

Global Warming Scapegoat: A New Punishment Measure Imposed on Indigenous Peoples for Practicing their Sustainable Traditional Livelihood Activities

In a dramatic incident, the Government of Thailand arrested and penalized villagers in Northern Thailand with up to THB 3,181,500 (USD 96,409) and imprisonment for “causing deforestation and rise in temperature”. The villagers were clearing the fallow-fields in their traditional shifting cultivation area for their livelihood. They were penalized ignoring all scientific evidences that shifting cultivation does not make any significant contribution to global warming. In fact, recent studies show that fallow forest of shifting cultivation has a high capacity for carbon sequestration apart from contributing to diversity of forest types at the landscape level and thus overall biodiversity.

When and How Did this Happen?

In early 2008, two villagers of the Karen indigenous people, Mr. Dipaepho (80 years old) and Ms. Naw He Mui Wingwittcha (35 years old) from Mae Om Ki village, Moo 4, Mae Wa Luang Sub-district, Tha Song Yang District, in Tak province were arrested by the foresters while they were working in their rice fields. They were charged with slashing, clearing and burning forest, usage of land in a national forest reserve and causing degradation of a national reserve forest, and damage to a watershed area without permission as required by the National Forest Law, 1941. Mr. Dipaepho was charged with destroying an area of forestland totaling 21 rai and 89 square wa (3.4 ha). The court sentenced him to 2 years and 6 months of imprisonment, which was later reduced by 3 months for confessing the so-called “crime”. He also has to pay a sum of THB 3,181,500 (USD 96,409) as compensation for the “damage” done.

Ms. Nawhemui was charged for destroying an area of forestland totaling 13 rai, 1 ngan and 8 square wa (2.1 ha). The court sentenced her to 2 years of imprisonment, which was reduced to 1 year since she was also “confessing” the so-called “crime”. In her case too, she has to pay a damage compensation of THB 1,963,500 (USD 59,500).

According to the national law in Thailand, Mr. Dipaepho and Ms. Nawhemui were to be provided not only with defense lawyers but also with interpreters since they cannot speak the official Thai language, which is the language for all court proceedings and hearings in Thailand. This was however not provided to them,



Ms. Nawhemui



Mr. Dipaepho



and it is utterly questionable that an independent court of a country can pronounce its verdict without ensuring that the proper procedures are followed. This is therefore a clear case of violation of the Constitutional provisions of Thailand.

Both of them are now out on bail which is guaranteed with the land titles of their relatives worth THB 200,000 (USD 6,259) each.

What is the Basis of the Calculation of the Damage Cost Imposed?

The Department of National Parks, Wildlife and Plant Conservation (DNP) used the following rates as the basis for calculating the compensation for the alleged damage:

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| a) Loss of soil nutrient | THB 4,064.15 (USD 123) per rai (0.16 ha)/year |
| b) Causing soil not to be able to absorb rain water | THB 600 (USD 18) per rai (0.16 ha)/year |
| c) Causing vaporization of water from the area by sun radiation | THB 5,280 (USD 1600) per rai (0.16 ha)/year |
| d) Loss of soil | THB 1,800 (USD 55) per rai (0.16 ha)/year |
| e) Causing rise in Temperature | THB 4,453.45 (USD 135) per rai (0.16 ha)/year |
| f) Causing less precipitation | THB 5,400 (USD 164) per rai (0.16 ha)/year |

Direct cost for damaging three different types of forests

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| a) Destruction of Evergreen Hill Forest | THB 61,263 (USD 1856) |
| b) Destruction of Mixed Deciduous Forest | THB 42,577.75 (USD 1290) |
| c) Destruction of Dry Dipterocarp Forest | THB 18,634.19 (USD 565) |





become a collective way of life since time immemorial. Their way of life, cultural practices, and value systems have come to revolve around this agricultural system. Research over the past decades has shown that shifting cultivation is not a major cause of deforestation or biodiversity loss. On the contrary, it has contributed to the development of an enormously rich agro-biodiversity. The availability of this genetic diversity is one of the main pillars on which their food security rests, and thus their

The methods used by the DNP to assess the cost of the damage are highly questionable in term of their scientific basis and accuracy. These calculations are not only based on rather arbitrary assumptions but betray a poor understanding of hydrological and edaphic processes in the forested uplands of Thailand, completely ignoring evidence generated by research over the past decades. In a recent publication Forsyth and Walker question some of the commonly held beliefs underlying these calculations to:¹

i. “Causing less precipitation”

Several long-term statistical studies on rainfall patterns in Northern and Northeastern Thailand showed that there is no correlation between rainfall and percentage of forest cover, that no changes in rainfall occurred despite a substantial decrease in forest area (Forsyth and Walker 2008: 100ff).

ii. “Loss of soil” and “Loss of soil nutrient”

A UN survey conducted in Thailand in 1967, for example, concluded: “Contrary to a widespread belief, the shifting cultivation as practiced by the hilltribes does not lead to any grave soil deterioration ... soil erosion is rare, and we have as yet not observed any serious accelerated wash-off or gully erosion” (cited in Forsyth and Walker 2008: 151).

iii. “Causing soil not to be able to absorb rain water” and “Causing vaporization of water from the area by sun radiation”

The emerging consensus among scientists regarding the complex interaction of forest cover, water absorption, evapo-transpiration and streamflow in forested uplands is: Forest soils do absorb rain water well (“sponge effect”), but this has to be balanced against the fact that forests are high users of water. Therefore, the overall impact of forest clearing on dry-season stream flow (and thus availability of water in the lowlands) depends on the trade-off between these two effects (Forsyth and Walker 2008: 112).

Most worrying however is the punishment of the two indigenous shifting cultivators for “causing rise in temperature”. It confirms a generally observed trend in tropical countries to blame shifting cultivators for deforestation, carbon emission and thus for contributing to global warming. Notwithstanding the fact that it is now widely recognized that the main causes of deforestation and carbon emissions in Asia have been intensification of agriculture and large-scale direct conversion of forest for small-scale and industrial plantations, governments still put the blame on shifting cultivators. In Thailand, every year indigenous villagers are arrested, jailed and fined for clearing a field in their fallow forests. It is the first time, however, that an explicit reference is made to climate change and it is feared that the two cases may set precedence and that more indigenous villagers will be made scapegoats in the future.

The indigenous highlanders in Thailand have been practicing shifting cultivation for hundreds of years in their traditional homelands. Shifting cultivation is not only the main source of their livelihood but has

capacity to adapt to disruptive changes of the global climate.

How is Climate Change, Mitigation and Adaptation Leading to Violation of Human Rights?

Over the past decades, state policies and laws that attempt to either regulate or outright ban shifting cultivation have severely impacted millions of indigenous peoples in several countries in Asia. Climate change mitigation and adaptation programs are further strengthening repressive policies in many countries. As a result, the collective rights of the indigenous peoples are increasingly being violated. There appears to be no consideration of the UN Declaration on the Rights of Indigenous Peoples which clearly states that indigenous peoples have the right to their lands, territories and resources, to practice their own ways of life according to their own culture and traditions, and to participate in all decision-making processes directly relevant to their lands and territories.

Furthermore, there is hardly any consideration of the studies that indicate the potential of shifting cultivation and other forms of indigenous peoples’ land use to contribute to carbon sequestration and thus climate change mitigation.

In order to avoid setting of dangerous trends and precedence, national governments must urgently review its forest and climate change policies. Further, any international agreement on climate change must fully account for the collective rights, and roles and contribution of indigenous peoples.

We therefore make the following recommendations:

1. Charges filed against Mr. Dipaepho and Ms. Naw He Mui Wingwittcha must be dropped and the basis of the imposed penalties have to be reviewed.
2. Indigenous peoples practicing shifting cultivation must not be subjected to such unjust charges and accusations, and their role in mitigation and adaptation and food security must be fully recognized.
3. International agreements and programmes such as REDD, as well as national forest and land laws, including policies and actions relating to climate change affecting indigenous peoples must adhere to and consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), including among others:
 - legal recognition of the collective rights of indigenous peoples over their lands, territories and resources.
 - full and effective participation of indigenous peoples through the implementation of the mechanism for the Free, Prior and Informed Consent (FPIC) in all activities, projects and programmes relating to climate change that affects them.
 - the recognition of indigenous peoples’ traditional knowledge and practices and their contribution to climate change mitigation and adaptation.

¹ Forsyth, Tim and Anthony Walker 2008. *Forest Guardians, Forest Destroyers. The Politics of Environmental Knowledge in Northern Thailand*. Chiang Mai: Silkworm Books