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UN Committee on the Elimination of Racial Discrimination

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Request for Consideration of the Situation of the Karen Indigenous People Forcibly Evicted from the Kaeng Krachan National Park, Thailand, under the Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedure

1. The Karen Network for Culture and Environment, the Northern Farmer's Network, the Inter Mountain Peoples Education and Culture in Thailand Association, the Indigenous Knowledge and Peoples Network, Indigenous Peoples Education and Environment Foundation, and the Forest Peoples Programme ("the submitting organisations") respectfully submit this short report for the consideration of the United Nations Committee on the Elimination of Racial Discrimination ("the Committee") under its early warning and urgent action procedure ("EW/UA procedure"). It concerns the forcible eviction of Karen indigenous people from the Kaeng Krachan National Park ("KKNP") by the State of Thailand ("Thailand" or "the State"), violations of their other human rights perpetrated at the same time, and Thailand's failure to respond to and address complaints about these violations. Said forcible relocation was done violently and without any attempt to consult with the affected people or to obtain their free, prior and informed consent, as is required by Thailand's international obligations.

2. As discussed below, Thailand's attempts to forcibly remove the Karen from the KKNP date back more than a decade and have intensified in the past year. This situation is compatible with the criteria adopted by the Committee for the use of the EW/UA procedure as it constitutes a large-scale, violent, discriminatory and persistent pattern of "forced removal of [indigenous] peoples from their lands," which threatens irreparable harm to Karen cultural integrity and other basic rights.¹ The submitting organisations, therefore, respectfully request that the Committee considers this situation under its EW/UA procedure at its 80th session and issues appropriate recommendations in line with the requests made in paragraph 16 below.

¹ Committee on the Elimination of Racial Discrimination, *Guidelines for the Use of the Early Warning and Urgent Action Procedure*, August 2007, at p. 3.

Forcible and Violent Eviction:

3. The Karen indigenous people's ancestral territory lies in northwest Thailand and neighbouring countries. Part of this territory was declared to be the KKNP pursuant to the 1961 *National Park Act*. Since the establishment of the KKNP, the State has engaged in a concerted policy of harassing and forcibly evicting Karen communities from the area. To legitimise these acts, the State claims, separately or together, that indigenous peoples' traditional farming methods are incompatible with conservation objectives; that the evicted are migrants from Burma (Myanmar) or otherwise undocumented, non-Thai citizens, or raises national security-related arguments concerning the drug trade.

4. However, none of these arguments can be fully substantiated in general and are specious in the instant case. For instance, many thousands of indigenous people cannot prove Thai citizenship precisely because the State has failed to grant it to them despite their meeting the relevant criteria.² Also, it is well documented in the instant situation that those evicted were Thai by birth and descent. Additionally, the Karen have been farming in this area for centuries without any degradation of the ecosystem, a fact amply attested to by the outstanding ecological integrity of the area, which has led Thailand to seek UNESCO World Heritage Status for the KKNP and surrounding area.³ At any rate, these justifications do not excuse the forced and often violent eviction of indigenous communities when viewed in the light of Thailand's international obligations.

5. The Karen have lived in the Kaeng Khachan forest for many hundreds of years. Despite this longstanding occupation and their effective stewardship of the area, in the past 16 years they have been repeatedly harassed by Thai national park and forestry authorities, who have sought to permanently evict them from the KKNP.⁴ In 1996, for instance, 57 Karen families were forced to leave their homes in Baan Bang Kloi Bon and Baan Pu Ra Kam and had to resettle in neighbouring villages without any assistance from Thai authorities. More recently, in 2010, Karen from 12 villages near Bang Kloi Bon and Pu Ra Kam were similarly ejected, their houses, rice granaries and other buildings destroyed. During 5-9 May 2011, 98 Karen houses and granaries in Bang Kloi Bon and Pu Ra Kam were burnt and their owners' farm tools and other possessions were confiscated. A month later, between June 23-26, 21 Karen houses and rice granaries were burnt and destroyed. Knives, fishing nets, salt, and traditional musical instruments were taken.

² The denial of citizenship to indigenous people in Thailand is a longstanding problem and is extensively explained in the *Report on the Situation of Human Rights and Fundamental Rights of Indigenous Peoples in Thailand*. Submitted to Prof. James Anaya, United Nations Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Network of Indigenous Peoples in Thailand (NIPT), Asia Indigenous Peoples Pact (AIPP) and the International Work Group for Indigenous Affairs (IWGIA), 19 January 2010, p. 9 *et seq.* Available at: <http://www.aippnet.org/home/human-rights/462-submission-to-the-un-special-rapporteur-on-indigenous-peoples-regarding-situation-of-indigenous-peoples-in-thailand>.

³ Karen traditional farming and forest stewardship methods are explained in detail in K. Rattanakrajang Sri, *Strengthening Community Rights Over Forests: Piloting Joint Management of a Protected Area in a Karen Village in Thailand*, 2011.

⁴ *Id.* p. 16-7.

6. Most recently, in July 2011, Thai national park guards attacked a number of Karen communities in the KKNP with the intent of forcibly displacing them from the park. According to reports, these armed men proceeded burn down the Karen's houses and rice stores, which would have provided food for almost one year, kill their chickens, and steal their money, jewellery and agricultural tools.⁵ The Karen were forced to flee and seek shelter with relatives outside of the KKNP. Around 70 persons continue to hide in forest without food or shelter for fear of further attacks. The victims, who include the very elderly and children, were terrorised by the experience: some reported that they were in their houses when they were set on fire, their houses were ransacked and occupied overnight by armed men, and they were told that they would be shot if they did not leave.⁶ A number of Karen were also arrested and charged with 'forest encroachment', a criminal charge that may lead to imprisonment for up to five years and a large fine (the equivalent of tens of thousands of US dollars that is beyond the means of the Karen).⁷

7. The official responsible for carrying out the latest attack, Mr. Chaiwat Limlikhit-aksorn, the head of the KKNP, claimed that the evictions were necessary because the Karen were undocumented migrants from Burma and because the *Forestry Law* prohibits occupation of national forest lands, including by indigenous persons, irrespective of whether the lands in question were traditionally occupied and used by them. However, the available evidence demonstrates that the persons evicted were Thai by birth and descent. This was verified by a member of the revered Thai royal family and by virtue of their possession of silver coins that were issued to the villagers by the Thai government in the 1960s and that serve as proof of their Thai citizenship.⁸

8. Moreover, the 2007 Royal Thai Constitution provides for the right of persons to remain in national parks and other forest areas if they can prove that they occupied the area prior to its establishment and demarcation.⁹ This, in principle, supersedes the *Forestry Law* and *National Park Act*, yet Thai authorities continue to evict persons, especially indigenous people, who are ostensibly protected by this provision, from national parks and forest areas throughout the country. Such protection was reconfirmed specifically for the Karen by a Thai Cabinet Resolution adopted on 3 August 2010.¹⁰ This resolution states unequivocally that the Karen have the right to stay

⁵ See 'Where the law of the jungle rules: Indigenous Karen forest dwellers suffer violent eviction despite their constitutional right to stay in their ancestral land', *Bangkok Post*, 1 October 2011. Available at: <http://www.bangkokpost.com/print/259158/>; and 'Royal vouches for 103-year-old Karen', *Bangkok Post*, 4 September 2011. Available at: <http://www.bangkokpost.com/print/254877/>.

⁶ *Id.*

⁷ See for instance K. Rattanakrajangsri, *Strengthening Community Rights Over Forests: Piloting Joint Management of a Protected Area in a Karen Village in Thailand*, 2011, at p. 14. (explaining that "An 80-year-old man, Mr. Dipaepho was charged with destroying an area of forestland totalling 21 rai and 89 square wa (3.4 ha). The court sentenced him to 2 1/2 years of imprisonment, which was later reduced by 3 months for his confessing to the so-called 'crime'. In addition, he has to pay the huge sum of THB 3,181,500 (USD 96,409) to compensate the 'damage' done").

⁸ See 'Where the law of the jungle rules: Indigenous Karen forest dwellers suffer violent eviction despite their constitutional right to stay in their ancestral land'; and 'Royal vouches for 103-year-old Karen', *supra*.

⁹ Royal Thai Constitution of 2007, Secs. 66 and 67 of Part 12.

¹⁰ Cabinet Resolution of 3 August 2010 on policies regarding the restoration of the traditional practices and livelihoods of Karen people.

in their ancestral land and to continue their traditional farm rotation system, and prohibits the arrests of indigenous Karen forest dwellers. Despite these laws, Thai authorities have done nothing to redress the forced eviction, inhumane treatment and arbitrary arrest of the Karen residing in the KKNP, including in the context of the July 2011 violent attacks on their communities.

9. Complaints about the eviction and other rights violations were raised in September 2010 with the State by Karen human rights defender, Tatkamol Ob-om, who helped one of the arrested persons to petition the Thai National Human Rights Commission. This petition sought an investigation into the evictions and the conduct of the head of the KKNP. However, Tatkamol Ob-om was shot dead on 10 September 2011. The head of the KKNP, whose hostility toward the Karen has been publicly documented, is currently a suspect in his murder, but neither he nor anyone else has yet to be sanctioned in any way for the illegal and violent eviction of the Karen and the destruction of their houses and food and the theft of their personal property.¹¹ To date, there has been no redress provided to any of the Karen evicted from the KKNP, despite the fact that their eviction *prima facie* contravenes Thai law, including provisions of the 2007 Constitution.

Applicable Jurisprudence:

10. The Committee has articulated two inter-related rules applicable to establishment and management of nature reserves in indigenous peoples' territories that apply to the above described situation. First, in 2002, it held that "no decisions directly relating to the rights and interests of members of indigenous peoples be taken without their informed consent" in connection with a nature reserve and the eviction of indigenous people therefrom in Botswana.¹² Second, with regard to a national park in Sri Lanka, the Committee called on the state to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources."¹³ More generally, the Committee has recognized that indigenous peoples have a right to restitution of their traditional territories and resources, which in principle also applies to nature reserves, stating that: "where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, ... that the State party take steps to return those lands and territories."¹⁴

11. In 2007, the Committee elaborated further, expressing its concern "about the consequences for indigenous groups of the establishment of national parks ... and their ability to pursue their traditional way of life in such parks..."¹⁵ It recommended that:

the State party provide ... information on the effective participation of indigenous communities in the decisions directly relating to their rights and interests, including their informed consent in the establishment of national

¹¹ See 'Karen murder accused bailed' *Bangkok Post*, 9 October 2011. Available at: <http://www.bangkokpost.com/lite/news/260397/karen-murder-accused-bailed>; and 'Karen "used as scapegoats", *Bangkok Post*, 24 January 2012. Available at: <http://www.bangkokpost.com/news/local/276502/karen-used-as-scapegoats>.

¹² *Botswana*. 23/08/2002. UN Doc. A/57/18, paras.292-314, at 304.

¹³ *Sri Lanka*. 14/09/2001. UN Doc. A/56/18, paras.321-342, at 335.

¹⁴ *Inter alia Guatemala*, 15/05/06. UN Doc. CERD/C/GTM/CO/11, 15 May 2006, at para. 17.

¹⁵ *Ethiopia*, 20/06/2007. UN Doc. CERD/C/ETH/CO/15, at para. 22.

parks, and as to how the effective management of those parks is carried out. The Committee also recommends that the State adopt all measures to guarantee that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities.¹⁶

12. These norms are reflected generally in the decisions of the Conference of Parties to the Convention on Biological Diversity, an international environmental treaty in force for Thailand. *Decision VII/28 on Protected Areas*, for instance, provides that “the establishment, management and monitoring of protected areas should take place with the full and effective participation of, and full respect for the rights of, indigenous and local communities consistent with national law and applicable international obligations.”¹⁷ This Decision also addresses the relocation of indigenous peoples from protected areas, calling on states to “Ensure that any resettlement of indigenous communities as a consequence of the establishment or management of protected areas will only take place with their prior informed consent that may be given according to national legislation and applicable international obligations.”¹⁸

13. Thailand’s practice of involuntary or forcible relocation of the Karen in the KKNP (and elsewhere) “is considered a practice that does grave and disastrous harm to the basic civil, political, economic, social and cultural rights of large numbers of people, both individual persons and collectivities.”¹⁹ For indigenous peoples, forcible relocation can be disastrous, severing entirely their various relationships with their ancestral lands, and constitutes a “gross violation of human rights.”²⁰ For this reason, Article 10 of the 2007 UN *Declaration on the Rights of Indigenous Peoples*, endorsed by Thailand, strictly prohibits forcible relocation or eviction and requires that indigenous peoples’ free, prior and informed consent be obtained.

14. Various UN treaty bodies have also rejected the practice of forcible evictions by states, including the Committee under its EW/UA procedures.²¹ In its 2010 review of Argentina, for example, the Committee urged the state “to take whatever steps are necessary to halt evictions and as appropriate to safeguard the communal property of

¹⁶ *Id.*

¹⁷ *Decision VII/28 Protected Areas*, at para. 22. In, *Decisions Adopted by the Conference of Parties to the Convention on Biological Diversity at its Seventh Meeting*. UNEP/CBD/COP/7/21, p. 343-64.

¹⁸ *Id.* at para. 2.2.5, Programme of Work, annexed to Decision VII/28.

¹⁹ *Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms*. Final report submitted by Mr. Theo van Boven, Special Rapporteur. UN Doc. E/CN.4/Sub.2/1993/8, at 10. See also *Forced evictions: Analytical report compiled by the Secretary-General*. UN Doc. E/CN.4/1994/20 (for an enumeration of the various human rights implicated by resettlement); and, *Report of the Representative of the Secretary-General on legal aspects relating to the protection against arbitrary displacement*. UN Doc. E/CN.4/1998/53/Add.1.

²⁰ *UN Commission on Human Rights resolution 1993/77* (stating that the practice of forced evictions constitutes a “gross violation of human rights,” and urging governments to undertake immediate measures, at all levels, aimed at eliminating the practice).

²¹ See *inter alia* *Communication of the Committee under the urgent action procedure: Tanzania*, 13 March 2009; and *Communication of the Committee under the urgent action procedure: United Kingdom*, 12 March 2010.

indigenous peoples.”²² More generally, the Committee unambiguously recommends in its General Recommendation No. 23 “that no decisions directly relating to [indigenous peoples’] rights and interests are taken without their informed consent.”²³ The Committee on Economic, Social and Cultural Rights concludes that the practice of forcible evictions is incompatible with the obligations assumed under the Covenant,²⁴ has stressed that relationships to lands are fundamental to cultural integrity, and called on state parties to respect indigenous peoples’ right to free, prior and informed consent whenever their rights may be affected.²⁵ Likewise, the Human Rights Committee has raised serious concerns about forced evictions in relation to the rights of persons belonging to indigenous peoples guaranteed by Article 27 of the International Covenant on Civil and Political Rights.²⁶ Consistent with the Committee’s above cited jurisprudence, the Human Rights Committee also stressed that “When planning actions that affect members of indigenous communities, the State party must pay primary attention to the sustainability of the indigenous culture and way of life and to the participation of members of indigenous communities in decisions that affect them.”²⁷

Requests:

15. Thailand’s persistent efforts to forcibly and violently evict Karen indigenous people from the KKNP, which have intensified in the past year, stand in stark contrast to its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and other applicable human rights instruments. The extent and duration of these evictions, the increasing violence employed, the substantial and potentially irreparable harm caused to the Karen, and Thailand’s on-going failure to provide meaningful and effective redress, despite the manifest illegality of its acts and omissions under domestic law, elevate this situation to one requiring consideration under the Committee’s EW/UA procedure.

16. The identity, well-being and existence of the Karen are fundamentally tied to their ability to maintain their various relationships with their traditional territory, and this is being violently and severely undermined by Thailand’s practice of forcible eviction of Karen communities from the KKNP. The submitting organisations, therefore, respectfully request that the Committee, as a matter of urgency, recommends that Thailand:

- a) Immediately ceases the eviction of the Karen from the KKNP and ensures that they are able to exercise and enjoy their rights therein without hindrance,

²² *Argentina*, 29/03/10. UN Doc. CERD/C/ARG/CO/19-20, at para. 20.

²³ *General Recommendation XXIII (51) concerning Indigenous Peoples*, at para. 4(d).

²⁴ See Committee on Economic, Social and Cultural Rights, *General Comment No. 4, The Right to Adequate Housing (Art. 11(1) of the Covenant)* (stating that the Committee “considers that instances of forced eviction are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law”), and *General Comment No. 7, The Right to Adequate Housing (Art. 11(1) of the Covenant): forced evictions*.

²⁵ Committee on Economic, Social and Cultural Rights, *General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*. UN Doc. E/C.12/GC/21, 21 December 2009, at para. 36-7.

²⁶ *Chile*, 30/03/99. UN Doc. CCPR/C/79/Add.104, at para. 22 (stating that “Relocation and compensation may not be appropriate in order to comply with article 27 of the Covenant”).

²⁷ *Id.*

including, but not limited to, by implementing the relevant provisions of the 2007 Constitution and the Thai Cabinet resolution on policies regarding the restoration of the traditional practices and livelihoods of Karen people;

- b) Recognises the rights of the Karen to the ownership and effective control of their traditional territory, including those parts incorporated into the KKNP, and negotiates and agrees on a management plan for the KKNP with the Karen and their freely chosen representatives;
- c) Immediately ceases all threats, harassment, arrests and all other forms of human rights violations against the Karen in and around the KKNP;
- d) Effectively investigates the actions of the staff and authorities of KKNP and all others involved in the above described acts of violence so that the perpetrators are sanctioned in accordance with applicable law and that adequate and effective reparation, including restitution, is rendered to the victims; and
- e) Recommends that UNESCO fully evaluates and addresses the practice of the forcible eviction of the Karen, as well as Thailand's compliance with their rights as guaranteed by, *inter alia*, the 2007 UN *Declaration on the Rights of Indigenous Peoples*, when considering Thailand's proposal for the inscription of the KKNP as a World Heritage Site.

Yours respectfully,

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