: <http://www.onep.go.th/Naturalresources/soil/eng/plan47-56/plan47-56.htm>

## How were all the ideals behind these projects implemented? Stories from Huay Plalod, Paksaem and Huay Jakhan.

### **Story of Huay Plalod**

The ‘New Approach Forest Village Project’ was implemented in the Huay Plalod village as a pilot project.

Huay Plalod village is located in Maesot District of Tak Province. People belonging to the Muser, Lahu, Hmong, Mien tribes live in the village. There are about 124 households in the village, each family having around five members. The primary occupation of the villagers is agriculture – they grow rice, coffee, bamboo shoots, bitter cucumber, corn and other kinds of vegetables. The village is surrounded by forests which are managed by the community. After three years of lobbying (1986-1989) with the government a school was constructed in the village. The school offers education up to junior school and has 300 students. Before this the children had to travel long distances to attend schools in other villages.

The village now falls within the boundaries of the Taksin Maharat National Park that was declared in 1981.

However the headman of Huay Plalod village emphatically says that – *“People think that Huay Plalod village is located within the Taksin Maharat National park, but actually Huay Plalod village was here before the declaration of the National Park. The villagers did not encroach upon the National Park but the National Park encroached upon our land”*.

After the declaration of the National Park, during 1981 – 1983, the villagers under the leadership of a Buddhist Monk led a struggle for the recognition of their right to continue living in the national park and not be evicted from their land. As part of the struggle, they tried to systemize the management of their community forest. Earlier they had an informal understanding that the villagers would not expand the land under their cultivation, would not cut down trees and ensure that bush fires did not spread into the forest. They formalized these rules and all villagers agreed to



abide by them. The rules were further developed and regulations on the use of forest products were adopted. 80 percent of Huay Plalod is in the watershed area and still have the characteristics of ‘natural forests’.

In Sept – Oct 2004, the village was informed that Huay Plalod had been selected to be the pilot area for implementing the ‘New Approach Forest Village’, under the Ministry of Natural Resources and Environment. The villagers were informed that the objectives of the project were to combat deforestation and ‘restore’ the quality of the forest through the involvement of the local communities. Under the project, roads, water and sanitation facilities would be constructed in the village. Electricity and health centers would be brought to the village too. The authorities declared that all land for housing and cultivation in the village had to be used and managed under the guidelines of the project. The villagers were informed about all these details and since there was no scope for the villagers to refuse to be part of the project, they gave their formal consent.

At the implementation stage of the project, each family was allocated 2 rai (less than one acre) of land for cultivation. Thus the cultivation land of the village was reduced from 4000 rai or 1600 acres to 244 rai or 97.6 acre of land. Under the traditional system of cultivation, the Lahu divide their land under cultivation to 3-4 plots. They cultivate rice on one plot of land for 2 years and then shift to 2nd, 3rd and 4th plots successively. The plots that are not used for cultivating rice are left fallow or are used to grow vegetables and other crops. This system allows the land to regain its nutrients before rice crop is grown on it again.

## *Reclaiming Rights in Forests*

Under the 'New Approach Forest Village Project', the authorities encouraged them to switch to growing cash crops such as fruits on the 2 rai of land allocated to them. Further they asked the villagers to plant trees to restore forests in the remaining area of land. Thus the '2nd /3rd /4th' plots of land which used to be the area around which the villagers shifted their cultivation was converted into 'forest plantation'.

The village headman said that the new project had given rise to many problems. He explained that the project can offer employment to only few people. At the same time the project by changing the usage of land takes away the food security of the villagers. The staple diet of the hilltribes is rice and they like to grow the rice that they eat. Under their traditional system they were able to grow enough rice for their subsistence and other crops as well – some for own consumption and some for the market. However under the new system they are not able to grow rice. They have to buy it

from the market after selling their cash crops. If they are not able to get a good price for the crop, they have to worry about securing their 'food' needs. Further the villagers could not revert back to their traditional system. If they cut down the trees that were planted in their cultivation area as part of 'forest restoration', they would be accused of causing destruction to the reserved forests and evicted from the area.

The village headman said that the hilltribe people also had a lot of knowledge about how forests can be conserved and protected. They understand that forests need to be preserved and they would like to work together with the authorities in their efforts. However the authorities do not care to know about how the people have been traditionally managing the forest resources. At the end he said, that had he known the full details of the 'New Approach to Forest Village' project, he would have never given their consent to be part of it.

### ***Story of Paksaem Agricultural Study and Dissemination Center***

In 2000 it was observed that Paksaem village, a watershed area in Chiangmai Province was facing destruction because of commercial farming of crops such as potato and lychee. It was also observed that the villagers were expanding the land under their cultivation and the number of households in the Piengluang and Hintaw village had increased. Drug trafficking was prevalent in these villages raising concerns of national security. For these reasons it was decided to set up **the Paksaem Agricultural Study and Dissemination Center**. The project sought to cover 19,375 rai or 7,750 acres of Vienghaeng District that included the Chang Dao National Park. The project area included the villages of Paksaem and Hintaw.

#### **The Objectives of the Project was to**

- To preserve natural forest and combat deforestation by working together with the local communities
- To promote reforestation and restore around 325 rai (130 acres) of forest and watershed area
- To protect the watershed area



#### **Implementation Plan**

- Survey water resources and land usage of the area under the project
- Divide the land according to usage purpose; for grazing of cattle, for agriculture and for forestry
- Hiring villagers from the target area to work in the Centre so that they can get agricultural training
- Re-arrange the communities in the target area so that it is easy to manage the villages

- Expand the project area and develop plans of working with the communities to support their livelihood according to their local customs and traditions

#### **Expected Outcomes**

- Generate incomes for the villagers employed under the project
- Giving agricultural training to the villagers so that they could apply it
- Reducing the incidence of drug trafficking in the area
- Improving livelihoods of the communities in the project area
- Preserve forest and watershed area

The Paksaem Agricultural Study and Dissemination Center (hereinafter called the Paksaem Agricultural Project), also aimed to

experiment with new agricultural methods and introduce new agricultural products for cultivation. Thus under the project land was used to set up ‘gardens’ for experimenting with techniques of growing temperate climate or exotic fruits, vegetables and flowers. A member of each family was given employment to look after these gardens. The land usage of 130 households of Paksaem and Hintaew was surveyed and a special land use permit for 4 rai or 1.6 acre was granted to each household. The villagers said that the authorities also encouraged them to stop cultivating rice and grow temperate climate fruits and vegetables. However growing such crops required investments in the form of fertilizers. It also decreased their food security and made them dependant on the market for buying their staple food of rice.

## **Story of Huay Jakhan**

**The land given to us was like old clothes – smelly and full of holes. It is an insult to our dignity**

We met the Huay Jakhan Lisu villagers in the District Office of Mae Ai, where they had come to attend a meeting organised by the National Human Rights Commission and the District Office to discuss their problems. It seemed that the whole village, the women in their traditional Lisu attire, had come to attend the meeting and were very agitatedly discussing the issues. Intrigued, we tried to find out more.

Huay Jakhan story is part of a Development Project that was initiated 14 years ago. The villagers originally lived in Omkoi village of Chaiprakan District of Chiang Mai Province. In 1993 they were requested to consider an alternate land for settlement as Omkoi village was in the middle of the Chang Dao reserved forest area. When the villagers did not agree to move, the Military Officers ordered the people to move into another area in Chaiprakan District. The villagers were promised 25 rai (10 acres) of land per family and basic services such as water, sanitation, electricity and school. The villagers agreed to follow the order. Once they had moved to the allotted area in Chaiprakan, they discovered that the source of water was very far away. The river water had to be transported and stored in tanks and could be used for a maximum of 3



months. Once the water stored in the tanks finished, the villagers had to wait for water to be delivered again. As this was not a very sustainable solution, the villagers submitted a petition to the office of the development project to relocate them in a new area. That is how they came to be settled at Huay Jakhan.

The villagers were not very enthusiastic about shifting to Huay Jakhan as the land did not seem very fertile. But in 1995 they were physically forced by the military to shift to Huay Jakhan. Once they shifted each family was given 5 rai of land (2 acres) for cultivation. Since then, the villagers have been struggling to grow crops in the rocky terrain amidst acute scarcity of water as there is no source of water nearby. To solve this problem, the project authorities constructed the Huay Pow small dam

in 1996. However the dam could collect water only during the rainy season and there was no improvement in the situation. In response to their complaints, another dam, Huay Kosai was constructed in 1997, but this small dam was also ineffective and water got collected only during the rainy season. Moreover there was too much mineral content in the water, which corroded the pipes. To improve fertility of the rocky soil and solve the irrigation related problems, the authorities provided and helped them to connect the land with sprinklers. But the sprinklers could not be used as there was no water.

Absence of water affects their health as well. There is no fresh source of water in the village for drinking, cooking and cleaning. They have to bathe in dirty stagnant water which makes them vulnerable to sickness and disease.

In the year 2003, officers of the Development Project conducted another survey and admitted that the land had to be developed before it could be cultivated. They promised the villagers that special techniques for improving the quality of the land would be developed. Meanwhile the project initiated income generating activities such as rearing pigs and ducks and growing fruits and vegetables in controlled conditions. The villagers were offered employment on a wage of 120 baht a day. There were also other activities such as weaving and making silver ware. After receiving adequate training the villagers were able to make good products, but these products had to be marketed through the office of the development project. The office purchased the products one time a year. As a result the villagers could get cash in return for their products only one time a year. The weaving and making silverware did not earn them enough income to meet their basic needs. Daily wage employment was available to only a limited number of people. Some families find it hard to secure two meals a day.

To overcome their hardships the villagers requested the authorities to provide them with alternate land. But the authorities said that no land was available. At present, in order to survive, the villagers have rented land in Maehongson province for cultivation. But this cannot be a long term solution, and in the meeting with the District office, they presented their decision – that if no sustainable solution could be reached they would return to their original village in Omkoi and face the consequences which they think could not be worse than starving to death in Huay Jakhan.



***Voices of the people of Huay Jakhan***

(Interviews during the field trip in December 2007)

*Since the last 14 years many meetings have been held to find ways of improving the soil. But now, it seems impossible to us. The land is very steep and rocky and cannot soak water. The authorities taught us to do terrace farming, but there is not enough water to irrigate the rocky soil. Even if there is water, it would be impossible for us to meet the costs of electricity needed to get enough water into the fields to irrigate the rocky land. We have put everything at stake and tried to invest money and cultivate the land, but at the crucial time, when we needed to irrigate the fields, water got exhausted and the crops failed.*

*A lot of resources have been spent on the land since the last 14 years, but none of it has benefited us. We would like the authorities to use the budget they want to spend on developing the land to buy alternative land for us. We cannot continue to live this life of insecurity. We have to think about our children and their future.*

*Prices are increasing everyday. We cannot meet our needs as daily wagers. We have to take loans to survive. We need land to cultivate as it gives us basic food security. When we tried to cultivate land belonging to the surrounding forests our lives were threatened by forest officers.*

*We want to return to the area where we came from originally. But the authorities have warned us against it as it is now a protected area. If all the fertile land becomes part of 'reserved forests' then what will happen to us? Where will we go? We have always lived together with forests. We would like to be given an opportunity to show that we are capable of protecting the forests as well.*

## Reviewing the Development Policies and Projects against human rights standards

All these projects and plans had laudable objectives, but the

bureaucracy implemented them with the mindset that all indigenous people were threats to national security as they were involved in drug trafficking and did not have the ability to conserve or protect forests on their own. Thus there settlements needed to be closely monitored and they needed to be given training on

conservation of forest resources. Because of this mindset, the administrative authorities adopted a top-down approach treating the hilltribe communities as 'objects' of development rather than as active agents in the process. Such an approach does not recognize the standards established under international law as well as the domestic law in Thailand.



### International and Domestic Standards that respect and protect the right to management of forest resources

**Right to participate in decision making in matters that affect rights:** Article 18 of the UN Declaration on the Rights of Indigenous Peoples stated that the indigenous peoples have a right to participate in decision making in all matters affecting their rights through representatives chosen by them in accordance with their own procedures. These rights are also guaranteed under Article 25 of

the International Covenant on Civil Political Rights which states that every citizen, without any discrimination or unreasonable restrictions should have the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives. The Human Rights Committee in its General Comment 25 has explained that,

*"The conduct of public affairs ... is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers ... the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs ... should be established by the constitution and other laws."*

**Obligation of the State to consult with the indigenous peoples:** Article 19 of the UN Declaration states that the States have an obligation to consult the indigenous peoples in good faith and adopt their free, prior and informed consent before adopting and implementing any

legislative or administrative measure that may affect them. Under Article 57 of the 2007 Constitution of Thailand, a person has the right to receive facts, explanation and reasons from government agencies, before approval or implementation of a project that



may have a serious impact on the quality of life, or other important interests of the individual or community. A person also has a right to give his or her opinion to the responsible agency in the evaluation of the project or activity. Further State must organize public hearings while making plans for social, economic and cultural development that has an impact on the benefits of the people.

Indigenous peoples have a distinct 'way of life' that revolves around the forest. 'Development' needs of indigenous peoples may not be

## *Reclaiming Rights in Forests*

the same as that of a person from a town or city. Policies that do not acknowledge the 'difference' of indigenous peoples and show respect for such difference would not be able to making any sustainable difference. Such policies would not be able to achieve the desired objectives. The different stories also show that indigenous peoples have a lot of knowledge about the forests that they live in.

The observation of villagers at Huaysan that the fern trees used for reforestation is not suitable for creating forests is echoed by many forest communities. The forest communities are able to point out the differences between a 'natural' and a 'planted' forest very descriptively. The State could only gain if they incorporated such knowledge in their work.

The indigenous peoples in

Thailand do need development assistance from the State. However they would like such assistance to be based on their aspirations. Rather than viewing them as threats to 'national security' the State should constructively engage with them. A positive move has been made with the enactment of the Community Forest Act in 2007, but much more needs to be done.

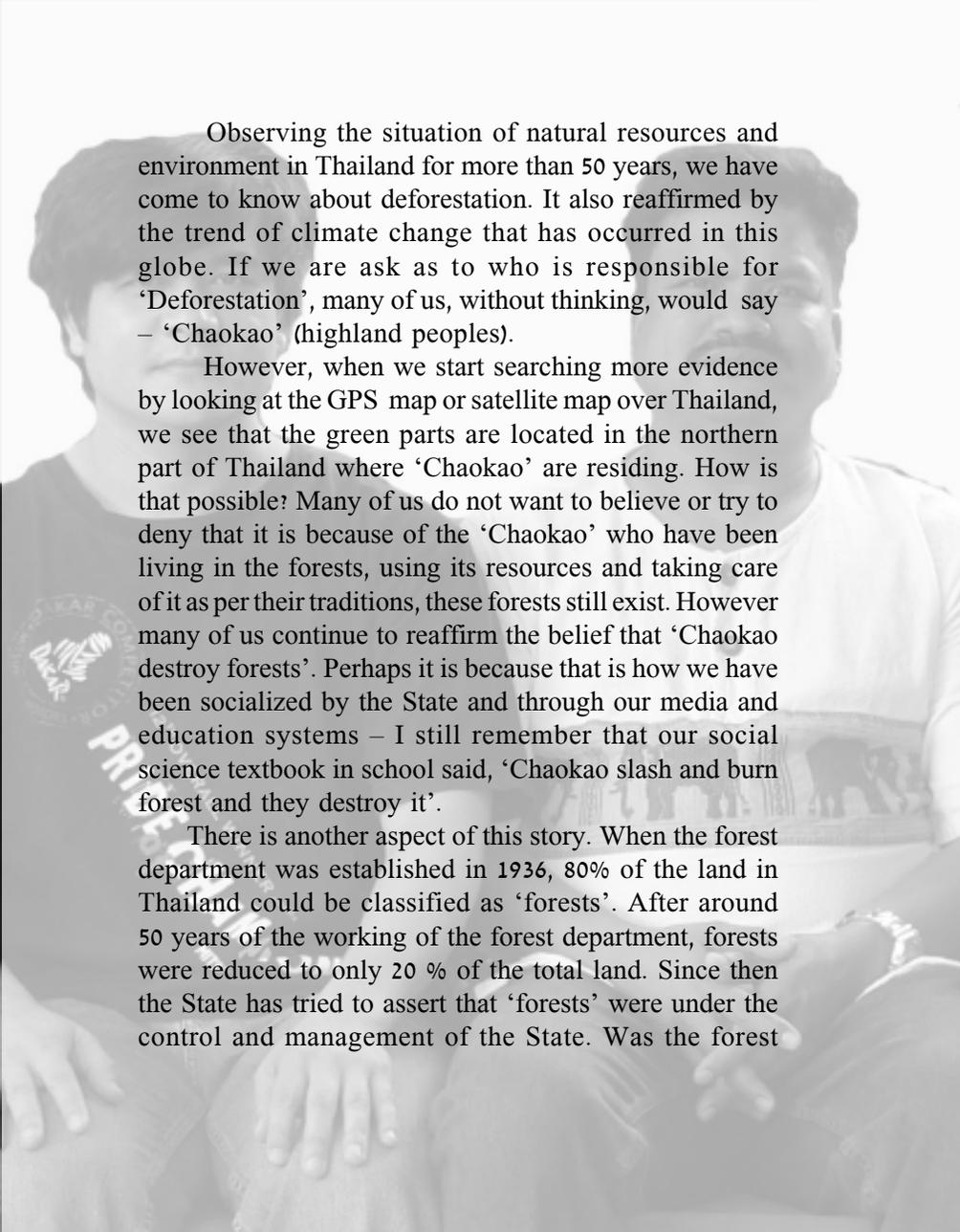
## **REFLECTION ON REAL FOREST SITUATION IN THAILAND**



Observing the situation of natural resources and environment in Thailand for more than 50 years, we have come to know about deforestation. It also reaffirmed by the trend of climate change that has occurred in this globe. If we are ask as to who is responsible for 'Deforestation', many of us, without thinking, would say – 'Chaokao' (highland peoples).

However, when we start searching more evidence by looking at the GPS map or satellite map over Thailand, we see that the green parts are located in the northern part of Thailand where 'Chaokao' are residing. How is that possible? Many of us do not want to believe or try to deny that it is because of the 'Chaokao' who have been living in the forests, using its resources and taking care of it as per their traditions, these forests still exist. However many of us continue to reaffirm the belief that 'Chaokao destroy forests'. Perhaps it is because that is how we have been socialized by the State and through our media and education systems – I still remember that our social science textbook in school said, 'Chaokao slash and burn forest and they destroy it'.

There is another aspect of this story. When the forest department was established in 1936, 80% of the land in Thailand could be classified as 'forests'. After around 50 years of the working of the forest department, forests were reduced to only 20 % of the total land. Since then the State has tried to assert that 'forests' were under the control and management of the State. Was the forest



## *Struggles of Indigenous Peoples in Thailand*

department more concerned with management of 'logging' than its protection and preservation? I remember that my school text book also mentioned that teak was our first commodity for export.

Who would know that there are peoples living in the forests in total harmony with it? Who would know that their traditional wisdom passed on through generations show them the way in which they live in the forests as well as protect and preserve its resources? Many academic researches have reaffirmed that 'swidden cultivation' is friendly to nature and preserves the environment by naturally fertilizing the soil without the addition of any chemicals. The highland peoples do not cultivate the same plot of land every year - they cultivate a plot for a maximum of two years and then leave it fallow and shift to another plot. In around seven years, the soil regains its nutrients naturally. The people do not cut down big trees, but try to cultivate in the empty spaces by cutting the small bushes and shrubs – just enough to produce their food. Swidden cultivation is a

community activity.

The land does not belong to any individual – but is common land for use by the community as whole. Because of stereotypes such as 'Chaokao slash and burn forests and destroy them', the state machinery is chasing the people out of their land, limiting land use by the highland people and even prohibiting swidden cultivation. Apart from excluding the 'Chaokao' from their own land, the laws relating to forests and nationality are very discriminatory against them and violate the dignity of indigenous peoples of this world.

State policy has not changed even today. As reflected from the proceedings of the Cabinet Meeting on 29th April 2008 that is reproduced below, it seems that the space for the highland indigenous peoples and the younger generation to maintain their traditional way of living in the forests is getting smaller and smaller.

**Sumitchai Hattasan,  
Human Rights Lawyer  
August 2008**



### **Proceedings of Cabinet Meeting, 29<sup>th</sup> April 2008**

The Ministry of Natural Resource and Environment reported to the Cabinet about the status of forests in Thailand as follows;

In the past, Thailand had rich forest resources. In the year 1961, there were 171 million rai or 53 % of land was forests land. However as of now there are only 104.7 million rai or 32 % forests land which includes state protected forestry areas and National Parks consisting of 92.9 million rai. Forests play an important role in economic and environmental situation of the nation. Deforestation has some adverse effects such as; scarcity of water for agricultural and industrial purposes, shortage of wood/log products, shortage of food, herbal medicine and income for local communities, increasing land disputes and climate changes and natural disasters.

The Ministry of Natural Resources and Environment plan to increase forest area to 128 millions rai or 40 % of total land. This result is to be achieved by (1) maintaining the forest land of 104.7 millions rai and (2) increasing the forest land to 128 millions rai.

The existing forest area will be maintained through the following actions; (1) strict surveillance of existing forest areas, (2) setting up joint committee check points in targeted

## *Reclaiming Rights in Forests*

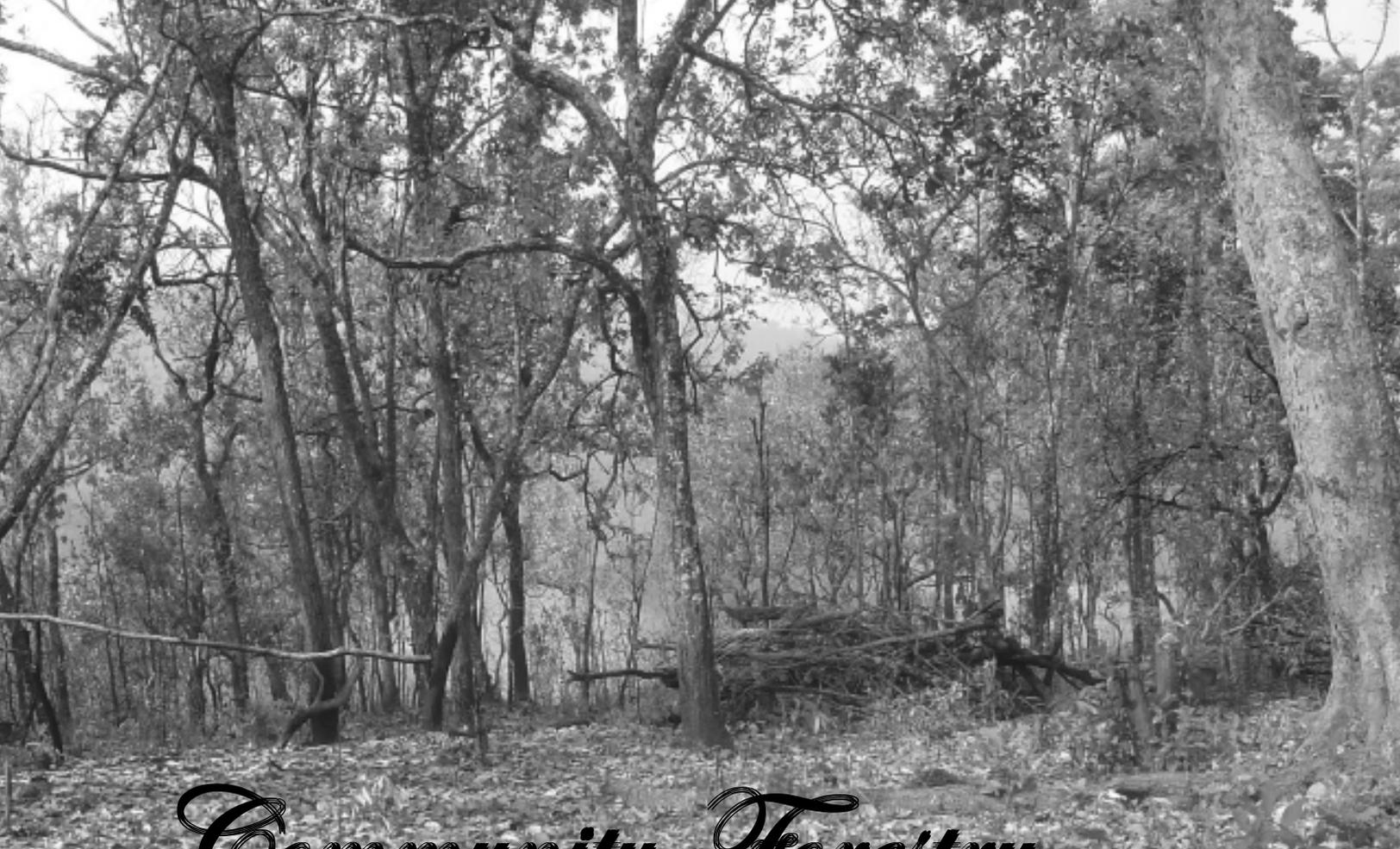
areas, (3) networking with peoples groups/networks, (4) providing encouragement to state officers, (5) examining the changes of forest land by satellite and (6) setting up National Committee on Prevention and Suppression on deforestation (NCPSD) according to Prime Minister Order No. on 81/2551 dated on 21 April 2008. This NCPSD will be authorized to prevent and suppress any act that causes deforestation in the country. There will be sub-committees appointed at provincial levels to integrate the implementation plan at provinces. The number of court cases relating to forests land in the year 2007/2008 is as follows;

<b>Year</b>	<b>No. of the court cases</b>	<b>Total Encroachment of land and forestry</b>
1. year 2007	6,711	35,988
2. year 2008 (Jan-25 April 2008)	2,625	19,039
<b>Total</b>	<b>9,336</b>	<b>55,027</b>

The plan for increasing forest area consists of; (1) Project development and action plan for 1010 million baht under the Budget year 2008, (2) Budget proposal for 2009 to restore forests over a minimum of 1 million rai of land, (3) Propose project, 'Love water, lover forest for our Queen', to Cabinet on the occasion of Her Majesty the Queen's 76th birth anniversary on 12th August 2008, (4) develop forest plantation for bio diesels in order to increase forest cover and reduce fuel and oil imports. The land for forest plantation and restoration is as follows:

<b>TYPES OF LAND AND FORESTRY</b>	<b>RAI</b>
1. Forestry areas (under National Parks and Wildlife and wild plants reservation areas Department)	7,400,000
2. Forest Reservation Areas and Forest plantation areas (under Forestry Department)	15,050,500
3. Mangrove Forestry (Marine and Coastal resources Department)	329,500
<b>Total</b>	<b>22,780,000</b>





# *Community Forestry*

In the 1980s the movement of civil society organizations, highland peoples groups, villagers, farmers' networks and academics initiated a campaign for public participation in the forest management. This movement initiated a policy of community forests based on the following principle:

“Community forest is part of the natural ecosystem on which depend the local people's livelihood, their social survival and the economy of the local community. There are two types of community forests. The first one is found in older village settlements where community based forest management works effectively. These community forests need to be further studied and their experiences replicated in other community areas. The second is the community forest found in newer settlements that may still lack adequate and effective management of natural resources and also suffer from problems of economic hardship. This type of area needs a development policy that promotes and strengthens the community capacity for effective community forestry management. The community forest planning and solutions to resource management problems must be done in parallel. As regards the land, its management should be decentralized to the community and governed by a new legal framework to avoid the limitations and difficulties that usually arise from the previous laws.”<sup>38</sup>

After a long struggle the Community Forest Law was finally enacted in December 2007 by the military coup appointed parliament. Indigenous people leaders and activists working closely with indigenous people were not very elated with the passing of the Act. They felt that the Act did not really recognize the rights of the community to manage local forests. Rather through its strict rules, the law took away the space that different communities had created for themselves. At the time of passing the law, the debate was on issues like whether people had the ability to manage forest resources. It was because of these

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<sup>38</sup> The conclusion was collectively made by environmental organizations, rural development NGOs, academics and the villagers of the northern, north-eastern and southern regions in a seminar on community forest, organized by the Project for Ecological Recovery in 1990. The excerpt has been reproduced from, *After the Logging Ban, Politics of Forest Management in Thailand*, Foundation for Ecological Recovery

issues that the Law which was passed did not include many of the recommendations made by the people's movements. The contentious provisions of the law are

**Article 25:** A community can request the right to protect its forest in any protected area if it can be proven that the community had existed before the protected area was declared by the government. The community must also demonstrate that it has been preserving and managing the local forest for no less than 10 years before enactment of the Community Forest Bill (CFB).

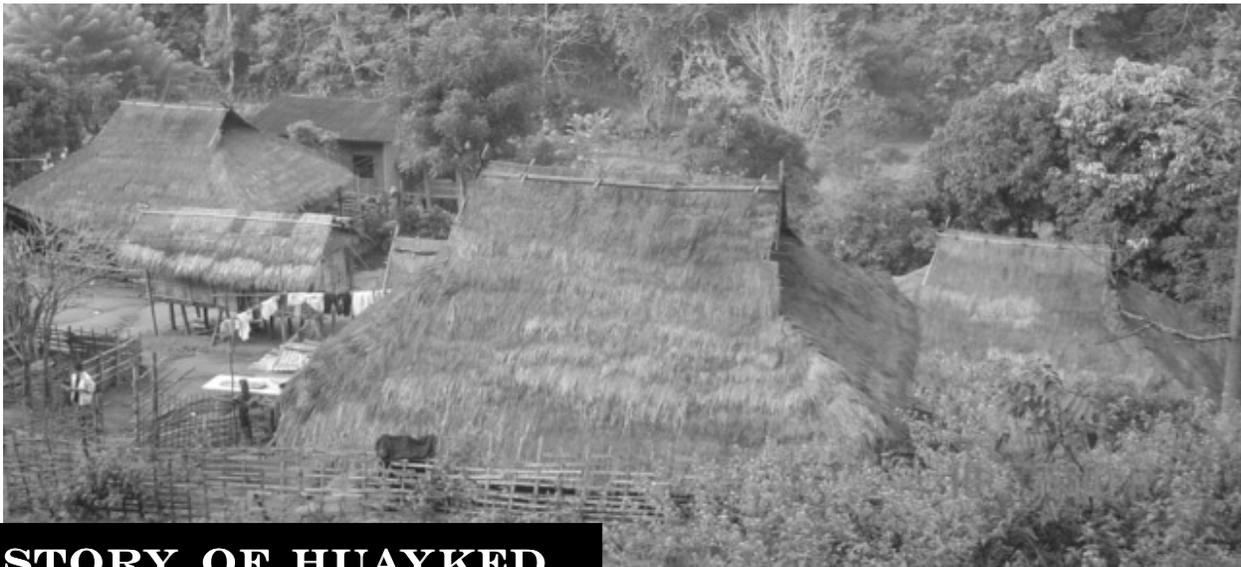
The community must also demonstrate that its culture is in harmony with the forest ecology.

Any request for the establishment of community forest (CF) must be made within five years of the enactment of the CFB.

The protected areas specified must not be government reserves for protection of wildlife, research and academic studies or other state benefits.

The proportions of the CF should follow the criteria, methods and conditions which the Community Forest Policy Committee stipulated and declared in the Royal Gazette.

**Article 35:** Logging is prohibited in CF within protected zones and in the area for conservation in CF outside the protected area. Logging in CF outside protected or conservation areas is allowed only for home consumption by members of the communities or for public activities within the community, in line with Community Forest Policy Committee regulations. Collecting forest products also must comply with the regulations of the Community Forest Policy Committee.



## STORY OF HUAYKED

Huayked sub village having 18 households was formally established in 1991 when the Border Petrol Police issued an official letter of recognition to them. The official name of the village is Huayked Nai and it is located 1500 metres above sea level in Maeay District, Chiangmai Province.

Each traditional house has a 'house number'. A solar system installed in the village provides electricity. There is a school in the village, equipped with wall boards, desks and chairs, books and even a television. There is water supply and proper sanitation facilities. The carefree laughter of the playing children reflects a state of well being. Yet, the security of life of the villagers has been shattered by recent events. On 8th November 2007,

the District Governor of Maeay passed a verbal order for their eviction on charges of deforestation and involvement with drugs. The Akha community in Huayked village is known for its system of managing the forests, so we visited the village to find out more about the issue.

The villagers have been living on the land and cultivating it since the last 25 years. Over the years they have developed a system of managing the forests. The forest land is divided into three parts according to usage – for conservation, for using and collection of forest products and for cultivation. The land for cultivation is also divided in two parts. Alternately one part of it is left fallow for some seasons and cattle graze on it, while the other part

is cultivated. These categories are strictly maintained. Whenever a family needs wood to repair their house or any such use, the matter is discussed in the village committee meeting. All such similar needs are collected, and a tree from the second category is chosen to be felled. In this way the villagers regulate the felling of trees and cut trees not for profit but to meet their essential needs. This kind of community management rules was set up in 1999, after leaders of the village had attended a meeting on community forestry in Chaing Mai Provincial Town Hall. Inspired by the meeting, and with the help from individuals such as the non formal education teacher and organizations such as IMPECT, they developed and documented rules and systems for managing the forests around them. In Banluang sub-district, Huayked is the only area where natural forests still exists. In other areas, the bamboo trees in the forests have been cut down for use in the fruit orchards.

The villagers have tried to get their system of managing the forests recognized by the authorities but they have not been entirely successful. In the past, the office of the watershed area near Huayked, had taken interest in their work and given them further training. In the year 2003, the Department of Watershed Area was also exploring the possibility of initiating a project to support their management of the forests, but the department could not raise budget for the project and the idea was dropped. The community is interested in working with the Royal Forest Department to protect the forests, as they believe they have the knowledge to do so. But as of now, they have not been able to gain any official recognition of their management system.

### **Why are they facing eviction?**

The villagers suspect that they are being evicted because they do not allow the felling of trees in the forests around them. Sometime back the villagers had stopped the District headman from felling a very old and valuable tree in the forest area. The villagers allege that many of the government officers are involved in logging business. These people do not like the villagers guarding the

conservation forests and not allowing the felling of the trees. As a reaction, officers from the Royal Forest Department once visited their village and charged them with the offence of destroying the forests, when they saw logs lying around. The officers did not accept the explanation of the villagers that the logs were for use in the village.

The villagers say that the problems have arisen with the authorities since the new District Governor and District Headman assumed office. These officers work with a very high handed attitude and never listen to what the villagers have to say. As proof, the villagers showed us an undated order issued in November 2007 by the Permanent Secretary on behalf of the District Governor. The letter invited the villagers of Huayked to a meeting on 16th November to listen to the instructions with regard to moving out of the village. The order informed the villagers that a meeting had been held with the 8 departments responsible for managing the forests and it had been concluded in that meeting that the villagers should be evicted as they were involved in the drug trade and were causing deforestation and destruction of the watershed area

and using chemical fertilizers for cultivation. The meeting also concluded that it would be easier for the authorities to manage the people if the villagers moved down from the hill.

The villagers commented that this high handed attitude changed when the villagers are accompanied by friends from civil society organizations. For example when the villagers attended the meeting on 16th November with social

activists, the attitude of the District Governor changed and he did not say much about carrying out the eviction order.

Only a few villagers speak Thai and none of them can read it. This language barrier works to their disadvantage as the officers do not speak in the Akha language but still expect the villagers to understand everything that is being said. The villagers say that one of the reasons why the Lahu community living in this area had to move was, that they were called for a meeting and asked to sign on a piece of paper. The people signed without understanding anything and later they realized that they had accepted to be evicted from the area.



**What next?**

On 26th November 2007, the village headman called the villagers and offered them alternative land for settlement. But the villagers do not want to relocate. Moving to a new area is the last option for them. The villagers now want some security and assurance that they would not be threatened with eviction time and again. The villagers are prepared to struggle for their rights. They are now eager to empower themselves with knowledge so that they can deal with the authorities with confidence.

For the moment, the eviction order still exists, though nothing has been done to execute it. There is a state of unstable peace, with no one knowing what might trigger a situation of conflict again...

One of the lasting memories of Huayked village is the group of children who accompanied us in

our hike through the forests to the cultivation land. Though shy at first, very soon they were singing songs in the Akha language together with our local guide, reciting rhymes, the months of the year in English, the days of the week and so on. Bright, carefree, confident – it was evident that they loved and enjoyed learning. We were told that all the credit went to the efforts of the non formal education teacher who not only had inspired a love for learning in the children, but also encouraged their parents to attend classes. The teacher, who also helped the villagers in documenting their rules of forest management, said that the community has access to very little information about events impacting on their lives. He remarked that information was power, and if the villagers had accurate information, they could use it to negotiate and bargain.

**Chronology of Huayked struggle**

13 June 2007	It was the first meeting where eviction of Huayked villagers was discussed in a meeting of the District Governor of Maeay District and other local authorities such as District Headman, Village Headman of the main village. When the Akha villagers of Huayked learnt about the possible eviction, they tried to present their community forest management by showing some of the records, reports, pictures and explain why they should not be evicted. But their voices were not heard. Instead the officers tried to convince the villagers to accept the eviction plan.
14 November 2007	A letter was issued by Maeay District to every household of Huayked village stating that the District Office could not administer and manage the small settlement of Huayked in terms of health care as it was situated in a remote area. The village was becoming a threat to national security since there were allegations of drug trafficking and deforestation against the villagers. The letter stated that the District Officer had decided to evict them and the villagers would be given more details about the eviction at the office of the Border Security Force in Maeay District, Chiangmai province on 16 November 2007.
16 November 2007	District Governor headed the meeting at the Border Security Force office in Maeay District. The meeting was also attended by representatives of Highland Peoples Taskforce and villagers of Huayked. The District Governor referred to the meeting on 8 November 2007 held with the concerned government agencies to discuss the policy of Ministry of Interior. The villagers were able to ask some questions in relation to the policy and the details of the eviction. When the villagers asked questions, the officers got very upset and walked out of the meeting room. That reaction caused uncertainty about the future of Huayked.

**Voices of the people of Huayked** (Interviews during the field trip in December 2007)

*Our children are the future of the community. We want to give them a good education so that they can carry forward our traditions and knowledge. Our land is our security. If we have our land, we can plan our future with confidence. If we have our land, we can work hard and take care of our children and families. We have*

*no education, no other skills than managing the forests and cultivating the land.*

*If our land is taken away from us, we will lose our identity. We will have no other option than to migrate to the cities in search of employment. And we don't want to do that because we cannot live without the forest.*



# *Will communities like Huayked get recognition under the Community Forest Law?*



**Anand Kanchanaphan :**  
18 years of Community Forest Law...eventually passed just to suppress rather than promote people's rights

**Prachadhrama News Network (PNN)**  
**27 November 2007**  
**News**

*Eventually, after 18 years of struggle, on 21 November 2007, the Community Forest Bill sailed through the National Legislative Assembly, where the majority of the members are government officers hand-picked by the Council for National Security. The law has long been awaited by the people's sector. But the final version has substantially deviated from the original proposal by the people and has drawn outcries. It makes people doubt if the NLA (National Legislative Assembly) sincerely believes that communities are capable of helping preserve the forests as the law intended. Many provisions in the final draft dismantle the rights of many communities which have been protecting forests for a long time. The contents of Sections 25 and 34 are no different from conventional forest laws which aim to curb people's rights to use forests and in fact led to conflicts of interests and the demand for a Community Forest law in the first place.*

*In an interview with Prachadhrama News, Prof. Dr. Anand Kanchanaphan, from the Faculty of Social Science, Chiang Mai University, one of the academics who have been pushing for the Community Forest Bill together with the people's sector and who was appointed to the committee to review the law, gave his views on the version of the Community Forest Act endorsed by the NLA*

*What are your general impressions about the Community Forest Bill endorsed by the NLA?*

*The version of the Community Forest Bill endorsed by the NLA will definitely make it impossible for communities to fully participate in community forest management. Instead of writing the law to provide for community participation, they have blocked these rights. Traditionally, people have had rights and have benefited from the forests, and these rights are upheld by the Constitution. The law now puts constraints on these rights and reduces the communities' potential role in forest management. It simply infringes on their constitutional rights.*

*The minority voices in the Drafting Committee held that if we paid too much attention to the people's draft version, it would lead to more encroachment.*

*This is an unfounded claim. Communities have long established themselves as protectors of the forests. It is not that they just started to do it recently. They have invented tools and mechanisms for this purpose. So we can develop our mechanisms to monitor the community at different levels including the setup of a Community Forest Committee, rules and regulations. It's not the case that they can just start managing forests; they have to have experience. In the draft version proposed by people's sector, we already required that to be entitled to forest management, a community must have at least five years experience. We have established many mechanisms to ensure that they really help to preserve the forests.*

*In the draft version by the people's sector, various mechanisms and conditions were set out to provide for very detailed monitoring. But in the final version, none of the mechanisms are there, so how can you say that this law will work? Those*

who support this final version have no understanding of the reality.

*Maybe they do not trust the mechanisms (proposed by the people's sector)?*

*Well, the monitoring is supposed to be carried out at different levels and by various sectors. Before, it was exclusively the government that took the role, but the new mechanisms we proposed included monitoring by the state, civil society, and the community with very good checks and balances. Before, it was the government that had the biggest voice and that led to discrimination or inaction, particularly, when money gets involved. But the new system that we proposed set out many conditions that involve cooperation from academics, the state, and civil society. To cheat in this system, you would have to bribe all the three parties, which is not very easy.*

*Could the fact that this version of the Community Forest law has been endorsed be attributed to a lack of trust or acknowledgement of the rights and authority of communities in natural resource management in society in general?*

*They must be worried too much. They must be concerned that people from outside will take advantage of the law to serve their vested interests. But their concerns are based on emotion, rather than facts.*

*Until now, forest and resource management has been guided by a single and exclusive point of view. The idea hinges on the exclusive leadership of one sector such as having the state to take the lead in management, or letting the market to drive management -- either the state or market forces. They stick to the idea of having a single authority, i.e., social organization, or state agency, market or private organization, to manage. They tend to forego the interdependence of all these agencies. We never explore how to mobilize the different functions of these organizations. We tend to look at the ownership aspect - who owns and controls the resources, and who should be the host organization in management.*

*But natural resource management is highly extensive. It involves the forest, the sea, and the environment. To stick to a solution based on*

*identifying a single authority that owns and manages the entire web of resources is very costly. The environment in its entirety is so large. Problems in the past stem from the fact that the environment is big, and man did not understand its potential, and thus failed to protect it by leaving many loopholes. We have to shift from thinking that natural resource management should belong to one single authority. The rights to manage resources should be treated as collective rights and involve multiple rights including the right to use, the right to check and balance, etc.*

*Once it is held that the rights are multi-dimensional and collective, then we can assign different rights to different actors, i.e., the ownership rights belong to the state, the rights to preservation and management to the community, and the rights to monitoring to some other agency. All the rights must be spread out among different parties and are subject to checks to prevent monopolization. And the gaps must be bridged. Different actors are assigned the roles they are capable of, i.e., the rural folk live close to nature, so they should be encouraged to look after it. It does not mean that the state will just leave it entirely in the hands of the community. They can still help to provide information to serve the purpose, and then we have the monitoring and checks performed by independent organizations such as academics, or NGOs. They are supposed to monitor the management.*

*All these different sectors should be involved and work with good checks on each other. Previously, there were no such checks, and that resulted in mistakes, unintentional negative impacts, leaks of natural resources and many other crises. Management must be carried out at multiple levels. Before, it was monopolized by just one single authority. Now, all the rights to management must be devolved to various actors including various social mechanisms to keep good checks.*

*- What are the problems with Section 25 in the final draft?*

*An amendment was made to change the requirement of experience in forest management from five to ten years. This may lead to problems*

in verification. How can we know if a community has been involved with community forest management for that long? There was no registration system.

The crux of the matter is they do not grasp that there are different layers of rights and how they lay on top of each other. They tend to focus on physical topography and then divide the area for management. But if we rely on the notion of relationships, the physical topography will no longer matter. Given that the management relationships are subject to checks and balances, a community anywhere can help to manage a forest. Of course, if you have never had experience in managing the forest for at least five years, you would not be entitled to the rights. But they tend to focus on the physical topography. They look at the world through a looking glass with one single colour.

- What about Section 34?

This section is OK. Traditionally, people have been using the forests, but their rights have not been recognized, which has led to discrimination against them. If a community's right to manage the forest is recognized, it will have more bargaining power and it will not be easy for government officers to interfere.

- Will this kind of law lead to more tense confrontation between the state and community?

I have no idea. But the bottom line is the government officers will never easily let go of their powers.

- How extensive are the impacts from the law?

All people managing community forests in the lowlands will be affected, but maybe not that much for the highlanders. The law has been tailored for those living on the mountains in the conservation forests. But there are people who live outside the conservation forests like those living in the lowlands. Since they have to rely on water from the mountains, they have been part of the efforts to help preserve the forests up there. Now, with this law, they will no longer be allowed to take part in that since they do not live in the conservation forests. Yet, we have many such communities. Peasants in the North traditionally rely on small scale irrigation systems

which benefit from the watershed on the mountains. But now, the law makes it impossible for people living in the lowlands to apply for the rights to manage community forests.

- After 18 years of struggle, how do those in the community forest network eventually benefit from the law?

Many think having laws is an answer, a solution and an ultimate goal. They think that with the law passed, the problems will end. But in fact, it is just the beginning. Mobilization for the community forest law has led to an increased awareness. The term "community forest" has now been included in the dictionary and the general public has been made aware. Despite some confusion and misunderstanding, it is now impossible to deny the existence of community forests since it has become part of the discourse in Thai society. Community forests are classified as part of the forest management system. Of course, there are different opinions about it.

I have no worry about this. As I said earlier, the process of pushing through the law aims just to raise people's awareness of the term "community forest". The notion behind the term is justification for this kind of forest management. But how it will evolve depends on how we bargain. And there will be endless bargaining. It is not that the issuing of the law will spell an end to the bargaining. Whether or not the law is passed, the bargaining will still go on. The law is just the first step, and definitely not the ultimate solution to forest management, which is very reliant on the strength of the people's sector.

- What are your proposals now?

Efforts to push for genuine community forests must continue. Even with the law, there may be no serious efforts and it might still lead to inaction. We need to push for the enforcement of the law. And if conflicts arise in future, we have to fight in the judicial system to prove that the law has been written with no regard to reality. It is not only impractical, but also leads to conflicts and therefore needs to be amended. Most importantly, the law was passed during an interim government. We may wait until an elected government is in place to push for amendments.



## *C o n c l u s i o n*

At the end of the report we remember the words of a Permanent Secretary of a District during a meeting in November 2007 to discuss alternative relocation sites. He said to the villagers -

*'You only think about agriculture and rice, how will you grow? How will you develop? Why don't you change your livelihood and try to find work as construction labour, live in the city so that your children can attend schools and universities?'*

And we remember the small children in Huayked who accompanied us while we went to survey the cultivation fields of the villagers. We remember their bright intelligent faces and their enthusiasm to tell us about their lessons in school. We remember the poems that they recited and the songs they sang along with our local guides – in English, Thai, Lisu and Akha language. They helped their elders to point out to us special trees, flowers and shrubs. The forests were their playground as well as a learning place.



Their parents and other indigenous peoples would have to continue with their struggles, so that they do not have to come down to the concrete jungle of the cities in search of daily wage labor. The indigenous peoples through their movement and campaigns have won many small battles. In all the stories recounted in this report, the people through their struggle have been able to successfully stall the eviction actions against them. They have started to raise voices against policies of exclusion and marginalization. The people will have to discover and give expression to this power within themselves so as to ensure that they do not lose control over their lives and are able to realize their dreams of a secure and peaceful life in the forests.

*After all this what the fortune telling at the end of the 'Juya' ceremony also suggested...*

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## PROTECTION ON HUMAN RIGHTS OF INDIGENOUS AND HIGHLAND ETHNIC PEOPLES IN THAILAND

### *OBJECTIVE*

- \* Promoting the right to citizenship and land ownership for indigenous and highland ethnic people in Thailand
- \* Promoting people participation of indigenous and highland ethnic people in the highland development policies and other national policies
- \* Promoting the implementation of Thailand ratified CERD International Convention to advance rights of indigenous and highland ethnic people and to eliminate social discrimination of indigenous and highland ethnic people.

### *PROJECT ACTIVITIES*

Most of Thai people see themselves as the majority group of the country and see others as the minority group due to different language and different culture. The Royal Thai Government has signed various international human rights conventions, such as ICCPR, ICESCR, CEDAW, CRC, ICERD and CBD, and a continuous effort is needed to transform these commitments into practice and to improve the human rights situation of marginalised groups, particularly the indigenous and highland ethnic people who are living in northern provinces of Thailand and are suffering from many obstacles in their social and economic development.



## ***PROJECT PARTNERS***

- \* The networks of the nine highland ethnic groups are Hmong, Mien, Lahu, Lisu, Karen, Lua, Palong, Akha and Kachin and the women ethnic network.
- \* IMPECT - Inter Mountain Peoples' Education and Culture in Thailand Association
- \* National Human Rights Commission of Thailand
- \* Lawyers Council of Thailand
- \* Northern Farmers Federation of Thailand
- \* NGO-Coordination Committee of Thailand
- \* CRCF - Cross Cultural Foundation, Thailand
- \* IWGIA - International Work Group for Indigenous Affairs
- \* UNDP - United Nations Development Program, Thailand
- \* UNDEF - United Nations Democracy Fund

## ***PROJECT ACTIVITIES***

The project consists of 4 main activities which are

- (1) Establishment of the human rights documentation center and development of Thai/English website including publication of human rights situation report of indigenous and highland ethnic people,
- (2) Training on human rights for the targeted ethnic leaders and local institutions for their capacity building,
- (3) Setting up the protection mechanism on ethnic people, ethnic communities and human rights para-legal training which helps build strong legal protection capacity , and
- (4) Networking activities with civil society organization, concerned government departments and other related international network. Through the continued support and more effective capacity building of ethnic individuals/community and networks





*Our rights  
and dignity  
which have been  
taken away  
should be restored*

*Wiwat Tamee,  
Coordinator of High Peoples Taskforce*

