

## **Statement of the Network of Indigenous Peoples in Thailand (NIPT) concerning**

### **The use of legal authority by a government agency following the decision of the Supreme Administrative Court in the case of the Karen people and the Department of National Parks, Wildlife and Plants Conservation (DNP)**

We issue this statement in reference to the Supreme Administrative Court Cases Aw Saw.77/2559 and Aw Saw.4/2561 between Mr. Ko-ee, or Kaw-ee Meemi, and 5 other plaintiffs against the Department of National Parks, Wildlife and Plants Conservation and other defendants. Mr. Ko-ee and the other plaintiffs requested compensation for damage caused by the destruction and burning of their residences and property within the Kaeng Krachan National Park by Park officials, and recognition of their right to return to their lands without threat of further eviction. Article 22 of the National Park Law of 1961 forbids the arbitrary use of force by staff including in the dismantling or burning of property and houses which severely impacts on property or other rights of the 6 plaintiffs, and causes excessive losses in comparison with the defined public benefit.

This judgment specified the land area of Bang Kloi Bon and Jai Paen Din Villages, which are ethnic Karen communities [*P'kawgeryaw*] within the boundaries of Kaeng Krachan National Park. The dismantling and burning were actions undertaken with knowledge of their destructive effects, constituted use of excessive force and were beyond any reasonable or proportionate response. In addition, this was not in conformity with the Cabinet Resolution of 3 August 2010, a Resolution which calls for the rehabilitation of the ways of life of the Karen people and local management of natural resources and for a cessation of arrests and protection of existing Karen communities and farmlands in conflict areas.

The Supreme Administrative Court found the actions of the forestry officials of the first defendant [Department of National Parks, Wildlife and Plants Conservation] did not conform to the law and caused losses to and were an abuse of the rights of all 6 plaintiffs in contradiction to Article 5 of the 1996 Act of Infringement Liability of Officials law governing such actions [see details in the text of the judgement].

In view of the judgement of the Supreme Administrative Court, the Network of Indigenous Peoples of Thailand demands that:

- 1) The decision on the employment of legal authority by a state agency should be used as a framework and rule for the actions of state officials in order to ensure that community rights are not abused in the future.
- 2) Legal action should be taken against the wrong-doers and redress provided to the affected villagers in accordance with the decision of the Supreme Administrative Court.
- 3) As for the request that the plaintiffs be allowed to return to their homes, in which the Court could not issue an order to reinstate their original status by

allowing them go back, live and farm in their lands because they possessed no legal documents affirming their land rights, nor other official documentation permitting their residence or use of the land for their livelihood. The Network of Indigenous Peoples in Thailand sees the Court's judgement as determined solely by law, and without consideration of the lifestyle and establishment of communities by the people who have resided there prior to the establishment of the Kaengkrachan national park. These communities are in possession of evidence of their own history and artefacts which bear witness to these facts. This should be taken into account in considering the judgement to ensure that communities do not lose their rights. In addition, a legal land claim guideline as stipulated in the Cabinet Resolution on 3 August 2010 should be used for resolving this problem.

- 4) In that the Supreme Administrative Court considered the importance of the 3 August 2010 policy on rehabilitation of the ways of life of the Karen and noted that the ethnic Karen were original residents, the administrative decision of the defendants was not legal and resulted in losses which were an abuse. This shows that the Cabinet resolution still stands and must be followed in practice by concerned government agencies. Therefore, NIPT requests that the Prime Minister, as the superior of all ministries, bureaus and departments, order the urgent implementation of the said Cabinet resolution and order the Ministry of Natural Resources and Environment to cease arrests and provide protection to all ethnic Karen communities in operationalizing this policy, including rotational agriculture, with all due haste.
- 5) Finally, the Network of Indigenous Peoples in Thailand requests that all state agencies accord importance to the protection of original indigenous communities in accordance with the United Nations Declaration on the Rights of Indigenous People and the Constitution of the Kingdom of Thailand. At the same time, practices should be undertaken in line with relevant international human rights, with attention to basic individual human rights and human dignity necessary to the pursuit of life, including those factors important to livelihood and cultural ways of each ethnic group.

Network of Indigenous Peoples in Thailand  
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