



BRIEFING NOTE

ON THE SITUATION OF COMMUNITY BASED HUMAN RIGHT DEFENDERS AND ON RECENT POLITICAL DEVELOPMENTS IN THAILAND.

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Protection International (PI) is an international non-profit organisation that provides assistance, trainings and capacity-building support on security and protection management for human rights defenders working with communities and organisations striving for the respect and protection of human rights. Since 2010 PI has been working in Thailand through its Protection Desk based in Bangkok.

I. Challenges faced by community based Human Rights Defenders (HRDs):

Since 2012 Protection International, with its Protection Desk Thailand and its local partner the Community Media for Just Society (CMJS)¹ and Community Resource Center has been monitoring the security situation of 20 community based human rights defenders (HRDs) in Thailand, particularly those defending economic, social and cultural rights.

There are several cases that illustrate the vulnerability and threats experienced by HRDs in Thailand, however, it is difficult to gain access to the real number of violations and threats against community-based defenders in Thailand. The NHRC recently estimated the number of HRDs killed in 2013 to be 35². PI has identified seven cases since the inception of its activities with this constituency in Thailand, including three cases in the Khlong Sai Community (Surat Thani province) and one in Chiang Rai, related to protests against the development of large-scale projects such as factories, mining and land grabbing. Furthermore, the communities of the North East region engaged in a battle for the extraction of its natural resources, mainly stone mining, mines and gold, which has motivated keen interest by large

¹ CMJS is a grassroots organisation based in Udonthani that provides technical support on community mobilisation and provides information on national development policy, which is key for communities affected and contesting development projects

transnational capital investment companies in the region; and requests for mining concessions for exploration and extraction are increasing substantially.

Despite the gravity of threats and challenges to their security, the situation of community-based human rights defenders in Thailand still lacks the appropriate attention it deserves from national stakeholders, including civil society and the media. Notwithstanding the rights of communities being enshrined in the 2007 Constitution (Art. 66 and 67), duty-bearers and stakeholders continue to ignore their right to free prior and informed consent and often side with corporate parties. This neglect of their rights, combined with a lack of attention for communities' security challenges, have resulted in a high degree of impunity for violations committed against them.

The Khon Rak Ban Koed Group and the 15/5/2014 attack in Loei province

The Khon Rak Ban Koed Group, a group of villagers from six villages including Nanongbong, strives to protect the environment and natural resources of their village and to uphold their community's agricultural practices. The Group in particular protested against the mining industry and the expansion of the Phuthapfa gold mine by Tungkum Limited (TKL) in the Loei province in North eastern Thailand.

In October 2013, Under the community consensus, the villagers agree to install blockade in front of the entrance to the mining site for the prevention of company trucks containing cyanide chemicals to transport on the community road. However, the blockades were overthrown twice by authority forces in the same month. During this time, community leaders were also threatened by fake bombs planted in front of their houses.

Since then Tungkum Limited (TKL), which is a subsidiary gold exploration and mining company of Tongkah Harbour Public Company Limited, has taken legal action against Khon Rak Ban Koed Group. TKL filed seven lawsuits against 33 villagers criminal charges related to trespassing and loss of property. The company has also taken civil action against 20 villagers. TKL have demanded compensation of 50 – 70 million Thai Baht (approximately 1.5 to 2.2 million US Dollars) from each villager. The total amount of monetary compensation being sought by TKL is 270 million Thai Baht (approximately 8.3 million US Dollars).

A mediation hearing between TKL and the community members has been planned for 3 June 2014 and will take place at the Loei Court. A judge from the Loei Court and the National Human Rights Commissioner *Niran* Pitakwatchara will act as mediators to bring the parties together and create a dialogue in an attempt to work out a solution to the dispute that both parties can agree upon.

In the meantime, on the evening of **May 15, 2014** around 10.00 p.m., a group of approximately 300 unidentified armed men wearing black entered the **Nanongbong village**. They started beating up the villagers on guard duty. They were then bound both wrists and ankles.

Villagers who rushed from their homes to help were met with shots fired into the air by these gunmen. The villagers thus could only watch helplessly as their neighbors were beaten and tortured. The armed men took about 40 villagers, half of whom women, as captives or 'hostages'. This included two key leaders of the community struggle against the mine.

These 'captives' were then placed face down on the ground and their hands and feet were bound. The barriers that the villagers had constructed to block access to the mine was then destroyed, about 13 trucks were then seen transporting materials from the mine. The villagers were held captive for about seven hours and finally released at about 4.30 am. They reported being assaulted and threatened with guns, and some women victims said that their captors threatened to rape them as they lay there with hands and feet bound.

Some villagers had managed to call and inform the local Governor and the police when it all began. But unfortunately, only two community police officers were sent to the village. When these policemen saw the large number of armed men, they backed off and did not take any action.

The violent attack did caused injury and loss to the villagers. More than 20 suffered injuries, of which at least 7 were severely injured and had to be hospitalized. Many villagers also lost valuable property such as gold chains, and some also suffered property damage.

II. Recommendations to the European Union member states

Protection International is concerned that the current political situation and the extensive powers granted to the military under martial law may create an atmosphere of fear that is detrimental to human rights and human rights defenders. PI feels in such a delicate and precarious moment for HRDs, action by the European Union and its member states is required, as follows:

- Make urgent recommendation to the European Union Council Working Party on Human Rights (COHOM) for a **statement of condemnation or a demarche** on the situation of human rights defenders in the Loei province;
- Raise particular concern before the Thai government about the security of community based HRDs and especially the **security protection of Khon Rak Ban Koed Group** in the Loei province;
- Publish in Thai and **disseminate in the Loei province contact details** of the liaison officers in EU member states Embassies on HRDs to promptly respond to forthcoming attacks against HRDs;
- **Plan a visit to Loei province.** The visit should include meetings with police authorities, local and provincial government officials and other duty bearer stakeholders in order to raise the above/mentioned concerns on safety and security protection of community HRDS;
- **Monitor court trials** of community based HRDs scheduled to take place on June 3 in Loei Court.
- Actively address involvement of Tungkum Limited and Tongkah Harbour Public Company Limited **company branches or investor based in EU member states.**

III. The 22 May 2014 coup of the military junta and the martial law regime

On 22 May 2014 General Prayuth led a military coup and brought into power a military junta - the so called National Peace Order Maintenance Council (NPOMC), who abrogated the 2007 Constitution and took over the national administration from the government. Prayuth later invoked the one century-old Martial Law Act of 1914, which grants the military virtually unlimited powers to restrict fundamental human rights and freedoms while it also provides effective immunity for abuses committed. The NPOMC has also imposed a daily curfew from 10 p.m. to 5 a.m. and banned any public gatherings of more than five people.

Under the Martial Law, all civilian officials must act in strict compliance with the requirements of the military authority. Furthermore, all the provisions of any law, including human rights safeguards, that are inconsistent with martial law are suspended and replaced by martial law provision. Under of the current regime the military possess extensive powers to arrest and detain arbitrarily. In particular, military authorities may detain and interrogate anyone for up to seven days without having to provide evidence of his/her wrongdoings or bring formal charges. People arrested can be held at irregular places of detention, including permanent or temporary military bases or other sites designated as places of detention. Detention in irregular places means that the possibility for rights violations, including torture, forced disappearance and extrajudicial execution is greatly increased. For example, in southern Thailand, where martial law has been in continual force since January 2004, the instrument has been used to arbitrarily detain human rights activists as well as ordinary citizens.

Furthermore the NPOMC military junta has imposed widespread censorship and broad restrictions on broadcast, print, and electronic media across the country. The coup leadership also announced the dissolution of the Senate - the only remaining body with partially-elected members. Thus the NPOMC now maintains absolute power to draft and approve new laws. On May 25, the NPOMC issued the 37th announcement granting authority to Military Martial Court to prosecute all crimes related to Article 112 of the Thai Criminal Code, known as the crime of *lese majeste*, as well as other crimes regarding the national security and sedition as stipulated in the Article 113-118 of the above/mentioned Code.

One day after the coup, citizens began to peacefully express their opposition to the coup in defiance of martial law and the junta's orders. Prachatai online newspaper has reported that at least five persons (two women and three men) were arrested by soldiers in front of the Bangkok Art and Cultural Center. In Chiang Mai at least seven persons have been reportedly arrested. At the time of writing, the location and conditions of these twelve people remains unknown.

Furthermore, the Army has issued summons to appear to activists, academics, writers, and others, requesting that 35 persons report themselves to the Army auditorium. The penalty for not obeying the summon carries a maximum prison term and a 40,000 baht fine (900 Euros approx.). The list of summoned persons includes Worachet Pakeerut and Sawatree Suksri, two academics from the Khana

Nitirat, a group of progressive legal academics at Thammasat University. Pravit Rojanaphruk, an outspoken journalist for the Nation newspaper, has also received a summon to appear. On May 25 the army searched the house of Somyot Phueksakasemsuk, an editor of pro-red magazine who has now been sentenced to 11 years in prison for lese majeste. The army also took to the Army Club, Sukanya Phrueksakasemsuk, Somyot's wife who has been campaigning for political prisoners, her daughter and their son, Panitan Phrueksakasemsuk. Three of them freed on the night of May 25th.

Annex 1

Additional information on HRDs challenges in the Loei province

In 1990, “TungKum (Gold Field) Limited” purchased large acres of land from the community rice paddle fields in very cheap deal, promising the company intention to grow timbers. Back there, the Agricultural Land Reform Office (ARLO) and the provincial forest department were also given approvals for the company use of land regularized by both offices for gold mining exploration and activity, despite their mandates to re-distribute property to landless farmers and protect conservative forests respectively.

In 1996, the Thai Department of Mineral Resources approved Tungkam Limited’s gold mining license applications in the Wang Saphung District in the Loei Province. Tungkam Ltd (TKL) is a subsidiary of the Tongkah Harbor Public Company Limited, which has Australian and German financial support.

A report released in February 2009 by Thai government officials also warned residents to refrain from drinking the local water or using it to cook, due to elevated levels of cyanide, arsenic, cadmium and manganese. In 2009, blood tests of local people showed that the level of toxic heavy metals far exceeded safety standards, while water, soil and farm land were found to have been contaminated with heavy metals.

On 8 February 2011, the cabinet resolution ordered the Ministry of Industry to halt both the company mining expansion and the mining license extension by Tungcum Limited (TKL), unless the agency could investigate the cause of contamination and submit re-assessment report on the natural resources and the community traditional way of life. Both actions have never been implemented and were violated by the public scoping process for EHIA (Environmental and Health Impact Assessment), as part of the gold mining expansion requirement supported by the Governor and related agencies at the provincial level on 23 December 2012 and more recently on 8 September 2013, when these authority decline the community participation in the process.

The villagers in the communities surrounding the mine in Khao Luang have suffered a myriad of consequences from the mining operation, but very few benefits. They suffer health consequences, their water is poisoned, very few gain employment, and they don’t directly receive any financial compensation. Other serious concerns of the community include criminalization, violence, intimidation and threats posed to those who lead the protest against mining operations.

In September 2013, a public hearing was held on the planned gold mine expansion in the Wang Saphung District in the Loei Province. The hearing captured media interest after local villagers were blocked from entering the hearing venue by as many as 700 police officers. The police forces were commanded by Major General Sakda Wongsiriyanon (who is also known as "Fugarn Seur").

Maj. Gen. Wongsiriyanon was involved, directly and indirectly, in the attempts to destroy the barricade. General Somyot Phumpanmuang, who was the Deputy Commissioner of Police at the time, also held a position as a director of TKL. As a result, the police were never able to ensure the security of the community members. No progress or follow up action was taken by the police in relation to the bomb threats.

Between October to December 2013, community members saw a number of men in their area who they believed were “gunmen” from the Chonburi area. To determine the identity of the men, the community members checked their car registration information. Other strange men with guns were also seen. As a result, the community arranged for four check points along the wall to prevent people from coming and destroying their barricade.

On the night of 20 April 2014, the mining operator sent a middleman to talk with the village leader, offering to withdraw three of TKL’s lawsuits against the villagers in exchange for the lifting of the barricade so that TKL could move the mined copper out from the mine.

On the morning of 21 April 2014, a convoy of trailer trucks accompanied by a number of smaller vehicles with concealed licence plates drove through the villages to the mine. Later that day, Lieutenant General Poramet Pormnak entered into the house of Mr Surapan Rujchiawat, the leader of the Khon Rak Ban Koed Group. Lt. Gen. Pormnak was accompanied by 15 men wearing black. Four of these men claimed to be soldiers. Lt. Gen. Pormnak demanded Mr Rujchiawat to lift the barricade to allow through trucks transporting copper ore from the mine. The information from the court hearing indicates that the amount of copper ore concerned was worth 300 million Thai Baht. The villagers set up a team to check the big truck that contain overload more than the law allow and also to prevent the unwanted person to come to threaten the leaders.

On 23 April 2014, Mr Poramet Pansit, the son of the management director of Tungkam company (who is also named Pramote Pansit), telephoned Ms Samai Pakdee, asking for a negotiation. Lt Gen Pormnak also called to ask for a follow up meeting but later cancelled the meeting after learning that Mr Pansit had already called. Mr Pansit’s proposal offered the villagers 20% of TKL’s shares and that the company’s profits will be shared with the locals through a fund. TKL also agreed to conduct their mining operations without the use of cyanide in gold and would allow six of the village residents to monitor the mining operations at any time. Mr Thanawat Timsuwan(Nick name Art) , the head of the Loei Provincial Administrative Organization (PAO) has appointed himself as a broker to buy copper ore from TKL. He has offered to give 5% of the profits to the local community in exchange for transporting the mine over the public roads. This would involve the destruction of the barricade and rebuilding it after the transportation is completed. A representative acting on behalf of the villagers in the negotiations set a number of conditions prior to the negotiations. The representative sought guarantees from TKL that it will not transport any copper prior to the negotiations. TKL were to disclose their buyers and show the agreements between TKL and their intended and actual buyers. TKL were also asked to show the licences approved by the agencies involved. TKL’s representative at the negotiations was also asked to bring a letter of authorisation to show that they had the power to act and make decisions on behalf of TKL.

Currently, both Mr Timsuwan and Maj. Gen. Wongsiriyanon act as consultants to the Sermthappaisan Companies Group 1999. Lt. Gen. Promnak also used to claim that he has close ties with the Timsuwan family who has strong influence over the mines in the province. The family was also accused of being involved in the murder of Mr Prawiean Bunnuk, a head of teacher association who was against the stone mining 19 years ago.

On 28 April 2014, Protection International [PI] sent a letter requesting the National Human Rights commissioner, Dr Niran Pitakwatchara, to take urgent action to stop the violence which may happen and affect the safety of the village community. PI proposed that the NHRI do contact the local governor and relevant authorities to do the needful to prevent such violence, attack and intimidations. The NHRC however said that they will only be present at the in Loei court on June 3, and that they did not believe that no further act of violence will occur in the community. The NHRI was proven wrong on 15/5/2014.

Consultations undertaken with the communities highlighted the following concerns among the Nanongbong Villagers:

1. The police and relevant local administrative authorities must urgently investigate into the violent assault and threats against the villagers and bring perpetrators and those involved to justice;
2. The relevant authorities must promptly provide effective remedies to the affected villagers;
3. The police and relevant local administrative authorities must take all measures to protect the community to ensure that such violent attacks, threats and violations of rights and liberties of the people will not repeatedly happen;
4. The Government and relevant authorities responsible for human rights protection must take all necessary measures to provide a systematic mechanism to protect human rights defenders.
5. Urge the National Human Rights Commission to immediately investigate the violence incident on night of May 15th and violations of the rights, including the human rights, of the community and the threats, intimidation and harassment that have been made on the villagers and their leaders.
6. Urge the Commander in Chief of the Military to investigate and discipline the group of soldiers involved in the threats, intimidation and harassment that have been made on villagers and their leaders⁶
7. Urge the Commissioner of Police to investigate the performance of local authorities for failing to address bomb threats against the villagers.
8. Urge the Department of Special Investigation to investigate the purchase and sale of minerals by TKL. The Department is urged to implement security and protective measures to ensure the safety of members and leaders of a group who protest against the mining companies.
9. Urge the industrial province to investigate TKL's sale and purchasing licence.
10. Urge the head of Tambon(Local administrative organization) Khao Luan, as the director of the local highway to provide strict surveillance of transport which exceeds the legal weight limit.