



**"WE
FIGHT
TO PROTECT
OUR HOME"**

**Reprisals Against
Environmental Defenders
in Loei Province, Thailand**

OCTOBER 2018

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Environmental Defenders in
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Cover:

"Close the Mine and Rehabilitate" written in lime powder around the rim of an open-pit mine in Wang Sa Phung District, Loei Province.

©Private, May 2015

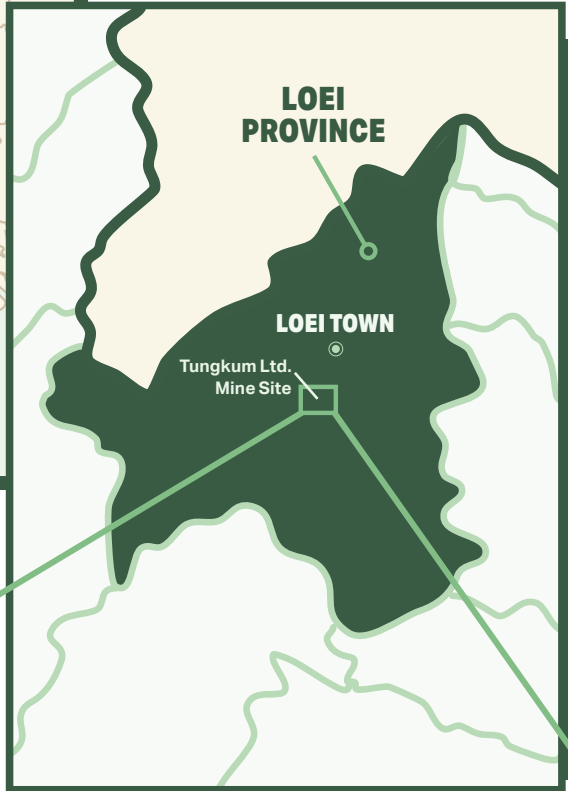


**FORTIFY
RIGHTS**

Fortify Rights works to ensure human rights for all. We investigate human rights violations, engage people with power on solutions, and strengthen the work of human rights defenders, affected communities, and civil society. We believe in the influence of evidence-based research, the power of strategic truth-telling, and the importance of working closely with individuals, communities, and movements pushing for change. We are an independent, nonprofit organization based in Southeast Asia and registered in the United States and Switzerland.

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Residents of Na Nong Bong village at a peaceful protest against Tungkhum Limited gold-mining company.
©KRBKG, November 2016



A sign reading "Close the mine for peace and happiness of the community" posted along a road in a village located near the Tungcum Limited mine site.

©Jamon Sonpedharin, 2015



SUMMARY

Around 10 p.m. on May 15, 2014, an estimated 150 masked men armed with knives, batons, and guns surrounded the small village of Na Nong Bong in Thailand's northeastern Loei Province. Eight months earlier, local residents erected barricades to block the only road to a controversial gold mine located near the village. During the next six hours, the armed men tore down the barricades and detained and beat dozens of local residents while trucks transported ore out of the mine operated by Thai mining company Tungcum Limited. Residents repeatedly called the local police for help. No one intervened.

The attack left at least a dozen residents of Na Nong Bong village and other surrounding villages injured and terrorized.

On May 31, 2016, the Loei Provincial Court convicted an army lieutenant colonel and a retired army lieutenant general for their involvement in the attacks, sentencing them to 36 months and 24 months in prison, respectively. The Court ordered the payment of compensation ranging from 2,600 to 25,000 Thai Baht (approximately US\$80 to US\$750) to nine residents. On September 25, 2017, the Appeal Court upheld the conviction of the two military officers and increased their sentences to 60 months' and 40 months' imprisonment, respectively.

Top, next page:

Masked men photographed during an attack on residents in Na Nong Bong village, Loei Province on May 15, 2014. ©KRBKG, 2014

Middle, next page:

Blood covered notebook and stains on the ground left following the May 15, 2014 attack on residents in Na Nong Bong village, Loei Province. ©KRBKG, 2014

Bottom, next page:

Environmental defender Yon Khunna after being beaten by armed and masked men during the May 15, 2014 attack on residents in Na Nong Bong village, Loei Province. ©KRBKG, May 2014



Unfortunately, the injustices faced by communities surrounding the gold mine in Loei did not end there.

This violent incident shed a spotlight on the decade-long struggle of the Khon Rak Ban Kerd Group (KRBKG) or “People Who Love Their Homeland,” a community-based organization whose members are residents living in six villages surrounding the gold mine. Including respected elder women from the six villages, KRBKG has been advocating for the closure of the gold mine as well as remedies for health and environmental impacts they say are linked to the gold mine, and its members have long faced violent threats, intimidation, and criminal prosecutions as a result of their nonviolent and legitimate activities.



Fortify Rights conducted a three-year investigation into the attack, reprisals, and judicial harassment against KRBKG and environmental defenders in Wang Sa Phung District, Loei Province. The investigation included 59 interviews with survivors and eyewitnesses, government officials, and others in multiple locations in Thailand. Fortify Rights also monitored 22 legal proceedings brought by the Thai authorities and Tungkum Ltd. against environmental defenders involved in opposing the mining operations and its impacts. In addition, Fortify Rights obtained and analyzed more than 1,900 pages of evidence, including legal documents, and more than 500 videos and 1,000 photos.



Environmental defender Pornthip Hongchai preparing residents for a peaceful protest in Loei Province.

©Luke Duggleby/Fortify Rights, 2016





A candle light vigil on the anniversary of the May 15, 2014 attack on Na Nong Bong village.

©KRBKG, May 2017

This report reveals that Thai authorities and Tungcum Ltd. committed and contributed to serious human rights violations and abuses against members of KRBKG and environmental defenders in Wang Sa Phung District, Loei Province. Violations and abuses include the arbitrary detention of human rights defenders and violations of the rights to freedom of expression, peaceful assembly, a healthy environment. In addition to the May 2014 attack, this report documents threats and intimidation, including death threats, against KRBKG members and other environmental defenders in Loei Province. Following protests organized by KRBKG, Thai military officers summoned KRBKG members for “attitude adjustment,” which in some cases involved the authorities arbitrarily detaining and interrogating members of the community in unofficial locations.

Fortify Rights also collected firsthand testimony about an alleged attempt by a local politician’s driver to hire a hitman to target and kill Loei residents involved in KRBKG, offering 500,000 Thai Baht (US\$15,000) per target. The plot, which was unfulfilled, allegedly aimed to assassinate six women and three men.

Thai authorities and Tungcum Ltd. have also targeted environmental defenders from the community and others with time-consuming and costly lawsuits that infringe on basic rights and freedoms. For example, in 2017, Thai authorities initiated three criminal



complaints against 14 members of KRBKG for engaging in protest-related activities connected to the gold mine. Tungkum Ltd. also filed at least 19 criminal and civil lawsuits against 33 Loei residents and members of the KRBKG as well as against a freelance journalist between 2007 and 2017. One case involved a complaint against a local 15-year-old girl.

Through its four civil suits, the company demanded 320 million Thai Baht (US\$9.8 million) in compensation from residents for allegedly damaging the company's reputation. Six out of these 19 lawsuits involve criminal defamation charges that carry sentences of up to two years' imprisonment and a fine of up to 200,000 Thai Baht (US\$6,000). Two of these cases involve charges under the 2007 Computer Crimes Act, which carries a sentence of up to five years' imprisonment and/or a fine of up to 100,000 Thai Baht (US\$3,000).

Available evidence indicates serious environmental contamination in areas surrounding the gold mine. Government testing of local streams and rivers in Loei Province found unsafe levels of cyanide, arsenic, and manganese—known by-products of gold mining processes—as well as cyanide, arsenic, manganese, cadmium, and lead in underground water supplies. A Cabinet Resolution issued on February 8, 2011 by the Office of the Secretary of the Cabinet under the Office of the Prime Minister acknowledged “the health

and environmental concerns related to the gold mining operation of Tungcum Ltd. in Loei Province,' citing concerns about air pollution and water contamination. The Cabinet Resolution ordered the Ministry of Industry to suspend consideration of any mining application by Tungcum Ltd. until the authorities established the cause of contamination and cost implications. The Cabinet also ordered stricter monitoring and evaluation of the company's mining operations and procedures to prevent cyanide leakage.

Although the government has not connected the contamination to Tungcum Ltd.'s operations in Loei Province, a 2007 government report found that Tungcum Ltd. allegedly failed to meet 13 environmental safeguards in conducting its mining activities in Loei Province, including failures to adequately manage cyanide contamination and its detoxification tanks.

Local residents in affected communities surrounding the gold mine largely rely on farming and the natural environment for their livelihoods and sustenance. Water and soil pollution has adversely impacted their daily lives and livelihoods. Residents have also complained about health conditions that are consistent with cyanide, mercury, and arsenic poisoning. Government tests conducted in 2007, 2014, and 2015 revealed that some residents had high levels of cyanide, mercury, and arsenic in their blood. These elements are commonly used in gold-mining processes.

International law protects the work of human rights defenders, the rights to liberty and freedom of expression and peaceful assembly, and the right to a healthy environment. When a person is subjected to human rights violations or abuses, international law calls for effective remedies. However, Thai authorities have failed to protect the rights of the community in Loei Province or ensure remedies for the violations and abuses experienced by environmental defenders.

Human rights defenders are typically the first line of defense against human rights violations and abuses. This report highlights the efforts of Thai human rights defenders who have long stood up for the rights of the community and the environment in Loei Province, including KRBKG, and public interest lawyers working with the Community Resource Centre Foundation.



Environmental defender Wiron Ruchichaiyavat discussing legal action involving the Tungcum Limited gold mine with members of the community-based Khon Rak Ban Kerd Group (KRBKG) in Loei Province.

Pools of discoloration in a stream located near Tungkm Limited mine site in Na Nong Bong village, Loei Province.

©Luke Duggleby/Fortify Rights, 2016



KRBKG leader Surapun Rujichaiyavat giving a speech on July 6, 2016 to residents of Pak Chom village in Loei Province on the potential adverse environmental impacts of gold mining.

©Fortify Rights, 2016




It is not too late for the Government of Thailand to reverse course with regard to the situation surrounding the gold mine in Loei Province. Fortify Rights recommends that the Government of Thailand:

- Fully investigate and hold to account individuals responsible for attacks and threats against environmental defenders, KRBKG members, and residents in Loei Province, including residents attacked by masked men on May 15, 2014.
- End all arbitrary legal proceedings against environmental defenders, community leaders, and journalists involved in legitimate activities protected by Thai and international human rights law.
- Repeal or amend laws and orders that are incompatible with the rights to freedom of expression and peaceful assembly, including sections 326 to 328 of Thailand's 1956 Criminal Code, the 2015 Public Assembly Act, and the National Council for Peace and Order (NCPO) Order No. 3/2558.
- Fully investigate allegations of environmental and health impacts resulting from Tungcum Ltd.'s gold mining operations in Loei Province and provide adequate and effective redress for communities and individuals affected.

Fortify Rights also recommends that Tungcum Ltd. and its related business enterprises:

- Drop all arbitrary legal proceedings against environmental defenders, community leaders, and journalists involved in legitimate activities protected by international human rights law.
- Uphold human rights protections in all of Tungcum Ltd.'s business activities, taking effective and concrete steps to prevent and address human rights abuses.
- Publish comprehensive information related to the gold mining operation, including mining applications, shareholders, and waste and toxic management, to ensure transparency.



An aerial image of Na Nong Bong village and Tungcum Limited gold mine sites in Wang Sa Phung District, Loei Province.

©Private, 2016

*A teenage girl accused of criminal defamation
by Tungkhum Limited for her narration in a
news clip on an environmental youth camp
in Loei Province published by the Thai Public
Broadcasting Service.*

©Luke Duggleby/Fortify Rights, 2016





Peaceful march by members of Khon Rak Ban Kerd Group calling for environmental protections in Loei Province.

©Fortify Rights, 2016



An aerial image of Loei Province and Tungkom Limited's gold mine sites.

©Private, 2016

An aerial image of Tungkim Limited's gold mine operations in Loei Province.

©Private, 2016



METHODOLOGY

The findings of this report are based on a three-year investigation into human rights violations and abuses affecting environmental defenders in Loei Province. Fortify Rights conducted 59 interviews—including with 28 women—with eyewitnesses, government officials, and others.

Fortify Rights conducted all interviews in the Thai language. No one interviewed for this report received compensation, and all were informed of the purpose of the interview, its voluntary nature, and the ways in which the information shared might be used. All consented to be interviewed. The names of some survivors, eyewitnesses, and others as well as the location of some interviews are withheld or changed in this report for security reasons.

Fortify Rights also monitored 22 legal proceedings in Loei, Tak, and Bangkok provinces and reviewed more than 1,900 pages of court documents. Fortify Rights obtained and analyzed more than 1,000 photographs, recordings, and other documents relevant to attacks, threats, and harassment targeting environmental defenders in Loei Province. These documents, photographs, and recordings are catalogued and on file with Fortify Rights.

On August 24, 2018, Fortify Rights sent a letter to the Prime Minister's Office, requesting further information on the attack against residents in Na Nong Bong village, the summonses for attitude adjustment, lawsuits against environmental defenders in Loei Province, and other restrictions on the right to freedom of expression and peaceful assembly. The Minister of Justice, Minister of Foreign Affairs, Minister of Industry, Ministry of Natural Resources and Environment, Ministry of Public Health, Loei Provincial Governor, and the National Human Rights Commission of Thailand received a copy of the letter. Fortify Rights also sent a letter to Tungcum Ltd. on August 24, 2018 requesting further information regarding the attack against residents in Na Nong Bong village, lawsuits against environmental defenders in Loei Province, the environmental impacts of the Tungcum Ltd. mine site in Loei Province, and the company's plans to rehabilitate the environment. Tongkah Harbour Public Company Limited received a copy of the letter.

Fortify Rights received a response from Tongkah Harbour PCL in response to the letter to Tungcum Ltd. At the time of writing, Fortify Rights did not receive a response from the government. The letter to the government is included in this report as Annex A and the letter to Tungcum Ltd. and response from Tongkah Harbour PCL is included in this report as Annex B.

BACKGROUND

Loei Province is in northeast Thailand, with a population of approximately 640,000 persons.¹ Agriculture is the main source of income for the majority of Loei residents, with more than 80 percent earning livelihoods through rubber, rice, and soybean production.² The average monthly household income for Loei farmers is approximately 15,000 Thai Baht (US\$450).³ Residents in Loei rely heavily on surrounding natural resources, including forests and rivers, for their daily lives.

Wang Sa Phung District of Loei Province is a small rural district surrounded by picturesque mountains and rivers and located more than 12 miles from Loei's city center.

On February 3, 1987, the Council of Ministers of Thailand, otherwise known as the Thai Cabinet, approved the Policy on Exploration and Development of Gold Mining based on a proposal by the Ministry of Industry to encourage investment and business engagement in gold mining and exploration.⁴ More than three years later, on November 5, 1991, Thai-registered mining company Tungkum Ltd. obtained a special concession for mining exploration in Loei and Nong Khai provinces from the Ministry of Industry, Department of Mineral Resources.⁵

Tungkum Ltd. has a long history in Thailand as a subsidiary of Tongkah Harbour Public Company Limited, a Thai-registered investment company

- 1 Ministry of Interior, Department of Provincial Administration, "The Official Statistics Registration System [in Thai]," website, http://stat.dopa.go.th/stat/statnew/upstat_m.php (accessed on April 28, 2017).
- 2 Provincial Strategy and Information Division, Loei Provincial Office, "Socio and Economic Information of Loei Province [in Thai]," 2008, <http://www.loei.go.th/data/pop47.doc> (accessed on April 28, 2017).
- 3 Ministry of Information and Communication Technology, National Statistical Office, "The 2015 Household Socio-economic Survey, Loei Province," website, http://loei.old.nso.go.th/nso/project/search/index.jsp?province_id=73 (accessed on May 31, 2017).
- 4 The Policy on Exploration and Development of Gold Mining was the country's first national policy on gold mining exploration and extraction. It set two types of permissions for gold exploration: one for government land concessions for gold exploration in large-scaled projects and another for private sector exploration, which requires the demonstration of interests and benefits for the state. To further this policy, on July 4, 1987, the Ministry of Industry enacted Ministerial Regulation No. 64 of the 1967 Mineral Act, which provided criteria for private companies to request permits for gold mining exploration and extraction. See, Office of the National Economic and Social Development Board, *A Study on the Policy on Exploration and Development of Gold Mining*, January 2009, Annex B; Ministry of Industry, Department of Mineral Resources, *Gold Mineral Resources and Gold Mining in Thailand*, December 2001, p. 8.
- 5 See, Ministry of Industry, Department of Mineral Resources, "Contract on Gold Mining Exploration and Extraction in Plot No.4 Nam Khiw-Phu Khum Thong between Tongkah Harbour PCL, Tungkum Ltd. and Department of Mineral Resources," November 5, 1991; Ministry of Industry, Department of Mineral Resources, *Gold Mineral Resources and Gold Mining in Thailand*, p. 9.

founded in 1906 by Australian Edward T. Miles.⁶ The Stock Exchange of Thailand first listed Tongkah Harbour PCL in 1981, and its shareholders initially included the Ministry of Finance and later Ms. Chomkamol Pumpanmuang, who is the daughter of former Commissioner General of the Royal Thai Police General Somyos Pumpanmuang.⁷ In March 2018, Mr. Suphachai Jaismut, an influential politician who served as the deputy spokesperson of the Office of the Prime Minister between 2008 and 2011, resigned from the Executive Board of Tongkah Harbour PCL after serving on it for one year.⁸

In 1992, Tungcum Ltd. conducted an exploration survey in Loei Province and found an estimated one million tons of ore in the hills surrounding Wang Sa Phung District, which at the time was worth an estimated 1,500 million Thai Baht (US\$45 million).⁹ In accordance with Thai law, Tungcum Ltd. hired S.P.S. Consulting Service Company Limited to conduct a gold-mine mapping and an Environmental Impact Assessment (EIA) to assess potential environmental impacts of Tungcum Ltd.'s proposed mining plans in Loei Province.¹⁰ The EIA found that the proposed mine would cause “geographical changes”, “dust and noise pollution”, and “deforestation and damages to natural habitats of wildlife” but that the “adverse impacts are limited.”¹¹ The EIA also warned that flash floods as the result of heavy rainfall may result in “heavy metal and chemical substances” affecting surrounding areas.¹²

The Office of Natural Resources and Environmental Policy and Planning approved Tungcum Ltd.'s EIA on December 23, 1998.¹³ Between September 2002 and January 2003, the Department of Mineral Resources granted Tungcum Ltd. permission to mine six plots of land in Wang Sa Phung District for

6 See, Tongkah Harbour Public Company Limited, “Milestone of Tongkah Harbour Public Company Limited”, website, <http://tongkahharbour.com/milestone/> (accessed August 8, 2018); “Tongkah Shifted its Direction to Neighboring Country to Mitigate Risks from Gold Mining [in Thai]”, *Thansettakij Multimedia*, March 1, 2016, <http://www.thansettakij.com/content/34067> (accessed on December 18, 2016).

7 Stock Exchange of Thailand, *Tongkah Harbour Public Company Limited, Annual Report 2017*, 2018, <http://www.set.or.th/dat/annual//A0061T17.zip> (accessed on August 5, 2018); Stock Exchange of Thailand, “Information Memorandum of the Listed Company, Tongkah Harbor Public Company Limited”, website, September 5, 2011, <https://www.set.or.th/set/factsheet.do?symbol=THL> (accessed on September 6, 2018); and Cabinet Resolution No. 4232/2552, B.E. 2552, May 19, 2009; Stock Exchange of Thailand, “Tongkah Harbour Public Company Limited, List of Shareholders”, website, <https://www.set.or.th/set/companyholder.do?symbol=THL&ssopageId=6&language=th&country=TH> (accessed on February 22, 2018).

8 Stock Exchange of Thailand, “Tongkah Harbour Public Company Limited, Appointment of Executive Board Members”, website, August 11, 2017, <https://www.set.or.th/set/newsdetails.do?newsId=15027511958781&language=th&country=TH> (accessed on February 22, 2018); Tongkah Harbour Public Company Limited, “Resignation of Executive Board Member”, website, March 14, 2018, <https://www.set.or.th/set/newsdetails.do?newsId=15209845868410&language=en&country=US> (accessed on August 8, 2018).

9 See, Ministry of Industry, Department of Mineral Resources, “Gold Mineral Resources and Gold Mining in Thailand”, p. 2; The Office of Secretary to the Parliament, “Gold Mining: State Incomes and Life and Environmental Impacts”, Academic Paper, January 2017, p. 21; Tungcum Ltd., “Project Proposal: Gold, Copper, and Silver Mining for Requesting a Mining Permit of Plot No. 76/2539 and Procedures to Conduct an Environmental and Health Impacts Assessment”, p. 13.

10 An EIA is a study to estimate potential positive and negative environmental impacts from a development project in order to develop preventive and rehabilitation measures. The Enhancement and Conservation of National Environmental Quality Act, B.E. 2535, 1992. Ministry of Industry, Department of Mineral Resources, “Gold Mineral Resources and Gold Mining in Thailand”, p. 38. The Office of Natural Resources and Environmental Policy and Planning (ONEP) under the Ministry of Natural Resources and Environment approved the Tungcum Ltd.'s EIA report on gold mining operation in Phu Tab Fah. See, Ministry of Natural Resources and Environment, Office of Natural Resources and Environmental Policy and Planning, “Letter No. Wor Wor 0804/1763”, December 23, 1998.

11 Tungcum Ltd., “Mapping of an Open-Pit Gold Mining for the Submission of Mining Permit Request No. 66/2538”, p. 97, 98, 100.

12 *Ibid.*

13 Ministry of Natural Resources and Environment, Office of Natural Resources and Environmental Policy and Planning, “Letter No. Wor Wor 0804/1763.”

the next 25 years.¹⁴ The Forestry Department of the Ministry of Natural Resources and Environment and the Agricultural Land Reform Office also granted Tungcum Ltd. a ten-year land-use permit to mine the six plots of land in Phu Tab Fah and Phu Sum Pa Bon.¹⁵

By December 2006, Tungcum Ltd. extracted ore containing more than 12,000 ounces of gold worth almost 270 million Thai Baht (US\$ 8.2 million) at the time.¹⁶

A few months after Tungcum Ltd. began its operations in Phu Tab Fah, residents living nearby the mining site began to complain to provincial authorities about noise and dust pollution as a result of rock explosions.¹⁷ They also raised concerns about the potential contamination of dozens of streams that flow near Phu Tab Fah and provide critical water sources for the almost 3,500 households living in the Khao Luang Sub-District of Wang Sa Phung District.¹⁸

In 2007, residents living in six villages affected by the gold mining operation in Wang Sa Phung District formed Khon Rak Ban Kerd Group (KRBKG) or “People Who Love Their Homeland” to protest the mining operations and bring attention to adverse environmental conditions. Led by respected elder women and men from the six villages, KRBKG began to organize peaceful protests calling for the closure of the gold mine, rehabilitation and reclamation of the environment, and remedies for residents with health problems potentially stemming from the mining operations.¹⁹ Starting in late 2006, residents of Na Nong Bong and nearby villages called for an investigation into the environmental and health impacts of Tungcum Ltd.’s mining operations in Wang Sa Phung District.²⁰ Responding to these demands, the Loei Provincial Office established a working group in December 2006 to monitor Tungcum Ltd.’s mining operation and conduct environmental testing.²¹ The Environmental Office of Region 9 from Udon Thani Province first tested the water

¹⁴ Ministry of Industry, Department of Mineral Resources, “Gold Mineral Resources and Gold Mining in Thailand” p. 43. Tongkah Harbour PCL., *Final Report of the Special Auditor*, July 31, 2012, p. 19–20; Ministry of Industry, “Tungcum Limited’s Mining Permission No. 26971/15558” September 27, 2002; Ministry of Industry, “Tungcum Limited’s Mining Permission No. 26972/15559” September 27, 2002; Ministry of Industry, “Tungcum Limited’s Mining Permission No. 26973/15560” September 27, 2002; Ministry of Industry, “Tungcum Limited’s Mining Permission No. 26968/15574” January 23, 2003; Ministry of Industry, “Tungcum Limited’s Mining Permission No. 26969/15575” January 23, 2003; Ministry of Industry, “Tungcum Limited’s Mining Permission No. 26970/15576” January 23, 2003.

¹⁵ Once a mining concession has been granted, the relevant authorities who are responsible for the management of the land, such as the Agricultural Land Reform Office and the Forestry Department, must consider and provide permission to the company to mine the land. The company is required to pay the relevant authorities a fee for using the land for mining. See, National Reserved Forest Act, B.E. 2507 (1964), Section II; Agricultural Land Reform Act, B.E. 2518 (1975); Office of Agricultural Land Reform, Regulations of the Committee on Agricultural Land Reform, “Permission to Use Natural Resources in Agricultural Land Reform Area for Other Purposes, B.E. 2541 (1998)”, October 21, 1998. Ecological Alert and Recovery–Thailand (EARTH), *Myths and Facts: Gold Mining in Loei Province*, May 2015, p. 215. Tungcum Ltd. received a permit to mine in Phu Sum Pa Bon on September 14, 2008. See, Office of Secretary to the Parliament, “Gold Mining: State Incomes and Life and Environmental Impacts”, p. 24.

¹⁶ Loei Provincial Industry Office, “Letter No. Lor Yor 0028 (2)/3134 Re: Permit to Operate Mining” September 11, 2006, cited in EARTH, *Myths and Facts*. See, also, Office of Secretary to the Parliament, “Gold Mining: State Incomes and Life and Environmental Impacts”; p. 25.

¹⁷ Fortify Rights interview with Ranong Kongsae, Loei Province, Thailand, February 17, 2016; Fortify Rights interview with Samai Phakmee and Yon Khunna, Loei Province, Thailand, March 29, 2016; Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016; Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

¹⁸ *Ibid.* Fortify Rights interview with Noo Saewanna, Loei Province, Thailand, March 24, 2016.

¹⁹ Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016; Fortify Rights interview with Surapun Rujichaiyavat, Wiron Ruchichaiyawat, and Ranong Kongsae, Loei Province, Thailand, February 17, 2016; Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016.

²⁰ Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016; Fortify Rights interview with Surapun Rujichaiyavat and Wiron Ruchichaiyawat, Loei Province, Thailand, February 17, 2016.

²¹ EARTH, *Myths and Facts*, p. 25.

in 2006 and found high levels of manganese but explained it as normal for the area.²² The Wang Sa Phung Hospital also tested blood samples of residents in the six villages in December 2007 and found high levels of cyanide in 20 samples.²³

On February 4, 2009, the Public Health Office of Loei Province officially announced that residents in Khao Luang Sub-District should refrain from obtaining drinking water from local streams and underground wells due to high levels of arsenic and manganese in local streams and cadmium contamination in residents' underground wells.²⁴ Health impacts of arsenic, manganese, and cadmium contamination include organ dysfunction, weakness, numbness, and muscle pain.²⁵

The provincial authorities provided drinking-water trucks to residents in these villages but discontinued the program within a few weeks.²⁶ Since then, residents have had to purchase drinking water for their household consumption at a cost of 750 Thai Baht (US\$25) per month or consume contaminated water.²⁷

On March 18, 2010, the Loei Public Health Office also prohibited residents from consuming river snails collected from the Huay Lhek stream in Phu Tab Fah Pattana village after government tests revealed elevated levels of arsenic contamination in the snails.²⁸ The Pollution Control Department conducted testing of the soil in December 2014 and similarly found arsenic in Huay Lhek, Huay Phuk, and Huay Lin Kwai streams.²⁹

The working group set up by provincial authorities continues to conduct tests every three months in six villages surrounding the mine site to monitor contamination levels in the water and soil. Recent water tests from April 2018 obtained by Fortify Rights found iron, manganese, cadmium, and lead in underground water supplies as well as elevated level of manganese, arsenic, and cyanide in local rivers and streams.³⁰

Although residents petitioned the Prime Minister's Office, the Ministry of Industry, the Ministry of Public Health, the Ministry of Natural Resources and Environment, and the National Human Rights Commission of Thailand to investigate the source of the contamination and facilitate remedies for affected communities, the source of the contamination remains unconfirmed.³¹

²² *Id.* at p. 26.

²³ *Id.* at p. 30.

²⁴ Ministry of Public Health, Loei Provincial Public Health Office, "Announcement No. 1/2552," February 4, 2009.

²⁵ World Health Organization (WHO), "Arsenic in Drinking Water, Background Document for Development of WHO Guidelines for Drinking Water Quality," 2011, http://www.who.int/water_sanitation_health/water-quality/guidelines/chemicals/arsenic.pdf?ua=1 (accessed on January 20, 2018); WHO, "Manganese in Drinking Water, Background Document for Development of WHO Guidelines for Drinking Water Quality," 2011, http://www.who.int/water_sanitation_health/water-quality/guidelines/chemicals/manganese.pdf?ua=1 (accessed on January 20, 2018); WHO, "Cadmium in Drinking Water, Background Document for Development of WHO Guidelines for Drinking Water Quality," 2011, http://www.who.int/water_sanitation_health/water-quality/guidelines/chemicals/cadmium.pdf?ua=1 (accessed on January 20, 2018).

²⁶ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

²⁷ Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016; Fortify Rights interview with Yanisa Wongkhamso, Loei Province, Thailand, March 25, 2016; Fortify Rights interview with Lamlearn Ruengrith and Boonraeng Sri-Thong, Loei Province, Thailand, April 2, 2017; Fortify Rights interview with Suphat Khunna, Loei Province, Thailand, April 4, 2017; Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016.

²⁸ Ministry of Public Health, Loei Provincial Public Health Office, "Announcement No. 1/2553," March 18, 2010.

²⁹ Ministry of Natural Resources and Environment, Department of Pollution Control, "Letter No. Tor Sor 0305/2140, Subject: Report on the Result of Monitoring Environmental Quality Inside and Around Tungkum Ltd.'s Gold Mine in Wang Sa Phung District, Loei Province," March 6, 2015.

³⁰ See, Loei Provincial Office, "Minutes of Meeting of the Committee to Test and Analyse Water Quality Around Tungkum Ltd.'s Gold Mine, No. 2/2559," June 28, 2016.

³¹ *Ibid.*

The slurry of waste resulting from chemical processes in hard-rock mining is known as *tailings*. Amid growing health and environmental concerns, on October 27, 2012, one of the walls of the tailings dam of Tungcum Ltd.'s mining factory collapsed, raising fears among local residents of potential contamination of nearby farmland.³² The Loei Industrial Office under the Ministry of Industry suspended the Tungcum Ltd.'s operation from November 2012 to March 2013 following the breach, allowing Tungcum Ltd. to resume its operations only after the company repaired the wall.³³ The authorities never investigated potential contamination of the surrounding farmland due to the collapsed wall.³⁴ However, the Department of Primary Industry and Mining ordered Tungcum Ltd. to pay a fine for failing to reduce cyanide levels in the tailing dam to the legal-standard levels in violation of Article 122 of the 1967 Mining Act.³⁵

In December 2010, Tungcum Ltd.'s permission to use the land in Phu Sum Pa Bon expired.³⁶ In December 2012, Tungcum Ltd.'s permission to use the land in Phu Tab Fah also expired.³⁷ Due to strong opposition by residents in Wang Sa Phung District against Tungcum Ltd.'s mining operations, the Forestry Department has not renewed permission for the company to use the land for its mining operations.³⁸ As a result, Tungcum Ltd.'s operations in Phu Tab Fah remain suspended as of the time of writing. Unfortunately, this has not relieved pressure on local communities or led to any meaningful land reclamation in the area.

Despite persistent local opposition and concerns about potential contamination from Tungcum Ltd.'s operations in Phu Sum Pa Bon and Phu Tab Fah, the company sought permission in 2013 to extend its operations to Na Pong village in Muang District and Phu Lhek or "Iron Mountain" in Wang Sa Phung District, Loei Province.³⁹ As part of the requisite Environmental and Health Impact Assessment or EHIA, Tungcum Ltd. organized public-scoping forums with stakeholders in Loei Province on December 23, 2012 and September 8, 2013 to initiate operations in Phu Lhek and Na Pong villages, respectively.⁴⁰ In advance of both forums, KRBKG mobilized

32 A tailings dam is an earth-filled embankment to store by-products of a mining operation after separating the targeted elements from the ore, often using chemical processes. See, Tungcum Ltd., "Rehabilitation Plan," November 2015, p. 5-6; Fortify Rights interview with Noo Saewanna, Loei Province, Thailand, March 24, 2016; Fortify Rights interview with Ranong Kongsae, Loei Province, Thailand, February 17, 2016. See, also, Ministry of Industry, Department of Primary Industry and Mining, Loei Provincial Industrial Office, "Letter No. 0028(2)/1763," November 5, 2012; Office of Secretary to the Parliament, "Gold Mining: State Incomes and Life and Environmental Impacts," p. 39.

33 Ministry of Industry, "Letter No. 0028(2)/1763." Ministry of Industry, Department of Primary Industry and Mining, Loei Provincial Industrial Office, "Letter," March 25, 2013.

34 *Ibid.*

35 See, Ministry of Industry, Department of Primary Industry and Mining, "Letter No. Aor Kor 0511/870," February 19, 2007. Mining Act B.E.2510, (1967), articles 122 and 149.

36 See, *Loei Provincial Prosecutor v. Surapun Rujichaiyavat and Pornthip Hongchai*, Loei Provincial Court, Black Case No. 1905/2559, Red Case No. 4386/2559, Verdict (Court of First Instance), November 25, 2016, p. 3-6.

37 *Ibid.*

38 See, *Tungcum Ltd. v. Samai Phakmee*, Appeal Court Region 4, Black Case No. 1278/2550, Red Case No. 2741/2560, Verdict (Appeals Court), October 30, 2017, p. 1-17.

39 Tungcum Ltd., "Letter Tor Kor Lor Yor (Wor) No. 278/56 Re: Request for Permission to Disseminate Information About the Gold Mining Project Proposal of Tungcum Ltd., Mining Permission Request Plot No. 76/2539," August 23, 2013. Tungcum Ltd., "Information on Gold and Copper Mining Project, Tungcum Ltd.'s Mining Permission Request Plot No. 104/2538 for EHIA Public Scoping Forum on November 22, 2012," Date Unspecified.

40 The Environmental and Health Impact Assessment (EHIA) is required according to Section 67 of Thailand's Constitution. The procedures to conduct the EHIA is set by the Ministry of Natural Resources and Environment and provides an opportunity for communities to raise concerns with the potential project, participate in the health assessment process, and contribute to planning for preventative measures for potential impacts of the project. The public scoping on December 23, 2012 was conducted in relation to Plot No. 104/2538, which is located close to Phu Tab Fah Pattana, Kaeng Hin, Huay Phuk, Na Nong Bong, and Kok Sa Thon villages, and the public scoping on September 8, 2013 was conducted in relation to Plot No. 76/2539, which is located close to Hua Na and Na Pong villages. See, Ministry of Natural Resources and Environment, "The Announcement of the Ministry of Natural Resources

hundreds of residents and students from Khon Kaen and Mahasarakham University to participate in the forums and oppose Tungkom Ltd.'s request to extend its operations.⁴¹ As a result of these efforts, the Department of Forestry did not provide Tungkom Ltd. permission to use the land in Khok Phu Lhek forest where Phu Tab Fah is located, and Tungkom Ltd. permissions to mine in Na Pong village and Phu Lhek are still pending.⁴²

On February 14, 2018, the Central Bankruptcy Court in Bangkok declared Tungkom Ltd. bankrupt in a lawsuit between Deutsche Bank AG and Tungkom Ltd.⁴³

Due to ongoing disputes between gold-mining operators and communities concerned by the health and environmental impacts of gold mining in Thailand, the Thai military government issued the Head of National Council for Peace and Order (NCPO) Order No. 72/2559 on December 3, 2016, suspending all activities related to gold mining operations nationwide effective on January 1, 2017. The NCPO also ordered gold-mining operators to rehabilitate the environment and relevant government agencies to address the impacts of gold mining operations.⁴⁴ However, as of the time of writing, little action has been taken by mining operators or government agencies to address the environmental impacts of the mining industry in Thailand. In Loei Province's Wang Sa Phung District, KRBKG and residents continue to campaign for redress and land reclamation but face restrictions and fresh lawsuits for exercising their rights to freedom of expression and peaceful assembly.

and Environment on Setting Criteria, Approaches, Rules, and Guiding Principles in Conducting Environmental and Health Impacts Assessment for Projects or Activities that May Cause Serious Adverse Environmental and Health Impacts on Communities"; December 29, 2009, Annex p. 4; Tungkom Ltd., "Letter Tor Kor Lor Yor (Wor) No. 278/56."

- 41 Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016. Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016. *See also*, Hathairat Deeprasert, "Digital Intellectual: Four Universities, 4 Perspectives, 4 Contexts [in Thai]," *Khom Chad Luek Online*, September 15, 2013, <http://www.komchadluek.net/news/edu-health/168256> (accessed on August 9, 2018).
- 42 Ministry of Industry, Department of Primary Industry and Mining, "National Database of Mining Permission" website, http://www.dpim.go.th/webservices/req_con_report.php (accessed on August 9, 2018). *See also*, *Mai Ramsiri and 16 others v. Department of Primary Industry and Mining, Industrial Office of Loei Province, Head of Khao Luang District, and Tungkom Ltd.*, Udon Thani Administrative Court, Black Case No. Sor 8/2557, Red Case No. Sor 5/2557, Verdict (Court of First Instance), November 17, 2017.
- 43 The Court ordered that any party who wishes to claim compensation or debt from Tungkom Ltd. would need to process their claims through the Legal Execution Department of the Ministry of Justice. Ministry of Justice, Department of Legal Execution, Bankruptcy Legal Execution Office, "Order of Control of Property, Red Case No. Lor 1913/2558", May 7, 2018.
- 44 In April 2017, the company proposed a rehabilitation plan to the Loei Provincial Industrial Office but KRBKG members rejected the plan and requested the development of a joint rehabilitation plan with consultation from local residents. Tungkom Ltd., "Rehabilitation Plan for Gold Mining Area." *See also*, KRBKG, "Letter Aor Ror No. 0011/2560 to Loei Provincial Industrial Officer, Subject: Opposing the Tungkom Ltd.'s Rehabilitation Plan, May 25, 2017. Fortify Rights phone interview with Surapun Rujichaiyavat, August 15, 2018.

I. HUMAN RIGHTS VIOLATIONS AND ABUSES

Residents of Wang Sa Phung District in Loei Province have faced physical attack, threats and intimidation, and a series of lawsuits as a result of their activism. Residents have repeatedly reported violations and abuses to government authorities, including the Prime Minister's Office, the provincial authorities, the police, and the National Human Rights Commission of Thailand; however, residents remain at risk and accountability for violations and abuses remain limited and rare.

ATTACKS ON ENVIRONMENTAL DEFENDERS

On the evening of May 15, 2014, after destroying roadblocks erected by local residents at the entrance of the mining facilities, unidentified assailants carrying wooden and metal batons, knives, glass bottles, and guns detained and beat Loei residents. According to residents interviewed by Fortify Rights, a group of approximately 150 armed men surrounded Na Nong Bong village at around 10 p.m. and continuously intimidated, assaulted, and detained residents for almost six hours.⁴⁵ During the attack, residents observed at least 11 trucks transporting ore out of the mine through a local road.⁴⁶ At around 4 a.m. in the morning of May 16, the attackers released the residents they had detained and left the village in four trucks.⁴⁷

Survivors and eyewitnesses told Fortify Rights that the assailants violently seized residents on the street and from community-operated checkpoints.⁴⁸ At least six residents interviewed by Fortify Rights, including two women, reported that the assailants detained and beat them.⁴⁹

⁴⁵ See, *Loei Provincial Prosecutor and nine co-plaintiffs v. Army Lieutenant Colonel Poramin Pomnak and Lieutenant General Porames Pomnak*, Loei Provincial Court, Black Case No. Aor 5440/2557, Red Case No. Aor 1983/2559, Verdict (Court of First Instance), May 31, 2016, p. 1-4.

⁴⁶ Fortify Rights interview with Surapun Rujichaiyavat, Wiron Ruchichaiyawat, and Ranong Kongsanen, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

⁴⁷ See, *Pomnak*, Black Case No. Aor. 5440/2557, Red Case No. Aor. 1983/2559, p. 1-4. Fortify Rights interview with Surapun Rujichaiyavat and Wiron Ruchichaiyawat, Loei Province, Thailand, February 17, 2016.

⁴⁸ Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016.

⁴⁹ *Ibid.* Fortify Rights interview with Surapun Rujichaiyavat and Phattraporn Kaengjampa, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017. Fortify Rights interview with Phongphat Khunna, Loei Province, Thailand, March 24, 2016; Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

Yon Khunna, a 47-year-old farmer who was stationed at a checkpoint erected by the residents, told Fortify Rights how masked men dragged him from his post, tied him up, and beat him. He said: “They were kicking me, stomping on me. I didn’t know how many of them there were, because I was not allowed to look. I was lying on my stomach, and they tied my hands behind my back. After that, I only saw feet kicking me.”

Yon Khunna described being held and beaten for two or three hours alongside several of his friends. He said:

They used their feet to press me down on the ground . . . They stepped on me the entire time and held me down with a wood baton. They pressed the baton and their feet against the back of my neck . . . They kicked me in my face. They did not kick my body, only my face. Every time someone walked by, they kicked me. I was conscious the entire time.⁵⁰

Assailants detained Somboon Sriburin, a 41 year-old farmer, near Yon Khunna. She said:

I saw Yon [Khunna]. He was injured. I was lying down close to him . . . He was beaten badly. Blood did not stop flowing from his mouth. I asked the men for a cloth to stop his blood as he was losing a lot of blood. The men threw us a notebook . . . I had to use the paper to stop the blood, but it did not work.⁵¹

Yon Khunna also described his injuries to Fortify Rights:

My eye was swollen. I could not see. I was aware of the situation, but one of my eyes was forced closed, and I was covered in blood, but I did not faint. After I was released, I walked to a friend’s house, and they took me to the hospital. At the hospital, the staff treated my wounds. The nurse pulled out pebbles from the cut. There were many pebbles, because I was hit against the ground, kicked, stomped, and dragged down along the road. . . Other residents were tied up together at the road where the trucks were moving back and forth. I only heard the sounds of beating and people screaming in pain.⁵²

Surapun Rujichaiyavat, a 43-year-old rubber farmer and leader of KRBKG who was bound and beaten by the assailants, told Fortify Rights:

I was arrested and separated from others. I was brought about 50 meters [164 feet] away from the checkpoint. I was not blindfolded, but I was handcuffed. I was beaten. One person took my motorcycle key. Another person came and kicked me in my face. I was knocked out and fell down. My eyes were blurry. The person who kicked me did not cover his face. People were afraid for their lives. I was not afraid, but I did not have energy to fight back. I was blurry. I was kicked many times while I was lying down.⁵³

Surapun also told Fortify Rights of his injuries:

The nurse saw that I was bleeding even after the doctor treated me, so she stitched me seven times. I was given an anesthetic injection. A healthcare volunteer came to clean up my wound for several days.⁵⁴

Wanlop Phuangpraiwan, a 39-year-old rubber farmer, described how assailants hit him on the night of the attack while he and his wife attempted to photograph the incident:

⁵⁰ Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016.

⁵¹ Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

⁵² Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016.

⁵³ Fortify Rights interview with Surapun Rujichaiyavat, Loei Province, Thailand, February 17, 2016.

⁵⁴ *Ibid.*

Some men were trying to snatch our camera from my wife's hand, but I intervened, and the man hit me on my head with a wooden stick. There was a cut, and my head was bleeding. [T]he man was saying, 'Why are you taking pictures?' . . . I could not go to the hospital because the men blocked the road. I went back home to receive first-aid treatment.⁵⁵

Oh Khamlai, a 47-year-old farmer, said masked men stopped him at one of the village checkpoints on the night of May 15. He said:

Four or five men came to stop me and put a gun to my head. I was on my motorbike. They pulled the trigger three times. Bullets did not come out. As they pulled the trigger the third time, I was thinking of my kids and parents. The men told me to take off my shirt. They tied me up with a piece of cloth, and they pushed me down on the ground on my chest. I saw other residents who were already captured at the checkpoint. People who lifted up their heads to see or help were kicked and stomped on the ground. They were hit with rifles on the back of the head. The masked men had large sticks, rifles and pistols, and metal bars.⁵⁶

Phattraporn Kaengjumba, a 37-year-old rubber farmer and leader of KRBKG, said she awoke on May 15 to crying and shouting and went outside her home to monitor the situation. She described how armed men held her for several hours on that night:

When I arrived at the bridge, there were five men carrying guns and wearing ski masks. They stopped my motorcycle. They told me not to panic. At that time, it was dark. The lights were cut off at the checkpoint. The men took my motorcycle key. They took my camera, and I was told to gather with other residents. They threatened me with their guns to walk. When I walked to the place where other residents were being held, I saw other residents lying on the ground. They were lying on their stomachs, many of them men.⁵⁷

Masked assailants bound her as she witnessed them beat other residents. She said:

A man whom I suspected was the leader arrived. He was wearing brown shoes and was chubby. He said to me and two other women who were captured at the checkpoint, 'Why do these women poke their noses here? Why didn't you stay at home?' He ordered everyone to lie on their stomachs and face the ground. He ordered his men to get pieces of cloth from the mosquito net or other clothes to tie up our hands and legs. The other two women and I were sitting on chairs. He walked behind one woman's chair and kicked her out of the chair, then pressed her face against the road with his foot. The other woman was hit on the back with a bamboo stick. I rushed to lie down on the ground, because I did not want to be hit. But still I was hit."⁵⁸

Somboon Sriburin, a 41-year-old farmer, described the weapons that the men carried that night, saying: "Some carried metal batons. Some carried bamboo batons that were freshly cut. Some carried guns, pistols. Not many of them carried guns, but everyone carried batons."⁵⁹

Somboon was detained along with her 51-year-old sister. She described how the men threatened her and her sister. She said:

The men stomped on my head if I lifted my head. They told us not to move or cry. If we cried, they stomped their feet on our head and pressed our head against the ground . . . My sister could not stop crying, so she was stepped on harder . . . I was hit on my back with a wooden baton because I was slow in lying down on the ground.⁶⁰

⁵⁵ Fortify Rights interview with Wanlop Phuangpraiwan, Loei Province, Thailand, March 29, 2016.

⁵⁶ Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017.

⁵⁷ Fortify Rights interview with Phattraporn Kaengjumba, Loei Province, Thailand, February 17, 2016 and April 3, 2017.

⁵⁸ *Ibid.*

⁵⁹ Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

⁶⁰ *Ibid.*

Jittapol Srisaburt, a 44-year-old community-emergency volunteer, said that he and his team worked to assist injured residents that night. He said:

It was pitch dark, and we heard gunshots and men shouting, but we couldn't see well. I had to crawl to pick up injured residents and bring them to the hospital. I managed to collect four people and bring them to the hospital. They were kicked in their faces and chests. Some had chest pain. It was frightening. In the morning, I visited the site of the clash again, and I saw broken glass bottles, wooden sticks, and bullet shells. The men were throwing glass bottles at residents.⁶¹

Somboon Sriburin, whom assailants detained with a group of residents that night, said the assailants threatened to shoot them and bury them alive if anyone moved. She said: "The masked men also asked if the hut was made of leaves and grass. If so, they said they would put residents inside the hut and burn down the hut. We were frightened and shocked."⁶²

Oh Khamlai also said he heard the men threaten other residents. He said:

As I was lying near [Phattraporn], I heard the men in black say, 'Just take her away and rape her.' . . . When I was lying there, I heard the men say, 'Count the people we captured and throw them in the truck and toss them in the mine.' They said, 'If you get 30 people, we will transport them and throw them in the mine.'⁶³

Phattraporn Kaengjampa, who was captured by the armed men at the same checkpoint with Oh Khamlai, told Fortify Rights that the armed men said to her: "You are a woman. Why didn't you stay at home? Why did you go out at nighttime? Aren't you afraid of being raped?"⁶⁴

Surapun Rujichaiyavat told Fortify Rights that the men held a gun at his back and forced him to walk towards the other detained residents. He said:

I was told to walk fast. On that night, I met and talked with one man, who told me, 'Tell the residents to give up. You will get nothing if you continue fighting. We will come back again. Your family will be in trouble.' . . . The leader of the militia also told me that if I did not stop protesting the mine, my children and wife would be in danger.⁶⁵

The assailants stole the residents' possessions, including a gold necklace, a walkie-talkie, an amulet, a camera, and a headlamp.⁶⁶ They also destroyed a spotlight installed by the residents at the checkpoint.⁶⁷

Police and provincial authorities, including the provincial governor, failed to intervene or respond to complaints by residents that evening. Wiron Ruchichaiyawat, a 46-year-old rubber farmer and leader of KRBKG whose husband was detained on the night of the attack, told Fortify Rights:

I heard gunshots all the time. I heard people crying and shouting . . . I thought my husband would be beaten . . . I went to report the incident to the police, but I was even more disappointed. There was only one police officer on stand-by at the station. He only said that he is a low-ranking officer. He did not know what was going on. He told me that at 1 a.m. other officers finished their shifts and went to bed. I begged him to please help the

⁶¹ Fortify Rights interview with Jittapol Srisaburt, Loei Province, Thailand, July 7, 2016.

⁶² Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

⁶³ Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017.

⁶⁴ Fortify Rights phone interview with Phattraporn Kaengjampa, November 22, 2017.

⁶⁵ Fortify Rights interview with Surapun Rujichaiyavat, Loei Province, Thailand, April 4, 2017.

⁶⁶ Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017. Fortify Rights interview with Phattraporn Kaengjampa, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Phongpat Khunna, Loei Province Thailand, March 24, 2016.

⁶⁷ Fortify Rights interview with Samai Phakmee, Loei Province Thailand, March 26, 2016.

residents. He replied that he did not have the manpower and no other police officers were around. Until 2 a.m., he was still typing something but did not move to come with me. When I was about to leave the police station, I saw the car of the Deputy Superintendent [of Wang Sa Phung Police Station] Police Lieutenant Colonel Ratthapol Pensongkram drive in. He got out of his car and went to his room like nothing had happened . . . Until the morning came, not a single police or military officer came to help us.⁶⁸

Pornthip Hongchai, a 46-year-old rubber farmer and leader of KRBKG, also attempted to contact government authorities that evening. She said: “I made phone calls to the superintendent of Wang Sa Pung Police Station, provincial police, and the provincial governor. I called many people, but nobody helped us. We were waiting for help from authorities for hours, from 10 p.m. to 12 a.m.”⁶⁹

Residents told Fortify Rights they believed the assailants were a mix of residents from other villages and security forces. Soom Sri-thong, a 40-year old grocery-shop owner and member of KRBKG, told Fortify Rights: “One guy had a red piece of cloth tied around his arm, and he dressed differently from other men. He dressed in a camouflage outfit. He wore combat boots. He was a huge. He was the one giving orders to other men . . . they were openly carrying guns.”⁷⁰

Some, but not all, were wearing ski masks or covering their faces.⁷¹ Yon Khunna told Fortify Rights:

I did not see who [the men] were, but they were wearing black outfits and covered their faces with ski masks. They did not allow me to look around . . . The shoes they were wearing were combat boots. The tip of the shoes had metal plates. I think these shoes belong to those working [with the authorities].⁷²

Somboon Sriburin gave a similar description of the men’s appearance: “[The men] were wearing shoes similar to those of police and military. There were metal plates on the shoes. I am confident they were combat boots because they stepped on my head to keep my face down on the ground.”⁷³

The Thai Government acknowledged that 13 residents were injured on the night of the attack, including members of KRBKG.⁷⁴ Some received treatment at the hospital.⁷⁵ Others treated themselves at home.⁷⁶

According to residents’ testimonies, government authorities, including a district officer and police officers, arrived at Na Nong Bong village around 8 a.m. in the morning of May 16, ten hours after the attack started, to investigate.⁷⁷ In response to a petition sent by members of the community to Prime Minister Prayut Chan-o-cha on June 1, 2014, the military sent approximately 120 Special Task Force soldiers from Sri Song Rak military barrack located in Amphue Muang, Loei Province to patrol and provide security to residents and surrounding areas for three months.⁷⁸

68 Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, July 22, 2016.

69 Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016.

70 Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016.

71 Fortify Rights interview with Wanlop Phuangpraiwan and Yon Khunna, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Phattraporn Kaengjumba, Loei Province, Thailand, February 17, 2016.

72 Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016.

73 Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

74 Permanent Mission of Thailand to the United Nations and Other International Organizations in Geneva, “Letter to the Special Procedures of the UN Human Rights Council,” Letter No. 52101/513, September 9, 2014.

75 Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016; Fortify Rights interview with Surapun Rujichaiyawat, Loei Province, Thailand, February 17, 2016.

76 Fortify Rights interview with Surapun Rujichaiyawat and Phattraporn Kaengjumba, Loei Province, Thailand, February 17, 2016.

77 Fortify Rights interview with Phattraporn Kaengjumba, Loei Province, Thailand, February 17, 2016.

78 Fortify Rights interview with Ranong Kongsanen, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016. Fortify Rights interview with Wanlop Phuangpraiwan, Loei Province, Thailand, March 29, 2016. See, “Military Deployed to Protect Wang Sa Phung Residents from Attack,” *Thairath Online*, June 9, 2014, <https://www.thairath.co.th/content/428379> (accessed September 27, 2017).

On November 11, 2014, the Loei Provincial Prosecutor filed a criminal complaint against Army Lieutenant Colonel Poramin Pomnak and retired Army Lieutenant General Porames Pomnak for their alleged involvement in the attack at the Loei Provincial Court. The court granted both men temporary release pending completion of the trial.⁷⁹

On May 31, 2016, the Loei Provincial Court convicted the two men for their involvement in attacks against Loei residents on May 15, 2014. They received sentences of 36 months' and 24 months' imprisonment, respectively, for violations of several sections of the Thailand Criminal Code and the Gun, Ammunition, Explosive Substance, Firework and Artificial Gun Weapon Act for causing bodily harm, depriving others of liberty, and the unnecessary use of a firearm in public.⁸⁰ The Court also ordered the payment of compensation to nine residents, ranging from 2,600 to 25,000 Thai Baht (about US\$80 to US\$750).⁸¹

On July 13, 2017, Thailand's Appeal Court upheld the conviction of the two military officers and increased their sentences to 60 months' and 40 months' imprisonment, respectively, and also confirmed that the two men must pay the residents the abovementioned compensation.⁸²

Although at least 150 unidentified men were allegedly involved in the May 15th attack, Lt. Col. Poramin Pomnak and Lt. Gen. Porames Pomnak were the only two individuals charged and convicted.⁸³

Death Threats

Loei residents and KRBKG members told Fortify Rights that they have received death threats that they suspect are linked to their involvement in protests against the mine.

KRBKG leaders Wiron Ruchichaiyawat and Surapun Rujichaiyawat, who are married, received a fake bomb on October 12, 2013. Wiron Ruchichaiyawat first noticed a suspicious paper carton box in front of their house early that morning. She told Fortify Rights: "I saw the box at 4 a.m. I saw a clock on the top of the box. I also looked inside and touched the box. If it was a real bomb, it could have exploded in front of me. I saw the clock ticking."⁸⁴

Wiron and her husband contacted the authorities. Surapun described the response. He said: "The EOD [Explosive Ordnance Disposal] officers came and surrounded my house to destroy the fake bomb. Nobody was held accountable for that incident."⁸⁵

Wiron added: "The officers said inside [the box], it was actually some rocks. Still, they used a water cannon to destroy the box. The officers said it was planted as a threat."⁸⁶

⁷⁹ See, *Loei Provincial Prosecutor and nine co-plaintiffs v. Army Lieutenant Colonel Poramin Pomnak*, Black Case No. Aor 5440/2557, Complaint (Court of First Instance), November 11, 2014. See, also, Fortify Rights trial-monitoring notes for Black Case No. Aor 5440/2557, Red Case No. Aor. 1983/2559 (unpublished), Loei Province, Thailand, May 20–June 2, 2016.

⁸⁰ The Loei Provincial Court convicted Army Lieutenant Colonel Poramin Pomnak of violating sections 296, 309(ii), 310(i), 358, 371, 376, and 391 in connection with Section 83 of the Thailand Criminal Code and articles 7, 8(2)(i), 72(iii), and 72(2)(ii) of the Gun, Ammunition, Explosive Substance, Firework and Artificial Gun Weapon Act, while the Court convicted retired Army Lieutenant General Porames Pomnak of violating sections 296, 309(ii), 310(i), 358, 371, 376, and 391 in connection with Section 84 of the Thailand Criminal Code and articles 7, 8(2)(i), 72(iii), and 72(2)(ii) of the Gun, Ammunition, Explosive Substance, Firework and Artificial Gun Weapon Act. Thailand Criminal Code, B.E. 2499 (1956). Gun, Ammunition, Explosive Substance, Firework and Artificial Gun Weapon Act, B.E. 2490 (1947).

⁸¹ See, *Pomnak*, Black Case No. Aor. 5440/2557, Red Case No. Aor. 1983/2559, p. 45–47.

⁸² See, *Loei Provincial Prosecutor and Nine Co-plaintiffs v. Army Lieutenant Colonel Poramin Pomnak and Lieutenant General Porames Pomnak*, Appeal Court Region IV, Black Case No. 510/2560, Red Case No. 1868/2560, Verdict (Appeals Court), July 13, 2017.

⁸³ *Ibid.*

⁸⁴ Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, April 4, 2017.

⁸⁵ Fortify Rights interview with Surapun Rujichaiyawat, Loei Province, Thailand, April 4, 2017.

⁸⁶ Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, April 4, 2017.

That same day, a similar box was found at one of the roadblocks erected by the residents.⁸⁷

Fortify Rights also received information about an attempt by a local politician’s driver to hire a hitman to target and assassinate Loei residents. One man approached by the driver said:

He [told me he] would pay a deposit of 150,000 Thai Baht (US\$4,500), and I would receive full payment when the job is finished. The hitman would get 300,000 Thai Baht (US\$9,000). The collaborator who identifies the targets would receive 150,000 Thai Baht (US\$4,500). The person who collects essential information will receive 100,000 Thai Baht (US\$3,000). He said, in total, the hit team would receive about 500,000 Thai Baht (US\$15,000) for finishing one target. The targets included six women and three men.⁸⁸

The man said that he had photos of the targets on his phone, but his nephew broke his phone. However, he recalled: “There was one photo of the house where [KRBKG members] normally gathered for meetings. Someone was already watching their moves.”

A KRBKG member, who was allegedly one of the targets, told Fortify Rights:

We could hardly sleep or eat. We are all humans. We are afraid of death. It was very difficult for the residents. We could not continue our daily lives. We were too frightened to tap rubber. We were living in fear and constant stress for a month. We could not go out to work.⁸⁹

Another woman rubber farmer told Fortify Rights that, as a result of the threat: “When the evening arrived, we did not go out of the house. We went to sleep at [a certain section of the village], where there were residents on guard to provide security checks.”⁹⁰

ARBITRARY DETENTION: “ATTITUDE ADJUSTMENT”

“The military told us that there were no such thing as rights.”

— KRBKG woman leader Pornthip Hongchai, March 22, 2016

According to eyewitness testimonies and documents obtained by Fortify Rights, the military subjected at least ten community leaders and KRBKG members to “attitude adjustment” for their involvement in opposing the Tungkum Ltd. gold mine.⁹¹

Since the military government took power in May 2014, Thai authorities began to summon human rights defenders and activists to report to specific places at specific times, usually to military bases, for what the NCPO refers to as “attitude adjustment.”⁹² This form of arbitrary detention can involve interrogation and incommunicado detention for up to seven days.⁹³ Failure to comply with

⁸⁷ Photos of fake bombs dated October 12, 2013, on file with Fortify Rights.

⁸⁸ Fortify Rights interview with [name and location withheld], April 2017.

⁸⁹ Fortify Rights interview with [name and location withheld], March 22, 2016.

⁹⁰ Fortify Rights interview with [name and location withheld], March 23, 2016.

⁹¹ Fortify Rights interview with Surapun Rujichaiyavat and Wiron Ruchichaiyawat, Loei Province, Thailand, April 3, 2017. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016. Fortify Rights interview with Phattraporn Kaengjampa, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Samai Phakmee and Wanlop Phuangpraiwan, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Banrawee Ramsiri and Montri Khamlai, Loei Province, Thailand, July 5, 2016. Fortify Rights interview with Dokmai Moonkongsri and Patcharin Bubparn, Loei Province, Thailand, July 4, 2016. Fortify Rights interview with Dao Nao-Suk, Loei Province, Thailand, July 5, 2016.

⁹² See, Martial Law Act B.E. 2457 (1984), Sec. 15(ii). Press briefing by Spokesperson of the NCPO Colonel Winthai Suwaree and Deputy Spokesperson of the NCPO Colonel Sirichan Nga-thong, September 15, 2015, cited in “NCPO Explained Four Criteria Inviting People for Attitude Adjustment [in Thai]” *Krungthp Turakij*, September 15, 2015, <http://www.bangkokbiznews.com/news/detail/665557>, (accessed on August 13, 2018). See also, “NCPO Warns ‘Pichai’ and ‘Keng’ Will Face Criminal Prosecution if Continue to Speak [in Thai]” *Post Today*, September 15, 2015, <https://www.posttoday.com/politic/news/388144>, (accessed on August 13, 2018).

⁹³ See, Martial Law Act, Sec. 15(ii). See also, U.N. Committee against Torture, *Concluding Observations on the initial report of Thailand*, U.N. Doc. CAT/C/THA/CO/1, June 20, 2014, para. 12.

the summons is considered a breach of a military order, subject to punishment of up to two years' imprisonment and/or a fine of up to 40,000 Thai Baht (US\$1,300).⁹⁴

Eight of the ten who are KRBKG leaders and Khao Luang Sub-District administrative council members were summoned for attitude adjustment after they signed a petition to Prime Minister General Prayut Chan-o-cha on July 10, 2014, opposing a military-backed provincial committee appointed to address problems related to the gold mine. On July 23 and 24, 2014, Colonel Saowarat Sawaengphol, Commander of Khao Luang Special Task Force and an officer under the NCPO, ordered these individuals to report to the Wang Sa Phung District Office.⁹⁵

Between July 23 and 27, 2014, the ten residents reported to the Wang Sa Phung District Office. Seven to eight officials, including the District Chief, the Senior Deputy District Chief, military officers, and police, photographed, filmed, and individually interrogated each resident.⁹⁶ Pornthip Hongchai, one of the KRBKG leaders summoned, described what happened. She said:

When we were summoned and called in one-by-one, we had to leave all our communication devices outside. We walked in without any belongings, and we sat in the middle [of the room] surrounded by government officers . . . They began asking me questions by telling me that what I did was violating the Martial Law . . . I cried because I was frustrated with the way we have been treated by the authorities. Why did they do this to us? . . . Finally, the military wrapped up and said if we refused to accept this tri-partied committee, it means we are defying the NCPO principles. The military officer told me to wait and see what would happen.⁹⁷

Patcharin Bubparn, a 38-year-old farmer, KRBKG member, and council member, reported a similar experience. She said: "They asked why I was a part of KRBKG. I told them I was a member of my community . . . The military told me in the session that by signing the petition, I was rejecting the NCPO's power."⁹⁸

Dao Nao-Suk, a rubber farmer and council member, told Fortify Rights: "The military told us next time we are summoned, it will be harsher . . . Both military and police took many photos of us and taped us."⁹⁹

Before being released, the authorities made the ten KRBKG members and administrative council members sign a document containing their testimony, but the authorities did not provide copies of the document or explain the purpose of the document.¹⁰⁰

⁹⁴ See, for example, NCPO, "Announcement No. 25/2557," May 23, 2014; NCPO, "Announcement No. 29/2557," May 24, 2014, stating, among other things, that "[f]ailure of those individuals named under the above-mentioned Orders to report themselves within the specified date and time is punishable by up to 2 years' imprisonment or a fine of up to 40,000 Thai baht [US\$1,300], or both."

⁹⁵ Fortify Rights interview with Dao Nao-Suk, Loei Province, Thailand, July 5, 2016. Fortify Rights interview with Patcharin Bubparn and Dokmai Moonkongsri, Loei Province, Thailand, July 4, 2016. Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016. See, also, Royal Thai Army, Khao Luang Special Task Force, "Summon Letter to Surapun Rujichaiyavat," Loei Province, Thailand, July 23, 2014; Royal Thai Army, Khao Luang Special Task Force, "Summon Letter to Pornthip Hongchai," Loei Province, Thailand, July 24, 2014; Royal Thai Army, Khao Luang Special Task Force, "Summon Letter to Phattraporn Kaengjampa," Loei Province, Thailand, July 24, 2014.

⁹⁶ Fortify Rights interview with Patcharin Bubparn, Loei Province, Thailand, July 4, 2016. Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016. Fortify Rights interview with Phattraporn Kaengjampa, Loei Province, Thailand, February 17, 2016.

⁹⁷ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

⁹⁸ Fortify Rights interview with Patcharin Bubparn, Loei Province, Thailand, July 4, 2016.

⁹⁹ Fortify Rights interview with Dao Nao-Suk, Loei Province, Thailand, July 5, 2016.

¹⁰⁰ Fortify Rights interview with Patcharin Bubparn and Dokmai Moonkongsri, Loei Province, Thailand, July 4, 2016. Fortify Rights interview with Dao Nao-Suk, Loei Province, Thailand, July 5, 2016. Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Pornthip Hongchai, Loei

The authorities summoned KRBKG leader Pornthip Hongchai for “attitude adjustment” three times for her involvement in legitimate activism. She told Fortify Rights:

I was summoned three times for “attitude adjustment.” Sometimes, I was summoned to meet the military at the temple. Another time, I was summoned to meet at the District Office with Surapun and other leaders. At the temple, I had many arguments with the military when they summoned us. The military told us that there were no such things as rights.¹⁰¹

In August 2014, the military withdrew from Na Nong Bong village and the surrounding areas.¹⁰²

RESTRICTIONS ON THE RIGHT TO FREEDOM OF EXPRESSION

KRBKG and environmental defenders in Loei have faced a variety of restrictions on their right to free expression, including through direct bans on particular means to free speech as well as through legal proceedings brought against KRBKG and environmental defenders in Loei for exercising their right to free speech.

For example, on August 26, 2014, four military officers from the Khao Luang Special Task Force confiscated Na Nong Bong village’s public announcement equipment and banned the use of public announcements to organize community rallies or events around environmental issues.¹⁰³ During the incident, one military officer was recorded as saying: “We will return your equipment, but we need to have a talk to share a common understanding first . . . It is inappropriate to make a public announcement calling for a rally and gathering of more than five persons. You have to comply with the order.”¹⁰⁴

The military ordered the chair of the Khao Luang Sub-District administrative council Samai Phakmee to remove the equipment after Wiron Rujichaiyawat and Pornthip Hongchai used the public announcement equipment to invite residents to a community march demanding environmental protections.¹⁰⁵ The military justified the verbal order under Section 11 of the 1914 Martial Law and NCPO Order No. 7/2557, which prohibits meetings or gatherings.

Surapun Rujichaiyawat, a leader of KRBKG, described the impact of the loss of the public announcement equipment. He said:

We have difficulties to distribute our information because the military banned us from using the village public announcement system. Before, we played our campaign songs to educate residents about the mining . . . The content of our songs talked about our struggle.¹⁰⁶

Unlawful and arbitrary legal proceedings have also infringed on the right to free speech for KRBKG members and environmental defenders in Loei Province. Between 2007 and 2017, Thai authorities and Tungkum Ltd. initiated six criminal and four civil defamation complaints against KRBKG

Province, Thailand, March 22, 2016. Fortify Rights interview with Phattraporn Kaengjumba, Loei Province, Thailand, February 17, 2016.

¹⁰¹ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

¹⁰² *Ibid.* Fortify Rights interview with Ranong Kongsae, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Patcharin Bubparn, Loei Province, Thailand, July 4, 2016. Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016.

¹⁰³ Fortify Rights interview with Surapun Rujichaiyawat, Loei Province, Thailand, April 4, 2017. He said, “Four military officers came to confiscate the speaker system. It was heavy. We did not go to take it back. We demanded that military bring the speaker system back to us. The military told us next time you should not make announcement about KRBKG activism.”

¹⁰⁴ Fortify Rights transcription of video recording between military officers and Samai Phakmee and other residents, August 26, 2014.

¹⁰⁵ Fortify Rights interview with Surapun Rujichaiyawat, Loei Province, Thailand, April 4, 2017.

¹⁰⁶ Fortify Rights interview with Surapun Rujichaiyawat, Loei Province, Thailand, February 17, 2016.

members and environmental defenders in Loei.¹⁰⁷ One of these complaints remains pending at the time of writing.¹⁰⁸

Criminal defamation under sections 326 and 328 of Thailand's Criminal Code is defined as imputing to another person "before a third person in any manner likely to impair [their] reputation . . . or to expose such other person to hatred or scorn."¹⁰⁹ Defamation committed under Section 326 carries a sentence of up to one-year imprisonment and/or a fine of up to 20,000 Thai Baht (US\$600).¹¹⁰ Section 328 provides for defamation committed by means of publication of a document or recording and carries a higher sentence of up to two years' imprisonment and a fine of up to 200,000 Thai Baht (US\$6,000).¹¹¹ Six of the complaints against KRBKG members and environmental defenders in Loei Province alleged violations under sections 326 and 328 of the Thailand Criminal Code.¹¹²

Two complaints also alleged violations under Article 14 of the 2007 Computer Crimes Act, which prohibits "input, into a computer system, forged or false computer data, in a manner likely to cause damage to another person or to the public" and carries a sentence of up to five years' imprisonment and/or a fine of up to 100,000 Thai Baht (US\$3,000).¹¹³

Thai authorities and Tungkum Ltd. brought these criminal defamation complaints against KRBKG members and environmental defenders in Loei in response to different types of protected speech. For example, six of the cases relate to legitimate comments given to the news media about alleged environmental impacts of the mine and the attacks on May 2014.¹¹⁴

¹⁰⁷ For criminal defamation complaints: *see, Tungkum Co. Ltd. v. Surapun Rujichaiyavat*, Phuket Provincial Court, Black Case No. 4471/2557, Complaint (Court of First Instance), August 15, 2014; *Tungkum Ltd. v. Pornthip Hongchai*, Phuket Provincial Court, Black Case No. 4472/2557, Complaint (Court of First Instance), August 15, 2014; *Tungkum Ltd. v. Surapun Rujichaiyavat*, Mae Sot Provincial Court, Black Case No. 1430/2558, Complaint, (Court of First Instance), June 10, 2015; Royal Thai Police, Testimony of Surapun Rujichaiyavat and Phattraporn Kaengjampa, Tak Province, Thailand, July 14, 2015; Ministry of Justice, Office of Juvenile Observation and Protection Office in Loei Province, "Invitation Letter to Parents of [name withheld] to Provide Testimonies," Letter No. Yor Thor 06048/2475, December 4, 2015; Royal Thai Police, Minburi Metropolitan Police, First Summon Order to [name withheld], December 14, 2015. For civil defamation complaints: *see, Tungkum Ltd. v. Samai Phakmee and 13 others*, Loei Provincial Court, Civil Case No. 859/2556, Complaint (Court of First Instance), December 13, 2013; *Tungkum Ltd. v. Surapun Rujichaiyavat and six others*, Loei Provincial Court, Civil Case No. 132/2557, Complaint (Court of First Instance), April 28, 2014; *Tungkum Ltd. v. Surapun Rujichaiyavat and five others*, Loei Provincial Court, Civil Case No. 974/2556, Complaint (Court of First Instance), December 13, 2013; *Tungkum Ltd. v. Surapun Rujichaiyavat and five others*, Loei Provincial Court, Black Civil Case No. 574/2558, Complaint (Court of First Instance), May 29, 2015.

¹⁰⁸ *See, Royal Thai Police, Minburi Metropolitan Police, "First Summon Order to [name withheld]," December 14, 2015; Permanent Mission of Thailand to the United Nations and Other International Organizations in Geneva, "Letter to the Special Procedures of the UN Human Rights Council," Letter No. 52101/553, October 3, 2017, para. 3.*

¹⁰⁹ Thailand Criminal Code, Sec. 326.

¹¹⁰ *Id.* at Sec. 326.

¹¹¹ *Id.* at Sec. 328

¹¹² *See, Rujichaiyavat*, Black Case No. 4471/2557; *Hongchai*, Black Case No. 4472/2557; *Rujichaiyavat*, Black Case No. 1430/2558; Royal Thai Police, Testimony of Surapun Rujichaiyavat and Phattraporn Kaengjampa, Tak Province, Thailand, July 14, 2015; Ministry of Justice, "Invitation Letter to Parents of [name withheld] to Provide Testimonies,"; Royal Thai Police, Minburi Metropolitan Police, "First Summon Order to [name withheld]," December 14, 2015.

¹¹³ Computer Crimes Act, B.E. 2550 (2007), Article 14(1). Note that the Computer Crimes Act was amended in 2017; however, the lawsuits brought against environmental defenders in Loei were brought under the 2007 Act. *See, Rujichaiyavat*, Black Case No. 1430/2558; Royal Thai Police, Testimony of Surapun Rujichaiyavat and Phattraporn Kaengjampa, Tak Province, Thailand, July 14, 2015.

¹¹⁴ *See, Rujichaiyavat*, Black Case No. 4471/2557; *Hongchai*, Black Case No. 4472/2557; *Rujichaiyavat*, Black Case No. 1430/2558; Royal Thai Police, Testimony of Surapun Rujichaiyavat and Phattraporn Kaengjampa, Tak Province, Thailand, July 14, 2015; Ministry of Justice, "Invitation Letter to Parents of [name withheld] to Provide Testimonies,"; Royal Thai Police, Minburi Metropolitan Police, "First Summon Order to [name withheld]," December 14, 2015.

In November 2015, Tungcum Ltd. filed a criminal defamation complaint at the Minburi Metropolitan Police in Bangkok against a 15-year-old schoolgirl.¹¹⁵ The charges related to her narration in a news clip by the *Thai Public Broadcasting Service (Thai PBS)* about an environmental youth camp in Wang Sa Pung District. In the clip, the girl alleged six villages in her area “have been environmentally affected from the gold mining industry.”¹¹⁶ She went on to say that “the River Huay has been contaminated” and “residents cannot use it for drinking or household consumption.”¹¹⁷ *Thai PBS* broadcasted the program on national television and the internet on September 1, 2015.¹¹⁸

With permission from her parents and with her own consent, Fortify Rights interviewed the girl about the complaint. She said:

The content I reported was about the River Huay that runs through my village, which was no longer safe to use or drink because it was contaminated. I did not say a company name, but I mentioned that there are several industrial operations in Loei . . . The news I narrated was on *Thai PBS* on the Citizen Journalist program. I was speaking about my feelings for my hometown; how things have changed from the past and why.¹¹⁹

The complaint at the Minburi Metropolitan Police Station in Bangkok is still pending.¹²⁰

Tungcum Ltd. similarly filed criminal defamation complaints against two KRBKG members for interviews provided to Thai-language media outlets.¹²¹ One complaint, filed against Surapun Rujichaiyavat, related to an interview that aired on *TNN24 Channel* on May 17, 2014.¹²² In that interview, Surapun discussed the May 15, 2014 attack on Na Nong Bong village, saying: “Early morning today, the mining employees burnt the shacks and tents at the gold mining site in order to place the blame on residents.”¹²³

The other complaint, filed on August 15, 2014, related to an interview by Pornthip Hongchai that aired on *The Nation TV Channel* on May 16, 2014.¹²⁴ In the interview, Pornthip said:

¹¹⁵ Tungcum Ltd. also filed a complaint with the Loei Office of Juvenile Observation and Protection, requesting to file a separate complaint at the Central Juvenile and Family Court in Bangkok; however, the Office of Juvenile Observation and Protection refused to accept the complaint. See, Ministry of Justice, Invitation Letter to Parents of [name withheld] to Provide Testimonies”; Royal Thai Police, Minburi Metropolitan Police, “First Summon Order to [name withheld]”; December 14, 2015.

¹¹⁶ See, Thai Public Broadcasting Service (*Thai PBS*), “Citizen Reporter,” YouTube, December 15, 2015, <https://www.youtube.com/watch?v=U2lGdNpteHE> (accessed September 7, 2018). See also, Fortify Rights, “Thailand: Drop Defamation Charges against Schoolgirl, Journalists, Residents,” news release, February 12, 2016, <http://www.fortifyrights.org/publication-20160212.html> (accessed January 24, 2017).

¹¹⁷ *Ibid.*

¹¹⁸ Fortify Rights interview with [name withheld], Loei Province, Thailand, July 27, 2016.

¹¹⁹ *Ibid.*

¹²⁰ See, Ministry of Justice, Loei Provincial Office of Juvenile Observation and Protection, Letter No. Yor Thor 06048/1163, June 12, 2016; Permanent Mission of Thailand to the U.N., “Letter to the Special Procedures of the UN Human Rights Council!,” Letter No. 52101/553, para. 3.

¹²¹ In addition to the criminal penalties, Tungcum Ltd. also demanded that both defendants publish the judgment in five main daily newspapers in Thailand for 30 days. *Rujichaiyavat*, Black Case No. 4471/2557; *Hongchai*, Black Case No. 4472/2557.

¹²² The interview aired online on May 17, 2014. Surapun Rujichaiyavat received a court summon on October 29, 2014. See, *Rujichaiyavat*, Black Case No. 4471/2557.

¹²³ Fortify Rights did not obtain further information on the burning of structures at the Tungcum Ltd. mine site. However, the charges against Surapun related to claims he made that the company set fire to the structures in order to frame residents. *Ibid.*

¹²⁴ Pornthip Hongchai received a court summons on September 13, 2014. See, *Hongchai*, Black Case No. 4472/2557. See also, Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

At first, the impacts that we have from here is the contamination in river sources, crab, fish, and food, and then later in our body. This has prompted us to stand up and be active. We realize that we cannot let them dig the gold or produce gold in our community anymore, because it has adversely affected us.¹²⁵

On December 4, 2014, following a negotiation mediated by the Governor of Loei between Tungcum Ltd. and KRBKG leaders, Tungcum Ltd. agreed to withdraw these two complaints against Surapun Rujichaiyavat and Pornthip Hongchai.¹²⁶

Members of the media have also faced criminal defamation complaints in connection with their legitimate activities in Loei Province. For example, on November 12, 2015, Tungcum Ltd. brought suit against *Thai PBS* and four *Thai PBS* journalists for the September 1, 2015 report narrated by the 15-year-old schoolgirl on the environmental youth camp.¹²⁷ Although the Criminal Court in Bangkok dismissed the complaints on November 16, 2016, the Appeal Court overturned the decision on March 20, 2018.¹²⁸ As of the time of writing, the case is under a mediation process.¹²⁹

Tungcum Ltd. not only filed criminal defamation complaints against members of KRBKG, environmental defenders in Loei, and members of the media, but also former employees involved in speaking out on alleged labor violations.¹³⁰ On June 22, 2015, Tungcum Ltd. filed a criminal

¹²⁵ See, *Hongchai*, Black Case No.4472/2557.

¹²⁶ The Provincial Prosecutor Wachira Phromthet, a military officer Thaloengsak Poonsuwan, and a provincial official in charge of the Department of Primary Industry and Mining Suwan Phratchayadamrong witnessed the negotiation process. Under the terms of the Memorandum of Understanding signed by Tungcum Ltd. and KRBKG members, in return for dropping eight pending complaints against KRBKG members, including the two criminal defamation complaints against Surapun Rujichaiyavat and Pornthip Hongchai, KRBKG agreed to allow Tungcum Ltd. to transport the remaining ore from the mine and, with the assistance of the government, destroy the remaining blockades. The company agreed to abide by government orders and regulations and refrain from depriving residents of their legal rights and KRBKG agreed not to obstruct the legal operations of the company. If any party violated the conditions of the MoU, the other party could demand compensation. See, Memorandum of Understanding between Tungcum Ltd. and KRBKG, December 4, 2014.

¹²⁷ On November 12, 2015, Tungcum Ltd. filed criminal defamation complaints against *Thai PBS* and *Thai PBS* journalist Ms. Wirada Saelim; then-Director-General of *Thai PBS* Mr. Somchai Suwanbun; Director of the News Department at *Thai PBS* Mr. Korkhet Chantalertluk; and Director of the Television and Radio Department at *Thai PBS* Mr. Yothin Sitthibodeekul. The complaint alleged violations under sections 326 and 328 of the Thailand Criminal Code, Article 4 of the 1941 Printing Act, and articles 14 and 16 of the 2007 Computer Crimes Act. In addition to the criminal penalties, Tungcum Ltd. demanded 50 million Thai Baht (US\$1.5 million) in compensation as well as the revocation of *Thai PBS*'s operating license for five years. See, *Tungcum Ltd. v. Wirada Saelim and four others*, Criminal Court, Criminal Case No. 3756/2558, Complaint (Court of First Instance), November 12, 2015.

¹²⁸ In its decision, the Court found that *Thai PBS* and its journalists acted professionally and relied on credible sources, including the findings from government agencies and residents, and the complaint therefore lacked merit. Citing Section 329(3) of the Thailand Criminal Code, which provides that opinions or statements made in good faith and subject to public interest are not defamatory, the Court also noted that natural resources and the environment are in the public's interest, particularly with regard to their impacts on peoples' lives and livelihoods. See *Tungcum Ltd. v. Wirada Saelim and four others*, Criminal Court, Black Case No. Aor 3756/2558, Red Case No. Aor 3680/2559, Verdict (Court of First Instance), November 16, 2016, p. 11-13. See also, Fortify Rights, "Thailand: Court Dismisses Criminal Defamation Case against *Thai PBS* and Journalists," news release, November 17, 2016, <http://www.fortifyrights.org/publication-20161117.html> (accessed on August 12, 2018); Fortify Rights, "Thailand: Uphold Decision to Dismiss Criminal Defamation Complaint against *Thai PBS* and Journalists," news release, March 19, 2018, <http://www.fortifyrights.org/publication-20180319.html> (accessed on August 12, 2018).

¹²⁹ See, *Saelim*, Black Case No. Aor 3756/2558, Red Case No. 3680/2559, Court Procedure Report.

¹³⁰ Tungcum Ltd. allegedly dismissed employees from their jobs without paying owed wages or compensation on September 30, 2014. After the former employees submitted complaints, the Loei Provincial Office of the Department of Welfare and Labor Protection ordered Tungcum Ltd. to pay outstanding wages and compensation owed to the employees. On March 24, 2015, the Labor Court Region IV also found that Tungcum Ltd. unfairly dismissed a former employee and ordered the company to pay outstanding salaries and compensation to the employee. When the company failed to comply, a group of former employees submitted a petition to the Loei Provincial Governor on April 30, 2015, requesting the authorities to enforce the orders. Two media outlets—*Mati Loei* and *Thairath Online*—published articles

defamation complaint at the Mae Sot Provincial Court against a former employee for giving an interview to *Thairath Online* accusing Tungcum Ltd. of failure to pay wages and compensation to its employees.¹³¹ This same employee along with another former employee faced a second complaint filed by Tungcum Ltd. on September 16, 2015 at the Phuket Provincial Court for giving interviews to Thai language daily *Mati Loei* in which they accused Tungcum Ltd. failed to pay wages and compensation to its employees.¹³²

Both the Phuket Provincial Court and the Mae Sot Provincial Court reportedly dismissed the cases against the two former employees.¹³³

KRBKG members and environmental defenders also faced criminal defamation complaints for posts on social media. On June 10, 2015, Tungcum Ltd. filed a criminal defamation complaint against Surapun Rujichaiyavat at Mae Sot Provincial Court for allegedly posting a petition on Facebook demanding an investigation into the legality of the mining concession and ore transportation from the mine site.¹³⁴ On March 10, 2016, Tungcum Ltd. withdrew the complaint following a court meditation session.¹³⁵

On December 26, 2014, Tungcum Ltd. filed two similar criminal defamation complaints with the Mae Sot District Police against KRBKG leaders Surapun Rujichaiyavat and Phattraporn Kaengjumba.¹³⁶ The complaint was related to a Facebook post of a letter that Surapun Rujichaiyavat and Phattraporn Kaengjumba wrote to the Loei Provincial Governor asking the Governor to investigate Tungcum Ltd. mining practices.¹³⁷

In discussing the complaint, Surapun Rujichaiyavat told Fortify Rights:

The letter for which the company accused me of defamation was posted online by an unknown user. The letter we submitted to the authorities requesting them to investigate the transportation of the ore from the mine was sent only to the government authorities, including the military officers. I don't know how it appeared on Facebook.¹³⁸

on the situation and included comments from former employees that resulted in the complaints from Tungcum Ltd. See, Ministry of Labour, Loei Provincial Office of the Department of Welfare and Labour Protection, "Labour Inspector Order No. 1/2558, 117 Employees v. Tungcum Ltd.," October 17, 2014, p. 3; Ministry of Labour, Loei Provincial Office of the Department of Welfare and Labour Protection, "Labour Inspector Order No. 2/2557, 210 Employees v. Tungcum Ltd.," July 25, 2014; and Ministry of Labour, Loei Provincial Office of the Department of Welfare and Labour Protection, "Labour Inspector Order No. 1/2558, 117 Employees v. Tungcum Ltd.," October 17, 2014. See, *[name withheld] v Tungcum Ltd.*, Labour Court Region IV, Labour Case No. 240/2557, Verdict (Court of First Instance), March 24, 2015. See, *Tungcum Ltd. v two individuals [names withheld]*, Phuket Provincial Court, Criminal Case Black Case No. 7009/2558, Complaint (Court of First Instance), September 16, 2015. See also, "Employee of Gold Mine Petition to be Paid Their Salaries of More Than 3 Million Baht [in Thai]," *Thairath Online*, May 1, 2015, <https://www.thairath.co.th/content/496177> (accessed on August 12, 2018). See, *Tungcum Ltd. v. [name withheld]*, Mae Sot Provincial Court, Black Case No. 1543/2558, Complaint (Court of First Instance), June 22, 2015, p. 2 and 3.

¹³¹ The complaint alleged violations under Section 326 of the Thailand Criminal Code and Article 14(1) of the 2007 Computer Crimes Act. See, *[name withheld]*, Black Case No. 1543/2558.

¹³² The complaint alleged violations under sections 326 and 328 of the Thailand Criminal Code and Article 14 of the 2007 Computer Crimes Act. See, *[names withheld]*, Criminal Case Black Case No. 7009/2558.

¹³³ Fortify Rights interview with [name and location withheld], March 24, 2016.

¹³⁴ In the complaint against Surapun Rujichaiyavat, Tungcum Ltd. alleged violations under Section 326 of the Thailand Criminal Code and Article 14(1) of the 2007 Computer Crimes Act. See, *Rujichaiyavat*, Black Case No. 1430/2558.

¹³⁵ See, *Tungcum Ltd. v. Surapun Rujichaiyavat*, Mae Sot Provincial Court, Black Case No. 1430/2558, Court Procedure Report (Court of First Instance), March 10, 2016.

¹³⁶ Tungcum Ltd. alleged violations under Section 328 of the Thailand Criminal Code. See, Royal Thai Police, Testimony of Surapun Rujichaiyavat and Phattraporn Kaengjumba, Tak Province, Thailand, July 14, 2015.

¹³⁷ *Ibid.*

¹³⁸ Fortify Rights interview with Surapun Rujichaiyavat, Tak Province, Thailand, March 9, 2016.

On October 15, 2015, the Mae Sot Provincial Prosecutor declined to proceed with the complaint on the basis that the letter was “a legitimate expression of opinion in good faith . . . which was protected under Section 329 of the Thailand Criminal Code” and that there was not enough evidence to identify who posted the letter on Facebook.¹³⁹

KRBKG members and environmental defenders in Loei Province have also faced civil defamation charges for engaging in protected speech and peaceful assembly. Civil defamation complaints may be brought under sections 420 to 437 of Thailand’s Civil and Commercial Code.¹⁴⁰ Since 2007, Tungcum Ltd. has initiated four civil defamation complaints against KRBKG members and environmental defenders, seeking damages totaling 320 million Thai Baht (US\$9.8 million) in compensation from residents for allegedly damaging the company’s business and reputation.¹⁴¹

Three of these civil defamation lawsuits were related to trespassing charges and the erection of roadblocks. The sole civil defamation lawsuit unrelated to other criminal defamation cases concerns signs posted at the entrance gate of Na Nong Bong village and along the local road, protesting the mine and calling for rehabilitation of the environment.¹⁴² On May 29, 2015, Tungcum Ltd. filed a complaint against six residents, seeking 50 million Thai Baht (US\$1.5 million) in damages.¹⁴³ KRBKG leader and administrative council member Samai Phakmee, who was one of the six residents named in the complaint, explained how the signs came about. He said: “It was a proposal from residents who wanted to express opposition to the mine. We had a vote and agreed to build an entrance gate for the village with the message, ‘This village does not want mining.’ This was our collective decision.”¹⁴⁴

On March 30, 2016, the Loei Provincial Court ruled against Tungcum Ltd., finding:

Villagers have exercised their right to complain their grievances to relevant government agencies to solve problems within their community. It is a form of expression of their opinion with honesty; therefore, it is a legitimate exercise of their rights and it does not cause damage to the plaintiff.¹⁴⁵

On February 14, 2017, the Appeal Court Region IV upheld the lower court decision, saying, “[R]ights to freedom of opinion in good faith and peaceful manner are guaranteed under the law.”¹⁴⁶ In addition, the Court ordered the company to pay 300,000 Thai Baht (US\$9,000) to the six defendants for their lawyer’s fee.¹⁴⁷

¹³⁹ See, Mae Sot Provincial Prosecutor, “Letter of Non-Prosecution Order to Mae Sot District Police,” Letter No. Aor Sor 0042(Mae Sot)/3934, October 15, 2015.

¹⁴⁰ See, Thailand Civil and Commercial Code, B.E. 2535 (1992), secs. 420–437.

¹⁴¹ See, *Phakmee*, Civil Case No. 859/2556; *Rujichaiyavat*, Civil Case No. 974/2556; *Tungcum Co. Ltd. v. Surapun Rujichaiyavat and six others*, Loei Provincial Court, Criminal Case No. 4542/2556, Complaint (Court of First Instance), October 22, 2013; *Rujichaiyavat*, Civil Case No. 132/2557.

¹⁴² The complaint alleged violations under Thailand Civil and Commercial Code. See, *Rujichaiyavat*, Black Civil Case No. 574/2558, Complaint.

¹⁴³ *Ibid.*

¹⁴⁴ Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016.

¹⁴⁵ See, *Tungcum Ltd. v. Surapun Rujichaiyavat and five other defendants*, Loei Provincial Court, Black Civil Case No. 574/2558, Red Civil Case No. 261/2559, Verdict (Court of First Instance), March 30, 2016, p. 10–14.

¹⁴⁶ See, *Tungcum Ltd. v. Surapun Rujichaiyavat and five other defendants*, Appeal Court Region 4, Black Case No. 600/2559, Red Case No. 401/2560, Verdict (Appeals Court), February 14, 2017, p. 15–16.

¹⁴⁷ *Ibid.*

Impacts of Judicial Harassment

Several residents in Loei Province who were subject to legal proceedings told Fortify Rights how these proceedings pose financial and livelihood strains. For example, Mon Khunna, a 39-year-old KRBKG member who has faced multiple lawsuits, said: “When I have to go to court, I cannot work. Normally, I will work on my rubber farm or sell lottery tickets to earn money, but I cannot work if I have to attend court hearings. Every time there is a court hearing, we have to cover meals and lawyers’ accommodations.”¹⁴⁸

Challenging these lawsuits is even more difficult when they are filed in jurisdictions outside of Loei Province, which is common in cases brought by Tungcum Ltd. It appears to be a deliberate tactic to frustrate defendants. Surapun Rujichaiyavat was required to travel an estimated 230 miles from Loei Province to Mae Sot in Tak Province to defend himself in a criminal defamation case brought by Tungcum Ltd. He described to Fortify Rights the added stress of travel, saying:

This is not fun to travel all the way to Mae Sot, and I have to bring my wife and my child along. I am stressed because I am the defendant, and I also have to take a long journey. I have to stay overnight here. The expenses I have to cover are high, and I don’t have enough time to work on my farmland. When I have to face trial at the court in Mae Sot, the question is why? Mae Sot and Loei are two towns on different sides of the border.¹⁴⁹

Pornthip Hongchai, who faced charges in Phuket—located 860 miles from Loei Province— similarly told Fortify Rights:

We traveled from Loei to Bangkok by bus, then boarded the flight from Bangkok to Phuket. On the way back, we boarded the flight from Phuket to Bangkok and then took the bus from Bangkok to Loei. It was very difficult, and we suffered. If we did not have lawyers to assist us, it would have been extremely difficult. We did not have money, and we could not afford the ticket. It was expensive as Phuket is a tourist destination. We had to stay overnight in Phuket, because we had to meet with the lawyers to prepare for the case.¹⁵⁰

One former employee of Tungcum Ltd., who also faced charges in Mae Sot, said: “This practice [of bringing lawsuits in other provinces] is intended to cause more obstacles and difficulties to us so that we decide to drop our case.”¹⁵¹

In some cases, the company uses pending lawsuits for leverage during negotiations with KRBKG, as Mon Khunna observed, “I was sued for 50 million [Thai] Baht (US\$1.6 million) for my involvement in erecting the blockades, which [Tungcum Ltd.] dropped in exchange for ore transportation.”¹⁵²

¹⁴⁸ Fortify Rights interview with Mon Khunna, Loei Province, Thailand, February 17, 2016.

¹⁴⁹ Fortify Rights interview with Surapun Rujichaiyavat, Tak Province, Thailand, March 9, 2016.

¹⁵⁰ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

¹⁵¹ Fortify Rights interview with [name and location withheld], March 24, 2016.

¹⁵² Fortify Rights interview with Mon Khunna, Loei Province, Thailand, February 17, 2016.

RESTRICTIONS ON THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Thai authorities and Tungcum Ltd. have also used unlawful and arbitrary legal proceedings to restrict protesters' rights in Loei, particularly the right to peaceful assembly. Between 2007 and 2017, Thai authorities and Tungcum Ltd. initiated seven legal proceedings against KRBKG members and environmental defenders in Loei for their involvement in peaceful assembly activities.¹⁵³ Two of these complaints are pending at the time of writing.¹⁵⁴

For example, on July 25, 2017, the Loei Provincial Prosecutor charged seven KRBKG members for their involvement in a peaceful sit-in protest at the Khao Luang Sub-District Administrative Council Office in Loei Province.¹⁵⁵ On November 16, 2016, more than 200 residents from Na Nong Bong village gathered at the office to oppose a request by Tungcum Ltd. to use land in the area for its mining operations.¹⁵⁶ The protesters also called for the administrative council to involve them in the decision-making process.¹⁵⁷ The protesters held banners and sang songs about their environmental concerns and the challenges faced by their community.¹⁵⁸

Pornthip Hongchai told Fortify Rights: "On that day, there were around 50 officers including police, ISOC [Internal Security Operations Command] intelligence, volunteer defense corps, and ten military officers. Some wore official uniforms, some were in plain-clothes."¹⁵⁹ Suphat Khunna, a 45-year-old woman who took part in the protest, also reported seeing a representative of Tungcum Ltd. photographing her and others involved in the protest. She went on to say: "I didn't expect a criminal lawsuit against me. This lawsuit was brought to make all the residents feel afraid to oppose the mining operations. It causes worry and concern."¹⁶⁰

The administrative council ultimately called off the meeting due to the protest.¹⁶¹ However, the following month, Police Captain Ananta Saengthopo of Wang Sa Phung District Police Station informed at least two women involved in the protest that they were under investigation for their activities during the protest.¹⁶² The police captain reportedly offered to drop the investigation if the women paid a fine of not more than 500 Thai Baht (US\$15) each.¹⁶³ Both women refused to pay the fine.¹⁶⁴

¹⁵³ See, *Tungcum Ltd. v. Surapun Rujichaiyavat and six others*, Loei Provincial Court, Criminal Case No. 4217/2556, Complaint (Court of First Instance), September 27, 2013; *Rujichaiyavat*, Criminal Case No. 4542/2556; *Tungcum Co. Ltd. v. Surapun Rujichaiyavat and six others*, Loei Provincial Court, Criminal Case No. 615/2557, Complaint (Court of First Instance), February 17, 2014; *Loei Provincial Prosecutor v. Surapun Rujichaiyavat and one other*, Loei Provincial Court, Criminal Case, Black Case No. 1905/2559, Complaint (Court of First Instance), May 24, 2016; *Loei Provincial Prosecutor v. Samai Phakmee and 21 others*, Loei Provincial Court, Criminal Case No. 2068/2560, Complaint (Court of First Instance), May 18, 2017; *Loei Provincial Prosecutor v. Pornthip Hongchai and five others*, Loei Provincial Court, Black Case No. 1974/2560, Complaint (Court of First Instance), May 11, 2017; *Loei Provincial Prosecutor v. Pornthip Hongchai and six others*, Loei Provincial Court, Black Case No. 2858/2560, Complaint (Court of First Instance), July 25, 2017; Wang Sa Phung District Police Station, "First Summon Order to Pornthip Hongchai, Ranong Kongsae, Mon Khunna, Wannisa Sutthi, Wiron Ruchichaiyavat, and Phattraporn Kaengjampa," December 25, 2016.

¹⁵⁴ See, *Hongchai*, Black Case No. 2858/2560, Complaint; *Hongchai*, Black Case No. 1974/2560; Wang Sa Phung District Police Station, "First Summon Order to Pornthip Hongchai, Ranong Kongsae, Mon Khunna, Wannisa Sutthi, Wiron Ruchichaiyavat, and Phattraporn Kaengjampa, December 25, 2016.

¹⁵⁵ See, *Hongchai*, Black Case No. 2858/2560, Complaint.

¹⁵⁶ Fortify Rights interview with Boonraeng Srithong, Loei Province, Thailand, April 2, 2017.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.* Fortify Rights interview with Lamplearn Ruengrith, Loei Province, Thailand, February 2, 2017.

¹⁵⁹ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, April 5, 2017.

¹⁶⁰ Fortify Rights interview with Suphat Khunna, Loei Province, Thailand, April 4, 2017.

¹⁶¹ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, April 5, 2017. Fortify Rights interview with Suphat Khunna, Loei Province, Thailand, April 4, 2017.

¹⁶² *Ibid.*

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

On March 8, 2017, the Wang Sa Pung District police charged Pornthip Hongchai (age 46), Wiron Ruchichaiyawat (age 46), Ranong Kongsanen (age 55), Mon Khunna (age 39), Suphat Khunna (age 45), Boonraeng Srithong (age 51), and Lumplearn Ruengrith (age 56) for allegedly violating Section 309 of Thailand’s Criminal Code.¹⁶⁵ Section 309 prohibits “compelling another person to do or not do any act by putting them in fear of injury to life, body, liberty, reputation or property . . . ” and carries a sentence of up to five years’ imprisonment and/or a fine of up to 10,000 Thai Baht (US\$300).¹⁶⁶

The authorities also charged Pornthip Hongchai for allegedly violating Article 10 of the 2015 Public Assembly Act for failing to notify the authorities of the gathering at least 24 hours before its commencement, which carries a fine of up to 10,000 Thai Baht (US\$300).¹⁶⁷ On June 13, 2017, the police added Article 8 of the 2015 Public Assembly Act to the charges against the seven women.¹⁶⁸ Article 8 of the Act prohibits holding a public gathering that obstructs entrances of government offices and carries a sentence of six months’ imprisonment and/or a fine of up to 10,000 Thai Baht (US\$300).¹⁶⁹

On April 19, 2018, the Loei Provincial Court acquitted the seven KRBKG members of all criminal charges, including alleged violations of the 2015 Public Assembly Act.¹⁷⁰ The court ruled that the seven women “have exercised legitimate rights to express [their] opinion which is protected under Thailand’s Constitution.”¹⁷¹ The court also held that the gathering was lawful because residents were “invited by the local administrative council to participate in the meeting.”¹⁷² At the time of writing, the case is pending before the Appeal Court.¹⁷³

At a sit-in protest at the Khao Luang Sub-District Administrative Council Office on February 15, 2016, the authorities threatened the protesters with arrest if they did not disperse. During this protest, at least 100 Loei residents gathered at the administrative office in the evening to protest a closed-door meeting scheduled to take place the next day between the administrative council and Tungkum Ltd.¹⁷⁴ During the meeting, the administrative council was expected to determine Tungkum Ltd.’s application for mining in Loei Province.¹⁷⁵

According to Police Colonel Sujin Nawaruen, commander of the Wang Sa Phung District Police Station, “We deployed at least 150 crowd-control police officers, 50 Volunteer Defense Corps, and 40 military police officials.”¹⁷⁶ Police Colonel Sujin Nawaruen told Fortify Rights that the police “did not have a plan to use force to disperse residents,” but rather that “police officers were deployed to guard the entrance and exit gates of the [administrative office] compound.”¹⁷⁷ However, environmental defenders who participated in the sit-in protest said that the police threatened the protesters with arrest and obtained a court order to disperse the protesters. KRBKG leader Wiron Ruchichaiyawat said:

¹⁶⁵ See, Royal Thai Police, Wang Sa Phung District Police, Testimonies of Pornthip Hongchai, Wiron Ruchichaiyawat, Mon Khunna, Ranong Kongsanen, Suphat Khunna, Lumplearn Ruengrith, and Boonraeng Srithong, Loei Province, Thailand, December 18, 2016. Thailand Criminal Code, Sec. 309.

¹⁶⁶ Thailand Criminal Code, Sec. 309.

¹⁶⁷ See, Royal Thai Police, Wang Sa Phung District Police, Testimony of Pornthip Hongchai, Loei Province, Thailand, December 18, 2016. Public Assembly Act, B.E. 2558 (2015), Art. 10.

¹⁶⁸ See, Fortify Rights trial-monitoring notes for Criminal Case No. 2048/2560 (unpublished), Loei Province, Thailand, July 24, 2017. Public Assembly Act, Art. 8.

¹⁶⁹ Public Assembly Act, arts. 8 and 27.

¹⁷⁰ See, *Loei Provincial Prosecutor v. Pornthip Hongchai*, Black Case No. 2858/2560, Red Case No. 1711/2561, Verdict (Court of First Instance), April 19, 2018, p. 1-14.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ See, *Hongchai*, Black Case No. 2858/2560, Red Case No. 1711/2561, Verdict (Appeals Court).

¹⁷⁴ Fortify Rights interview with Ranong Kongsanen, Mon Khunna, Wiron Ruchichaiyawat, Dokmai Moonkongsri, and Phattraporn Kaengjampa, Loei Province, Thailand, February 17, 2016.

¹⁷⁵ *Ibid.*

¹⁷⁶ Fortify Rights interview with Police Colonel Sujin Nawaruen, Loei Province, Thailand, February 18, 2016.

¹⁷⁷ *Ibid.*

The Police Commander of Wang Sa Phung Police announced publicly to the crowd gathered outside the compound in the morning of February 16 that if the residents are still stubborn and insist to block the entrance, ‘officers will issue arrest warrants against you. We have already photographed you . . . We will give you 30 minutes to vacate this area and make way for the members of the local council to attend the meeting.’ . . . Some residents were afraid and moved away. Some residents who were not afraid said, ‘You can arrest me and all other residents here.’¹⁷⁸

Ranong Kongsae, a leader of KRBKG, explained the peaceful nature of the sit-in, saying: “While we were sitting in the compound, we were singing and clapping our hands to cheer up our spirit. We did not carry any banners. We only sang a song to tell the story of what happened in our villages, to tell government officers what we are fighting for.”¹⁷⁹

Later that afternoon, the police obtained a court order from the Loei Provincial Court requiring the protesters to disperse by 3 p.m.¹⁸⁰ However, by the time the court issued the order, the protesters had already voluntarily left the compound.¹⁸¹

In addition, environmental defenders involved in peaceful assemblies in Loei faced trespassing complaints. Under Thai law, trespassing is defined as “entering into the immovable property belonging to another person so as to take possession . . . or entering into such property to do any act disturbing the peaceful possession.”¹⁸² Trespassing carries a sentence of up to one year imprisonment and/or a fine of up to 20,000 Thai Baht (US\$600).¹⁸³ Higher sentences of up to five years’ imprisonment and/or a fine of up to 100,000 Thai Baht (US\$3,000) are provided for under Section 365 of the Thailand Criminal Code when an act of trespassing is committed by violence or threat or with arms or by two or more persons or during nighttime.¹⁸⁴ Five of the complaints against KRBKG members and environmental defenders in Loei Province allege trespass.¹⁸⁵

In one case, Tungcum Ltd. filed a complaint against Surapun Rujichaiyavat, Pornthip Hongchai, and others in May 2015 for allegedly erecting green flags at the mine site and using lime powder to write “Close the Mine and Rehabilitate” on the ground surrounding the open-pit mine on May 14, 2015.¹⁸⁶ On November 25, 2016, the Loei Provincial Court acquitted Surapun Rujichaiyavat and Pornthip Hongchai, finding insufficient evidence that the mining company possessed the land at the time of the incident.¹⁸⁷

¹⁷⁸ Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, February 17, 2016.

¹⁷⁹ Fortify Rights interview with Ranong Kongsae, Loei Province, Thailand, February 17, 2016.

¹⁸⁰ Loei Provincial Court, Order Ror Cho No. 1/2559, February 16, 2016.

¹⁸¹ Fortify Rights interview with Police Colonel Sujin Nawaruen, Loei Province, Thailand, February 18, 2016.

¹⁸² Thailand Criminal Code, Sec. 362.

¹⁸³ *Ibid.*

¹⁸⁴ *Id.* at Sec. 365.

¹⁸⁵ See, *Rujichaiyavat*, Criminal Case No. 615/2557; *Rujichaiyavat*, Criminal Case No. 4542/2556, Complaint; *Rujichaiyavat*, Criminal Case No. 4217/2556; *Rujichaiyavat*, Black Case No. 1905/2559, Complaint; Royal Thai Police, “Suspect Summon Order Concerning a Criminal Complaint Between Tungcum Ltd. v. Samai Phakmee and a Criminal Complaint Between Tungcum Ltd. v. [name withheld],” Loei Province, Thailand, November 5, 2016.

¹⁸⁶ See, *Rujichaiyavat*, Criminal Case, Black Case No. 1905/2559, Complaint.

¹⁸⁷ The Thai Mining Act requires that the company obtain permission from the Department of Forestry and the Agricultural Land Reform Office to use the land. Tungcum Ltd.’s permission expired in 2010, five years before the alleged incident took place. Witnesses for the plaintiffs testified further that the company stopped operations in 2010. The court ruled that the company did not suffer any harm if they did not have possession of the land. The court acquitted the two defendants of all charges. See, *Rujichaiyavat*, Black Case No. 1905/2559, Red Case No. 4386/2559, Verdict, p. 5–6. See also, Fortify Rights, “Thailand: Court Acquits Environmental Defenders of Wrongful Charges,” news release, November 25, 2016, <http://www.fortifyrights.org/publication-20161125.html>, (accessed on January 14, 2018).

Despite this ruling, Thai authorities arrested and detained freelance journalist Jamon Sonpednarin on the morning of November 29, 2017 for his alleged involvement in the same protest.¹⁸⁸ The authorities released Jamon on bail three days later. On June 22, 2018, the Loei Provincial Prosecutor informed Jamon that the case would not proceed to trial.¹⁸⁹

In an earlier case, Tungkum Ltd. accused seven members of KRBKG of trespassing, alleging that KRBKG mobilized residents and blocked a local road on September 22, 2013, which prevented the company's employees from entering the mining site and factory.¹⁹⁰ Tungkum Ltd. filed criminal and civil complaints against Surapun Rujichaiyavat, Phattraporn Kaengjampa, Wannisa Sutthi, Thulida Khunna, Angsana Phuangpraiwan, Arporn Ninsi, and Boonhong Tonpanom on February 17, 2014 and demanded compensation of 150 million Thai Baht (more than US\$4.5 million).¹⁹¹ On December 4, 2014, following a negotiation mediated by the Governor of Loei between Tungkum Ltd. and KRBKG leaders, Tungkum Ltd. agreed to withdraw the complaints.¹⁹² As part of this negotiation, Tungkum Ltd. also agreed to drop two other trespassing complaints against KRBKG members for allegedly erecting blockades on the company's property on October 11, 2013 and September 7, 2013, respectively.¹⁹³

In 2010, Tungkum Ltd. filed a trespassing complaint against KRBKG leader Samai Phakmee and a young girl, under the age of 15, for allegedly entering company property while leading a group of approximately 16 students and residents to monitor the water quality in the Huay Lin Kwai stream, located nearby the mine site.¹⁹⁴ On July 26, 2011, the Loei Provincial Prosecutor declined to proceed with the case.¹⁹⁵

KRBKG members and environmental defenders in Loei Province have also faced other law suits for their involvement in peaceful assembly activities. For example, on May 18, 2017, the Loei Provincial Prosecutor filed charges against 22 KRBKG members under the 1992 Highway Act for erecting roadblocks in 2013.¹⁹⁶ On July 24, 2017, the Loei Provincial Court convicted the 22 defendants of violating sections 38 (1) and 39 of the Highway Act after the defendants pled guilty to the charges.¹⁹⁷ However, the court suspended the decision to impose a penalty for one year.¹⁹⁸

¹⁸⁸ Royal Thai Police, Kanchanaburi Provincial Police, "Arrest Record of Jamon Sonpednarin," November 29, 2017. See also, Fortify Rights, "Thailand: Drop Complaint against Journalist Jamon Sonpednarin," news release, January 5, 2018, <http://www.fortifyrights.org/publication-20180105.html> (accessed February, 18, 2018).

¹⁸⁹ Fortify Rights, online communication with Jamon Sonpednarin, June 22, 2018.

¹⁹⁰ See, *Rujichaiyavat*, Criminal Case No. 615/2557; *Rujichaiyavat*, Civil Case No. 132/2557.

¹⁹¹ See, *Rujichaiyavat*, Civil Case No. 132/2557.

¹⁹² See, Memorandum of Understanding between Tungkum Ltd. and KRBKG, December 4, 2014.

¹⁹³ The seven KRBKG members are Surapun Rujichaiyavat, Soom Sri-thong, Pattraporn Kaengjampa, Phao Promharaj, Pranom Namwong, Thanil Phakmee, and Pornthip Hongchai. See, *Rujichaiyavat*, Criminal Case No. 4542/2556; *Rujichaiyavat*, Criminal Case No. 4217/2556.

¹⁹⁴ Royal Thai Police, "Suspect Summon Order Concerning a Criminal Complaint Between Tungkum Ltd. v. Samai Phakmee and a Criminal Complaint Between Tungkum Ltd. v. [name withheld]," Loei Province, Thailand, November 5, 2010.

¹⁹⁵ Loei Provincial Prosecutor Office, "Letter No. 0037 Yor Lor/3840," July 26, 2011.

¹⁹⁶ The 22 KRBKG members and Loei residents include: Samai Phakmee, Surapun Rujichaiyavat, Wiron Ruchichaiyavat, Thanin Phakmi, Soom Sri-thong, Mon Khunna, Sathien Sanom, Saengchon Wareerith, Patcharin Bubphan, Wern Baolorthong, Phakhom Phromphakdi, Wanlop Phuangpraiwan, Chun Phakmi, Phao Phrommaharaj, Phattraporn Kaengjampa, Wannisa Sutthi, Thulida Khunna, Asgsana Phuangpraiwan, Ar-phong Ninsri, Ranong Kongsan, and Bopha Nawongsri. See, *Phakmee*, Criminal Case No. 2068/2560.

¹⁹⁷ See, *Loei Provincial Prosecutor v. Samai Phakmee and 21 others*, Loei Provincial Court, Black Case No. 2048/2560, Red Case No. 2818/2560, Verdict (Court of First Instance), July 24, 2017; Fortify Rights trial-monitoring notes for Criminal Case No. 2048/2560 (unpublished), Loei Province, Thailand, July 24, 2017. Highway Act, B.E. 2535 (1992), Sec. 38(1) (prohibiting anyone from "installing, erecting, or placing any materials which may cause disruption or harm to vehicles commuting on public roads, or causing any damage to public ways without permission from the designated authorities,") Sec. 39 (prohibiting anyone "from blocking public roads or placing any sharp objects or any objects on public roads which may cause harm or damage to vehicles or commuters using the roads.") Violations of sections 38(1) and 39 of the Highway Act carry a sentence of up to three years' imprisonment and/or a fine of up to 60,000 Thai Baht (US\$1,850).

¹⁹⁸ See, *Phakmee*, Black Case No. 2048/2560, Red Case No. 2818/2560; Fortify Rights trial-monitoring notes for Criminal Case No. 2048/2560 (unpublished), Loei Province, Thailand, July 24, 2017. See, Thailand Criminal Code, Sec. 56.

Tungkum Ltd. also brought civil suits against more than a dozen KRBKG members involved in erecting roadblocks on public roads in 2013 to protest the company's activities.¹⁹⁹ Through these suits, the company demanded a total of 120 million Thai Baht (US\$3.7 million) in damages.²⁰⁰ However, Tungkum Ltd. dropped the suits following a negotiation mediated by the Governor of Loei between Tungkum Ltd. and KRBKG leaders.²⁰¹

Thai authorities also monitored the activities of Loei residents and prevented gatherings following the May 15, 2014 attacks. For example, Patcharin Bubphan, a 38-year-old council member and KRBKG member, told Fortify Rights how the soldiers sent to provide protection to residents following the attacks instead conducted surveillance: “[Soldiers] tried to take our pictures and find out what we were discussing as a KRBKG group and what were our plans. The soldiers climbed the windows and walls of the house to take our photos when we were having a meeting inside a house.”²⁰²

Soom Sri-thong, a member of KRBKG, confirmed the military monitored KRBKG following the attacks. She said:

[The soldiers] did not allow us to close the door if we wanted to have a meeting. They told us to leave the door open, and they would sit in front of the house . . . The soldiers said they did not want to intervene. They only wanted to monitor and report to their supervisors.²⁰³

VIOLATIONS OF THE RIGHT TO A HEALTHY ENVIRONMENT

According to a government report in May 2007, Tungkum Ltd. failed to meet 13 environmental safeguards in its mining activities in Loei Province, including managing cyanide contamination and its detoxification tank.²⁰⁴ Further government testing in the area found unsafe levels of cyanide, arsenic, and manganese—by-products of the gold mining process—in local streams and rivers as well as cyanide, arsenic, manganese, cadmium, and lead in underground water supplies.²⁰⁵ Blood tests of residents in the area revealed that more than 120 residents had high levels of cyanide in their blood, with dozens of residents testing positive for mercury and arsenic.²⁰⁶

Water and soil pollution has impacted the daily lives of residents in the affected communities, who largely rely on farming and the environment for their living and sustenance. Beginning in 2009, the government warned residents to stop using local water sources for drinking, bathing, and cooking.²⁰⁷ Later warnings cautioned against eating river snails and crabs from local rivers.²⁰⁸

¹⁹⁹ The KRBKG members who faced legal action included: Surapun Rujichaiyawat, Soom Sri-thong, Mr. Samai Phakmee, Konglai Phakmi, Tiem Peena, and Pattraporn Kaengjampa, Mol Khunna, Put Inthasorn, Mana Phakmee, Lerdsak Srithong, Thavorn Chaisith, Chamnien Khunna, Sathien Sanom, Lumduan Tongwan, Dokmai Moonkongsri, and Wiron Rujichaiyawat. See, *Rujichaiyawat*, Civil Case No. 974/2556; *Phakmee*, Civil Case No. 859/2556.

²⁰⁰ *Ibid.*

²⁰¹ See, Memorandum of Understanding between Tungkum Ltd. and KRBKG, December 4, 2014.

²⁰² Fortify Rights interview with Patcharin Bubphan, Loei Province, Thailand, July 4, 2016.

²⁰³ Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016.

²⁰⁴ See, Ministry of Industry, Department of Primary Industry and Mining, *Inspectors Report on Mining and Metallurgical Processing of Tungkum Ltd.*, May 16, 2007 cited in EARTH, “Myths and Facts,” p. 27–28.

²⁰⁵ Ministry of Natural Resources and Environment, “Letter No. Thor Sor 0305/2140.”

²⁰⁶ Cyanide, mercury, and arsenic are chemicals commonly used in the processing of ore; however, it is difficult to conclusively determine the cause of the blood poisoning or the health impacts of such poisoning. Mahidol University, Faculty of Medicine, Ramathibodi Hospital, “Results of Toxic Contamination in Blood Samples Collected from Residents Living Near the Gold Mine in Khao Luang Sub-District Wang Sa Phung District, Loei Province,” June 19, 2010. See, *Rujichaiyawat*, Black Case No. 600/2559, Red Case No. 401/2560, p. 6–8.

²⁰⁷ Ministry of Public Health, Loei Provincial Public Health Office, “Announcement No. 1/2552,” February 4, 2009.

²⁰⁸ Ministry of Public Health, “Announcement No. 1/2553;” Ministry of Public Health, Loei Provincial Public Health Office, “Letter No. Lor Yor 0032.013/Wor 7740,” December 22, 2014.

Residents have also complained about health conditions that are consistent with cyanide, mercury, and arsenic poisoning.²⁰⁹

On December 13, 2016, the Thai government issued NCPO Order No. 72/2559, suspending all gold-mining operations in Thailand, including the operations of Tungcum Ltd., beginning on January 1, 2017.²¹⁰ The Order also required mining operators “to restore the environment” by implementing measures recommended in EIA reports.²¹¹

In April 2017, the Loei Provincial Industrial Office accepted Tungcum Ltd.’s environmental rehabilitation plan to restore areas used for mining, including the open-pit mines, landfills, the metallurgical factory, tailing dams, and waste-dump sites.²¹² However, the company failed to meaningfully consult with the affected community in developing its plan, and KRBKG members have objected to the plan and called on the company to additionally address contaminated areas surrounding the mine site and the health concerns of affected residents.²¹³ To date, the company has failed to engage the community on these demands.²¹⁴

Lack of Adequate Access to Water

Traditionally, rural farming communities in Thailand, including in the six villages surrounding the mine in Loei Province, rely on local water sources for bathing and cooking as well as vegetables and wildlife found in surrounding forests for food. Residents in affected villages in Loei Province are no longer able to use their natural resources as they once did due to contamination of water sources.

Residents noticed a change in the water quality after the mining operation began in 2006. Ranong Kongsanen, a 55-year-old woman farmer, said, “The color of the natural water changed from clear to a dark, almost black color.”²¹⁵

Wiron Ruchichaiyawat confirmed changes in the water quality, saying: “The quality of the water changed, the water in the river smelled bad . . . while the mine was in full operation, the fish and vegetable growing in the river died.”²¹⁶

A 16-year-old girl whose house was located in Phu Thab Fah village along the River Huay said: “My parents stopped growing vegetables on the river bank because of contamination. The river smelled bad and the fish died.”²¹⁷

A water test conducted by the Department of Pollution Control and the Department of Primary Industry and Mining in June 2008 found unsafe levels of arsenic and manganese contamination in local streams and cadmium contamination in underground water in Kok Sa Thon and Na Nong Bong villages.²¹⁸ Based on these findings, the Public Health Office of Loei Province issued a warning on February 4, 2009 to residents living in Khao Luang Sub-District not to drink or use water from the rivers or streams in the area for cooking.²¹⁹

²⁰⁹ Fortify Rights interview with Sri Loonthasod, Loei Province, Thailand, March 29, 2016; Fortify Rights interview with Khan Juttano, Loei Province, Thailand, July 26, 2016; Fortify Rights interview with Montri Khamlai, Loei Province, Thailand, July 5, 2016; Fortify Rights interview with Dao Nao-suk, Loei Province, Thailand, July 5, 2016. Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

²¹⁰ Head of NCPO Order No. 72/2559, December 13, 2016.

²¹¹ *Id.* at Art. 3.

²¹² See, Tungcum Ltd., “Rehabilitation Plan for Gold Mining Area.”

²¹³ KRBKG, “Letter No. 0011/2560.”

²¹⁴ Fortify Rights phone interview with Surapun Rujichaiyawat, August 15, 2018.

²¹⁵ Fortify Rights interview with Ranong Kongsanen, Loei Province, Thailand, February 17, 2016.

²¹⁶ Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, July 22, 2016.

²¹⁷ Fortify Rights interview with [name withheld], Loei Province Thailand, July 27, 2016.

²¹⁸ Ministry of Public Health, Loei Provincial Public Health Office, “Announcement No. 1/2552,” February 4, 2009.

²¹⁹ *Ibid.*

Noo Saewanna, a 58-year-old woman farmer, described the impact of the public health authority's order on residents, said: "Previously, we grew our own vegetables on the riverbank of the River Huay, but when authorities prohibited residents from using water from the River Huay, we stopped growing vegetables. We only have one option now—to buy vegetables."²²⁰

After finding contamination in the water supply, the Thai authorities initially provided free water to residents for drinking and cooking. However, according to residents, this service was limited and discontinued after a short period of time.²²¹ Residents have since had to purchase water for drinking and cooking, increasing their household expenses.²²²

On March 18, 2010, the Public Health Office of Loei Province issued another warning against consuming river snails collected from Huay Lhek stream in Khao Luang Sub-District due to the high levels of arsenic contamination in river snails tested.²²³

A Cabinet Resolution issued on February 8, 2011 by the Office of the Secretary of the Cabinet under the Office of the Prime Minister acknowledged "the health and environmental concerns related to the gold mining operation of Tungkum Ltd. in Loei Province," citing concerns about air pollution and water contamination.²²⁴ The Cabinet Resolution ordered the Ministry of Industry to suspend consideration of any mining application by Tungkum Ltd. until the authorities established the cause of contamination and cost implications.²²⁵ The Cabinet also ordered stricter monitoring and evaluation of the company's mining operations and procedures to prevent cyanide leakage.²²⁶

Following the Cabinet's order, the provincial authorities, including the Department of Pollution Control, the Department of Underground Water Resources, and the Department of Primary Industry and Mining, conducted tests on water, soil, and sediments from mine sites and villages surrounding the mine every three months.²²⁷ At the time of writing, this periodic testing is continuing.²²⁸

Following a country visit to Thailand in February 2013, the U.N. Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation raised serious concern that "water pollution is being exacerbated by . . . large-scale industrial, mining and agricultural projects which have had a severe impact on the environment in general, and on water sources, including drinking-water sources in particular."²²⁹

On December 22, 2014, the Public Health Office warned Loei residents against consuming river crabs from the affected villages after finding high levels of arsenic in the crabs.²³⁰ In March 2015, the authorities also reported high levels of arsenic, manganese, and cyanide in Huay Lhek stream

²²⁰ Fortify Rights interview with Noo Saewanna, Loei Province, Thailand, March 24, 2016.

²²¹ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016.

²²² Residents interviewed by Fortify Rights said they paid between 200 to 600 Thai Baht (US\$6 to 20) per month on water. Fortify Rights interview with Yanisa Wongkhamso, Loei Province, Thailand, March 25, 2016 (sharing information on an informal survey of more than 98 percent of the households in the affected villages). Fortify Rights interview with Phongpat Khunna, Loei Province Thailand, March 24, 2016. Fortify Rights interview with Sri Loonthasod, Loei Province, Thailand, March 29, 2016. A 2013 study found that the average household income in the affected villages was approximately 514 Thai Baht (US\$15) per day, while households in the affected villages spent approximately 474 Thai Baht (US\$14.4) per month in drinking water. Kanchana Ya-ud, "Calculating the Economic Cost of Health Impacts from the Gold Mine in Wang Sa Phung District in Loei Province," Sukhothai Thammathirat Open University, 2013.

²²³ Ministry of Public Health, "Announcement No. 1/2553."

²²⁴ Cabinet Resolution, B.E. 2554 (2011), February 8, 2011.

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ Ministry of Natural Resources and Environment, "Letter No. Thor Sor 0305/2140."

²²⁸ Fortify Rights phone interview with Samai Phakmee, August 20, 2018.

²²⁹ See, Human Rights Council, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, U.N. Doc. A/HRC/24/44/Add.3, July 16, 2013.

²³⁰ Ministry of Public Health, "Announcement No. Lor Yor 0032.013/Wor 7740."

as well as arsenic in sediments collected from three local streams. Groundwater testing found unsafe levels of cadmium, lead, manganese, arsenic, and cyanide.²³¹

Since 2014, residents have avoided eating any produce grown or sourced from affected areas.²³² Pornthip Hongchai explained: “We cannot drink the water or eat the vegetables, river crabs, or fish. We also fear to eat the rice that we grow.”²³³

Adverse Health Impacts

Since the Tungkm Ltd. mining operations began in Loei, some residents reported health problems. Randomized blood tests conducted by the Public Health Office in 2010 revealed that 124 out of 725 residents tested had high levels of cyanide in their blood, 50 out of 758 residents tested had high levels of mercury, and at least 22 people out of an unknown number tested had high levels of arsenic.²³⁴ Residents with such blood poisoning complained of fatigue, muscle weakness, and pain in their limbs and body.²³⁵

According to the World Health Organization, cyanide exposure can cause “shortness of breath, difficulty walking, weakness of the fingers and toes, and irritation and sore on the skin.”²³⁶ Mercury poisoning can damage a person’s nervous, digestive, and immune systems as well as lungs and kidneys and may cause “tremors, insomnia, memory loss, neuromuscular effects, headaches and cognitive and motor dysfunction.”²³⁷ Long-term exposure to arsenic can result in skin lesions, peripheral neuropathy, diabetes, cardiovascular diseases, and cancer.²³⁸

Some residents in Loei Province with elevated levels of toxic metals in their blood have undergone treatment for their condition.²³⁹ For example, Montri Khamlai, a 45-year-old farmer and administrative council member with arsenic poisoning, said:

I had my blood tested, and they found high levels of arsenic. My husband has high levels of cyanide. He did not receive any treatment . . . I received treatment 20 times at the hospital last year. It was a detox process. I was on a drip receiving saline solution with other substances. I had to go the Wang Sa Phung Hospital every week. They called the process chelation therapy. Other people were later given tablets of coriander seeds.²⁴⁰

Chelation therapy is used to remove toxic metals, including mercury and arsenic, from the body by injecting drugs that bind to the metals to facilitate their removal through urination.²⁴¹ In some

²³¹ Ministry of Natural Resources and Environment, “Letter No. Thor Sor 0305/2140.”

²³² Fortify Rights interview with Montri Khamlai, Loei Province, Thailand, July 5, 2016.

²³³ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016.

²³⁴ Mahidol University, Faculty of Medicine, Ramathibodi Hospital, “Results of Toxic Contamination in Blood Samples.” See, *Rujichaiyavat*, Black Case No. 600/2559, Red Case No. 401/2560, p. 6–8.

²³⁵ Fortify Rights interview with Sri Loonthasod, Loei Province, Thailand, March 29, 2016. Fortify Rights interview with Khan Juttano, Loei Province, Thailand, July 26, 2016. Fortify Rights interview with Montri Khamlai and Dao Nao-suk, Loei Province, Thailand, July 5, 2016.

²³⁶ WHO, Eastern Mediterranean Regional Office, “Public Information on Biological and Chemical Threats,” 2003, http://www.who.int/csr/deliberatedemics/biochem_threats.pdf?ua=1 (accessed on July 20, 2018), p. 19.

²³⁷ WHO, “Exposure to Mercury: A Major Public Health Concern,” flyer, 2017, <http://www.who.int/phe/news/Mercury-flyer.pdf> (accessed July 22, 2018).

²³⁸ WHO, “Arsenic Factsheet,” June 2016, <http://www.who.int/mediacentre/factsheets/fs372/en/> (accessed on September 27, 2017); WHO, International Program on Chemical Safety, “Arsenic Factsheet,” June 2016, http://www.who.int/ipcs/assessment/public_health/arsenic/en/ (accessed on September 27, 2017).

²³⁹ Fortify Rights interview with Montri Khamlai, Dao Nao-Suk, and Sri Loonthasod, Loei Province, Thailand, July 5, 2016. Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016. Fortify Rights interview with Khan Juttano, Loei Province, Thailand, July 26, 2016.

²⁴⁰ Fortify Rights interview with Montri Khamlai, Loei Province, Thailand, July 5, 2016.

²⁴¹ See, WHO, “Basic Analytical Toxicology,” website, http://www.who.int/ipcs/publications/training_poisons/basic_

cases, chelation therapy removes metals the body needs, such as calcium, copper, and zinc, in addition to harmful metals, leading to deficiencies and kidney damage.²⁴²

Montri Khamlai described her condition before receiving chelation therapy treatment for arsenic poisoning, saying:

Before I received the chelation therapy, I had spots on my palms. The health practitioner said it shows up on the skin and can develop into skin cancer. I became quite forgetful. My memory is shorter than normal recently. The health officer said this arsenic has effects on your memory.²⁴³

Other residents did not receive medical treatment but only herbal remedies for metal poisoning. Dao Nao-Suk, a 42-year-old farmer and administrative council member who initially tested positive for high levels of arsenic in her blood, said:

I was told to take herbal medicine—the leaves of Laurel Clockvine or Blue Trumpet Vine—for detoxification. I boil the leaves and drink its water. It was said to help with detoxing the body. I took the herbal medicine for about a month. No other medicine was provided to me.²⁴⁴

Residents also complained of skin rashes after going into the Huay River.²⁴⁵ For example, Somboon Sriburin said: “One time, I was hired to grow rice plants nearby the Huay River, and I got a rash and blisters. I am afraid to go into the water again . . . The water [for the plants] comes from the River Huay.”²⁴⁶

analytical_tox/en/index12.html (accessed July 22, 2018). See also, WebMD, “What is Chelation Therapy,” website, November 2, 2016, <https://www.webmd.com/balance/guide/what-is-chelation-therapy#2> (accessed July 22, 2018).

²⁴² WebMD, “What is Chelation Therapy.”

²⁴³ Fortify Rights interview with Montri Khamlai, Loei Province, Thailand, July 5, 2016.

²⁴⁴ Fortify Rights interview with Dao Nao-Suk, Loei Province, Thailand, July 5, 2016.

²⁴⁵ Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016. Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016. Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, July 22, 2016.

²⁴⁶ Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

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KHON RAK BAN KERD GROUP (KRBKG)

Khon Rak Ban Kerd Group (KRBKG) or the "People Who Love Their Homeland" is a Thai women-led community-based organization comprised of residents from six villages affected by the Tungcum Ltd. gold mining operation in Loei Province. In 2007, the residents mobilized to form KRBKG to advocate for the closure of the gold mine, rehabilitation of the local environment, and access to medical services to address health concerns of the residents.

Most residents of the six affected communities are rubber, rice, banana, and soybean farmers who depend on the natural environment for their livelihoods. As Samai Phakmee, a 53-year-old administrative council member and a founding member of KRBKG, told Fortify Rights: "Gold mining is not essential for our community. Our way of life relies on clean water. We depend on the forest, mountains, and water as the foundation of our community."²⁴⁷

Pornthip Hongchai, a 46-year-old leader of KRBKG, explained the importance of KRBKG's work for the community, saying:

This is our right to live in our hometown where we were born. It's a traditional community. We have the right to protect our local natural resources. Any action that would cause negative impacts and problems for residents, we opposed them.²⁴⁸

Pornthip Hongchai added that:

The assembly we have is a very normal way of expressing grievances of the community surrounding the mine and opposing the mine. Since we started, we have submitted petitions and opposed the mine and peacefully protested. It's normal that we exercise our rights. This is the legitimate right of every villager. Every citizen has the right to express ourselves and exercise our rights.²⁴⁹

Wiron Ruchichaiyawat, a 46-year-old leader of KRBKG and a mother of three who experienced death threats due to her activism, described KRBKG's commitment to the cause, saying: "We fight to protect our home to better the

²⁴⁷ Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016.

²⁴⁸ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016.

²⁴⁹ Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, April 5, 2017.

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quality of life for our children. At the end of the day, everyone must die. But if we die to protect our home and our children, it's an honorable death. So I have overcome the fear of death.”

Wiron further described the challenges KRBKG members face in their campaign for environmental protections. She told Fortify Rights:

We have the right to protect our community, to choose the best for our community, but we have only rights. They have money, they have weapons, they have power, and they have the laws in their hands. This fight is unequal, but we will fight to the very end until we drop dead.²⁵⁰

Soom Sri-thong, a member of KRBKG, shared with Fortify Rights her reasons for joining KRBKG. She said: “Residents were blocked from accessing information. For a long time, we were not told that there was toxic contamination [in our environment]. Once we learned that information was hidden from us, I felt pain in my heart, so I decide to stand up and join the fight.”²⁵¹

A schoolgirl similarly explained how her experience facing criminal charges for speaking about environmental concerns within her community has reinforced her commitment to the cause. She said: “I was speaking about my feelings for my hometown. How things have changed from the past and present and why. I am doing the right thing to protect my community. It's better than to be ignorant and silent.”²⁵² She added: “I want to study political science and laws, so I can help the residents. I've seen them suffering for a long time. I want to seek justice for them.”²⁵³

The women of KRBKG are at the frontline of protesting harmful corporate and government actions that affect their community. They are leading the group, engaging in decision-making processes, and facilitating fund-raising efforts. To ensure support for KRBKG, these women formed a cotton-weaving collective to produce and sell hand-made cotton scarves, the profits of which go towards supporting KRBKG activities.²⁵⁴

Recognizing the tireless efforts of the KRBKG, on March 7, 2016, the National Human Rights Commission of Thailand awarded the 2016 Women's Human Rights Defenders Honorary Award to the women of KRBKG for their activism.²⁵⁵ On March 11, 2017, the Somchai Neelapaijit Fund also presented to KRBKG the Highly-Esteemed Human Rights Defenders Award—an award to commemorate the life and work of prominent human rights lawyer Somchai Neelapaijit.²⁵⁶

COMMUNITY RESOURCE CENTRE FOUNDATION (CRC)

The Community Resource Centre Foundation (CRC) is a non-profit organization committed to protecting and promoting human rights and environmental justice. Ms. Sor Rattanamanee Polkla, a human rights lawyer at the forefront of defending the rights of communities impacted by development projects in Thailand for more than 20 years, co-founded CRC along with Mr. Prashant Singh, an activist with experience working on child labor issues and business and human rights issues in the mining and dam sector in India. Sor Rattanamanee and the team of human rights lawyers at CRC have represented hundreds of environmental defenders, including members of KRBKG and other environmental defenders in Loei Province, facing reprisals for

²⁵⁰ Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, July 22, 2016.

²⁵¹ Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016.

²⁵² Fortify Rights interview with a 16-year-old school girl, Loei Province, Thailand, July 27, 2016.

²⁵³ *Ibid.*

²⁵⁴ Radical Grandma Collective, website, www.radicalgrandmacollective.com (accessed August 20, 2018).

²⁵⁵ Fortify Rights, “Thailand: Human Rights Defenders Honored, Still Need Protection,” news release, March 7, 2016, <http://www.fortifyrights.org/publication-20160307.html> (accessed February 14, 2016)

²⁵⁶ “Somchai Neelapaijit is Still with Us: The Struggle Continues and Inspiration for Young Generation of Lawyers,” Special Report [in Thai], *Prachathai*, March 12, 2017, <https://prachatai.com/journal/2017/03/70535> (accessed on August 27, 2018).

their involvement in resisting projects potentially detrimental to the health and livelihoods of communities. As a result of their tireless defense of KRBKG, Thai authorities have dismissed at least 14 lawsuits brought against KRBKG members.²⁵⁷

Speaking about the work of CRC in defending KRBKG and other environmental defenders in Loei, Sor Rattanamanee told Fortify Rights:

[Tungkum Limited] does have the right to protect themselves through court procedure. However, legal proceedings should not be used to silence criticism or restrict the right to freedom of expression of people. If legal proceedings are used to restrict freedom of expression, it will become more difficult to monitor and investigate human rights violations, and it leaves no guarantee for victims of human rights violations to demand protection. Especially in the case of rural communities living in remote areas, there is already a barrier for communities to access public information and news. If they are further restricted from disseminating or presenting their voices, it will create greater barriers for them to access justice and human rights protections. The work of human rights defenders is integral to ensuring the environment is protected in Loei Province and throughout Thailand. This work should be safeguarded.²⁵⁸

Due to her commitment to community rights and environmental justice, on June 1, 2017, the National Human Rights Commission of Thailand appointed Sor Rattanamanee for a third time to the Sub-Committee on Community Rights and Natural Resources, which is mandated to take up complaints and conduct fact-finding on environmental issues.²⁵⁹

Sor Rattanamanee and the CRC team have not only served as formidable legal representatives and advocates for at-risk communities but have stood together with these communities to advance the fight for land rights, free speech, and environmental justice in Thailand. KRBKG member Samai Phakmee affirmed the important role CRC plays in supporting KRBKG's activism, saying: "We are well aware that small, ordinary people like us grassroots activists will face troubles if we obstruct the interests of the powerful. We are lucky to have lawyers and a network of supporters."²⁶⁰

²⁵⁷ See, *Rujichaiyavat*, Black Civil Case No. 574/2558, Red Civil Case No. 261/2559, Verdict; Mae Sot Provincial Prosecutor, "Letter of Non-Prosecution Order to Mae Sot District Police," Letter No. Aor Sor 0042(Mae Sot)/3934, October 15, 2015; Ministry of Justice, "Letter No. Yor Thor 06048/1163;" *Tungkum Ltd. v. Samai Phakmee*, Loei Provincial Court, Black Case No. 687/2558, Red Case No.2647/2559, Verdict (Court of First Instance), July 26, 2016; *Phakmee*, Black Case No. 1278/2550, Red Case No. 2741/2560; *Tungkum Ltd. v. Samai Phakmee and Konglai Phakmi*, Loei Provincial Court, Black Case No. 2291/2558, Red Case No. 3392/2558, Verdict (Court of First Instance), September 9, 2015; *Rujichaiyavat*, Black Case No. 1905/2559, Red Case No. 4386/2559, Verdict; *Hongchai*, Black Case No. 2858/2560, Red Case No. 1711/2561, Verdict; *Saelim*, Black Case No. Aor 3756/2558, Red Case No. Aor 3680/2559, Verdict.

²⁵⁸ Fortify Rights interview with Sor Rattanamanee Polkla, Bangkok, Thailand, November 16, 2016.

²⁵⁹ National Human Rights Commission of Thailand, "Appointment of the Sub-Committee on Community Rights and Natural Resources," Order No. 18/2560, June 1, 2017. Fortify Rights electronic communication with Sor Rattanamanee Polkla, August 10, 2018.

²⁶⁰ Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016.

III. LEGAL ANALYSIS

Thailand is obligated under international and domestic law to protect the rights of environmental defenders as well as the rights to liberty, freedom of expression and peaceful assembly, and a healthy environment. These rights are largely guaranteed by customary international law as well as core human rights treaties, to which Thailand is a party, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁶¹ Although states bear primary responsibility for ensuring human rights protections, business entities also have a duty to uphold human rights standards in line with international human rights law and the U.N. Guiding Principles on Business and Human Rights.²⁶²

Thailand's domestic law also protects many of the rights protected by international law. Thailand's current Constitution, enacted in 2017, protects the right to liberty, the right to express opinions, the right to freedom of peaceful assembly, and the right of individuals and communities to take part in decision-making processes and managing natural resources.²⁶³ Thailand's earlier constitutions similarly protected these rights.²⁶⁴

²⁶¹ International Covenant on Civil and Political Rights (ICCPR), adopted March 23, 1976, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), ratified by Thailand October 29, 1996; International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, entered into force January 3, 1976, ratified by Thailand September 5, 1999; Convention on the Rights of the Child (CRC), adopted September 2, 1990, G.A. Res. 44/25, U.N. Doc. A/44/49 (1990), ratified by Thailand March 27, 1992; Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted September 3, 1981, G.A. Res. 34/180, U.N. Doc. A/34/46 (1981), ratified by Thailand August 9, 1985.

²⁶² U.N. Office of the High Commissioner for Human Rights (OHCHR), *Guiding Principles on Business and Human Rights: Implementing the United Nations, 'Protect, Respect and Remedy' Framework*, 2011, https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed September 7, 2018).

²⁶³ Constitution of the Kingdom of Thailand, B.E. 2560 (2017), arts. 28, 34, 35, 43, 44, and 57.

²⁶⁴ *Id.* at arts. 32, 45, 63, 66, and 67. See, also, Constitution of the Kingdom of Thailand (Interim Version), B.E. 2557 (2014), Art. 4.

Evidence collected by Fortify Rights implicates Thai authorities and Tungkum Ltd. in violations of international law and Thai law by failing to uphold the rights of human rights defenders, the right to liberty, the right to freedom of expression, the right to freedom of peaceful assembly, and the right to a healthy environment. Under international law and Thai law, Thailand has a responsibility to investigate and prosecute perpetrators of violations as well as provide access to remedies and reparations to individuals who have experienced violations.²⁶⁵

PROTECTION FOR ENVIRONMENTAL HUMAN RIGHTS DEFENDERS

The United Nations recognizes “human rights defenders” as “individuals, groups and associations . . . contributing to . . . the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.”²⁶⁶ In addition to ensuring human rights defenders are able to exercise their rights, the U.N. Declaration on Human Rights Defenders requires states to protect human rights defenders “against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action.”²⁶⁷

Recognizing the “unprecedented risks” particularly faced by environmental defenders given the “growing number of attacks and murders of environmental defenders,” the U.N. Special Rapporteur on the Situation of Human Rights Defenders has called on states to “reaffirm and recognize the role of environmental human rights defenders and respect, protect and fulfill their rights” as well as “ensure a preventive approach to the security of environmental human rights defenders by guaranteeing their meaningful participation in decision-making and by developing laws, policies, contracts and assessments by States and businesses.”²⁶⁸ In March 2018, the U.N. Special Rapporteur on Human Rights and the Environment further called on states to “provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”²⁶⁹

On December 17, 2015, Thailand adopted the latest U.N. resolution on human rights defenders, affirming its commitment to respect the rights of human rights defenders and “strongly condemned violence against and intimidation of human rights defenders.”²⁷⁰ This resolution recognizes “the vital work of human rights defenders in promoting, protecting and advocating the realization of economic, social and cultural rights” and calls upon states to “take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly and association.”²⁷¹

²⁶⁵ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948). Article 8 of the UDHR and Article 2(3) of the ICCPR outline the main provisions of the right to remedy, which includes “an effective remedy . . . determined by a competent authority” that is enforced. Section 25 of the 2017 Constitution of Thailand guarantees access to a judicial process and remedies or assistance from the State for individuals who have experienced violations of their rights under Thai law.

²⁶⁶ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (U.N. Declaration on Human Rights Defenders), adopted December 9, 1998, G.A. Res. 53/144, U.N. Doc. A/RES/53/144 (1999), Art. 1.

²⁶⁷ *Id.* at 12.

²⁶⁸ Special Rapporteur on the Situation of Human Rights Defenders, “Violence Against Environmental Defenders— New UN Major Report Urges Zero-Tolerance,” October 21, 2016; U.N. General Assembly, *Situation of Human Rights Defenders*, U.N. Doc. A/77/81, August 3, 2016, p. 25.

²⁶⁹ U.N. General Assembly, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/37/59, January 24, 2018, p. 9.

²⁷⁰ Human Rights Defenders in the Context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted December 17, 2015, G.A. Res. 70/161, U.N. Doc. A/RES/70/161, February 10, 2016.

²⁷¹ *Ibid.*

In addition to specific protections afforded to human rights defenders, the ICCPR also protects the right to personal security, requiring states to “take appropriate measures in response to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors.”²⁷² Under the ICCPR, states must “respond appropriately to patterns of violence against categories of victims such as intimidation of human rights defenders and journalists.”²⁷³

Sections 391 and 392 of the Thailand Criminal Code also prohibit acts of violence and threats that put a person “in fear or in fright,” providing penalties of one-month imprisonment and/or a fine of up to 1,000 Thai Baht (US\$30).²⁷⁴

Despite Thailand’s commitments to protect human rights defenders and others from attack and harassment under international and domestic law, environmental defenders in Thailand remain at risk. Although Thai authorities convicted and imprisoned two military personnel responsible for the 2014 attacks against residents in Na Nong Bong village, no action was taken against more than 150 perpetrators involved in the attack.²⁷⁵ The authorities also failed to fully investigate threats, including death threats, made against environmental defenders in Loei as well as alleged plots to assassinate members of KRBKG.²⁷⁶ In addition, at least four lawsuits are currently pending against 14 environmental defenders involved in expressing concerns or protesting the mining operations in Loei Province.²⁷⁷ These lawsuits are arbitrary and unwarranted—given that they are in response to legitimate activity—relatively frequent, and appear intended to frustrate or disrupt the lives and activities of members of KRBKG, amounting to judicial harassment. These actions and inactions demonstrate a failure of Thai authorities to fully protect environmental defenders in the country.

RIGHT TO LIBERTY

The right to liberty and to be free from arbitrary detention is a fundamental right under international law.²⁷⁸ Deprivation of liberty is only permissible on grounds and procedures that are established in domestic law and aligned with international law.²⁷⁹ According to the U.N. Working

²⁷² ICCPR, Art.9(1). U.N. Human Rights Committee, *CCPR General Comment No. 35: Article 9 (Liberty and security of person)*, December 16, 2014, para. 9.

²⁷³ *Ibid.*

²⁷⁴ Thailand Criminal Code, secs. 391 and 392.

²⁷⁵ See, *Pomnak*, Black Case No. Aor. 5440/2557, Red Case No. Aor. 1983/2559; *Pomnak*, Black Case No. 510/2560, Red Case No. 1868/2560. See also, Open Letter from KRBKG to the National Human Rights Commission of Thailand, the Army Chief Commander, the Police Commissioner General, the Director-General of the Department of Special Investigation, the Loei Provincial Industry Officer, the Chief Executive of the Khao Luang Subdistrict Administrative Organization, April 24, 2014; Letter from KRBKG to Thai authorities, May 22, 2014; Letter from KRBKG to Army Chief Commander, May 26, 2014.

²⁷⁶ Fortify Rights interview with Surapun Rujichaiyawat, Loei Province, Thailand, February 17, 2016. Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, July 22, 2016. Fortify Rights interview with Phattraporn Kaengjampa, Loei Province, Thailand, April 3, 2017. See also, Open Letter from KRBKG to the National Human Rights Commission of Thailand, the Army Chief Commander, the Police Commissioner General, the Director-General of the Department of Special Investigation, the Loei Provincial Industry Officer, the Chief Executive of the Khao Luang Subdistrict Administrative Organization, April 24, 2014; Letter from KRBKG to Thai authorities, May 22, 2014; Letter from KRBKG to General Prayuth Chan-ocha, Head of the National Council for Peace and Order, the Police Commissioner General, the Director of Loei Provincial Internal Security Operation Command, the Loei Provincial Governor, the Commander of Loei Provincial Police Office, the Superintendent of the Wang Sa Phung District Police, June 1, 2014.

²⁷⁷ See, Royal Thai Police, First Summon Order to [name withheld], December 14, 2015; *Hongchai*, Black Case No. 1974/2560; *Hongchai*, Black Case No. 2858/2560, Complaint; Royal Thai Police, Wang Sa Phung District Police Station, First Summon Order to Pornthip Hongchai, Ranong Kongsae, Mon Khunna, Wannisa Sutthi, Wiron Ruchichaiyawat, and Phattraporn Kaengjampa, December 25, 2016.

²⁷⁸ UDHR, arts 3 and 9.

²⁷⁹ The U.N. Human Rights Committee defined liberty of person as “freedom from confinement of the body, not a general freedom of action” and security of person as “freedom from injury to the body and the mind, or bodily and mental integrity.” UDHR, Art. 9; ICCPR, Art. 9(1); U.N. Human Rights Committee, *CCPR General Comment No. 35*, para. 3.

Group on Arbitrary Detention, detention that “results from the exercise of the rights or freedoms guaranteed by the UDHR and the ICCPR” is arbitrary and in violation of international law.²⁸⁰

The Thai authorities’ “attitude adjustment” sessions experienced by environmental defenders involved in activism in Loei Province qualifies as arbitrary detention under international law. Thai military and police in Loei Province summoned and held at least ten environmental defenders due to their engagement in activities protected under international law, including the right to freedom of expression and peaceful assembly. Thai authorities interrogated, filmed, and held Loei environmental defenders for more than an hour.²⁸¹ In at least one case, Thai authorities summoned and held a KRBKG leader multiple times for her engagement in legitimate activities.²⁸²

The authorities relied on the military’s declaration of martial law to justify the “attitude adjustment” sessions against environmental defenders in Loei Province.²⁸³ Under Section 15(ii) of the 1914 Martial Law Act, anyone who is viewed as “the enemy or violates the provisions of the Martial Law, or the order of military authority” can be detained for up to seven days.²⁸⁴

In its concluding observations on Thailand’s compliance with the ICCPR issued in April 2017, the U.N. Human Rights Committee expressed concern about arbitrary detention under the “attitude adjustment” program and urged Thailand to “immediately release all victims and provide them with full reparation.”²⁸⁵ The U.N. Committee Against Torture also earlier expressed concern over the implementation of martial law in Thailand, which provides for “enlarged executive powers of administrative detention, without adequate judicial supervision, and weaken[s] fundamental safeguards for persons deprived of their liberty.”²⁸⁶

Thai authorities also have an obligation under international and domestic law to prevent arbitrary detention by non-state actors.²⁸⁷ Section 310 of the Thailand Criminal Code provides a penalty of up to three years’ imprisonment and/or a fine of up to 6,000 Thai Baht (US\$185) against anyone who “detains or confines” or deprives the liberty of another person.²⁸⁸

In the evening of May 15, 2014, masked men arbitrarily detained at least 23 Loei residents for several hours.²⁸⁹ In some cases, the men bound, beat, and threatened their captives.²⁹⁰ To date, Thai

²⁸⁰ UDHR, arts. 7, 13, 14, 18, 19, 10, and 21; OHCHR, *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, May 2000.

²⁸¹ See, for example: Fortify Rights interview with Banrawee Ramsiri, Dao Naosuk, and Montri Khamlai, Loei Province, Thailand, July 5, 2016. Fortify Rights interview with Patcharin Bubphan and Dokmai Moonkongsri Loei Province, Thailand, July 4, 2016. Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, July 22, 2016. Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016. Fortify Rights interview with Surapun Rujichaiyavat and Phattraporn Kaengjampa, Loei Province, Thailand, February 17, 2016. See also, Royal Thai Army, Khao Luang Special Task Force, “Summon Letter to Surapun Rujichaiyavat,” Loei Province, Thailand, July 23, 2014; Royal Thai Army, Khao Luang Special Task Force, “Summon Letter to Pornthip Hongchai,” Loei Province, Thailand, July 24, 2014; Royal Thai Army, Khao Luang Special Task Force, “Summon Letter to Phattraporn Kaengjampa,” Loei Province, Thailand, July 24, 2014.

²⁸² Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016.

²⁸³ Royal Thai Army, “Announcement of the Royal Thai Army No. 1/2557,” May 20, 2014; NCPO, “Announcement of the NCPO No. 2/2557,” May 22, 2014; Royal Command to Revoke Martial Law, April 1, 2015.

²⁸⁴ Martial Law, Sec. 15(ii).

²⁸⁵ U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, U.N. Doc. CCPR/C/THA/CO/2, April 17, 2017, para. 25-26.

²⁸⁶ U.N. Committee against Torture, *Concluding Observations on the initial report of Thailand*, U.N. Doc. CAT/C/THA/CO/1, June 20, 2014, para. 12.

²⁸⁷ See, U.N. Human Rights Committee, *CCPR General Comment No. 35*, para. 7.

²⁸⁸ Thailand Criminal Code, Sec. 310.

²⁸⁹ See, *Pomnak*, Black Case No. Aor 5440/2557, Red Case No. Aor 1983/2559; *Pomnak*, Black Case No. 510/2560, Red Case No. 1868/2560.

²⁹⁰ *Ibid.*; Fortify Rights interview with Surapun Rujichaiyavat and Phattraporn Kaengjampa, Loei Province, Thailand,

authorities have held only two former military personnel to account for the incident.²⁹¹ However, Thai authorities failed to fully investigate and hold to account more than 150 perpetrators who were involved in this case. The failure to “investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies” raises concerns about the right to effective remedies as provided for by international law.²⁹²

Under Article 9(5) of the ICCPR, victims of unlawful detention have an enforceable right to compensation, including financial compensation, for such violations.²⁹³ This remedy must “operate effectively and payment must be made within a reasonable period of time.”²⁹⁴ These rights extend to Loei environmental defenders summoned and held for “attitude adjustment” as well as Loei residents and KRBKG members assaulted, intimidated, and unlawfully detained by masked men during the night of May 15, 2014 without immediate intervention by the authorities.²⁹⁵ Although the Appeal Court awarded financial compensation ranging from 2,600 to 25,000 Thai Baht (US\$80 to 750) to nine Loei residents affected by the May 2014 attack, as of the time of writing, Loei residents have yet to receive compensation.²⁹⁶

RIGHT TO FREEDOM OF EXPRESSION

Article 19 of the UDHR and ICCPR protects the right to freedom of expression.²⁹⁷ International law permits restrictions only in exceptional circumstances where the restriction is considered necessary to achieve certain legitimate aims, such as the protection of national security and public order, and is proportionate to achieving that aim.²⁹⁸ The 2017 Constitution and earlier constitutions of Thailand similarly protect the right to free speech, allowing for restrictions on this right only “for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people.”²⁹⁹

Thai authorities violated the free speech rights of environmental defenders in Loei Province by confiscating the public announcement equipment used by environmental defenders to organize peaceful gatherings.³⁰⁰ Article 19 of the ICCPR expressly protects all means to engage in free

February 17, 2016. Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017. Fortify Rights interview with Phongphat Khunna, Loei Province, Thailand, March 24, 2016; Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016; Fortify Rights interview with Somboon Sriburin, Loei Province, Thailand, March 23, 2016.

²⁹¹ See, *Pomnak*, Black Case No. Aor 5440/2557, Red Case No. Aor 1983/2559; *Pomnak*, Black Case No. 510/2560, Red Case No. 1868/2560.

²⁹² See, U.N. Human Rights Committee, *ICCPR General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004, para. 15.

²⁹³ See, U.N. Human Rights Committee, *CCPR General Comment No. 35*, para. 49–50.

²⁹⁴ *Ibid.*

²⁹⁵ According to the ICCPR Committee, a State may violate the rights protected by the Covenant by “permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” See, U.N. Human Rights Committee, *ICCPR General Comment No. 31*, para. 8.

²⁹⁶ See, *Pomnak*, Black Case No. Aor 5440/2557, Red Case No. Aor 1983/2559; *Pomnak*, Black Case No. 510/2560, Red Case No. 1868/2560. Fortify Rights phone interview with Surapun Rujichaiyavat, August 15, 2018.

²⁹⁷ See, UDHR, Art. 19; ICCPR, Art. 19.

²⁹⁸ See, ICCPR, Art. 19(3) and 21. See also, U.N. Human Rights Committee, *General Comment No. 31*, para. 6; Manfred Nowak, *UN Covenant on Civil and Political Rights; CCPR Commentary* (Kehlram Rhein: N.P. Engel, 1993), p. 387–87.

²⁹⁹ Thailand Constitution, arts. 4, 34, 35, and 45.

³⁰⁰ Fortify Rights interview with Surapun Rujichaiyavat, Loei Province, Thailand, April 4, 2017. See also, Fortify Rights transcription of conversation between military officers and Samai Phakmee and other residents, Loei Province, Thailand, August 26, 2014.

expression.³⁰¹ This would include the use of public announcement equipment. The authorities justified the confiscation as a measure to enforce Section 11(1) of the Martial Law Act and the NCPO Order No. 7/2557, which prohibits gatherings of more than five persons.³⁰² Legitimate aims for restricting the right to free expression under international law are limited to aims considered “necessary in a democratic society in the interest of national security or public safety, public order (*ordre publique*), the protection of public health or morals or the protection of the rights and freedoms of others.”³⁰³ Preventing the organizing of peaceful rallies and gatherings is not a legitimate aim that would justify the confiscation of the public announcement equipment.

Criminal and arbitrary civil-defamation proceedings against environmental defenders in Loei Province have further threatened the right to free expression. Between 2007 and 2017, Thai authorities and Tungkum Ltd. initiated six criminal and four civil defamation complaints against KRBKG members and environmental defenders in Loei.³⁰⁴ Tungkum Ltd. also initiated one criminal and civil defamation complaint against *Thai PBS* and its journalists.³⁰⁵ As noted by a group of U.N. special rapporteurs, specifically referring to legal proceedings brought against KRBKG members and environmental defenders in Loei, “[t]his form of judicial harassment may have a chilling effect on public debate, human rights advocacy, access to information and awareness raising about environmental and human rights implications of business activities in Thailand.”³⁰⁶

The lawsuits included charges against journalists, a media outlet, and children involved in disseminating information on Tungkum Ltd. mine and alleged environmental impacts of the mine.³⁰⁷ The ICCPR and the CRC provide further specific protections to ensure the right to free expression for children and members of the press.³⁰⁸ Section 35 of Thailand’s 2017 Constitution also protects the liberty of media professionals “in presenting news or expressing opinions in accordance with professional ethics.”³⁰⁹

The criminal defamation laws—including sections 326 and 328 of the Thailand Criminal Code and Article 14(1) the 2007 Computer Crimes Act—*per se* restrict the right to free expression in ways that are neither necessary nor proportionate to legitimate state interests recognized under international law. In particular, imprisonment constitutes a disproportionate punishment that violates international law.³¹⁰ Sections 326 and 328 of the Thailand Criminal Code and Article 14(1) of the 2007 Computer Crimes Act carry sentences ranging from one to five years’ imprisonment.³¹¹

³⁰¹ ICCPR, Art. 19(2). U.N. Human Rights Committee, *Article 19: Freedoms of Opinion and Expression: General Comment No. 34*, U.N. Doc. CCPR/C/GC/34, 2011, para. 23.

³⁰² Martial Law, Sec. 11(1) (prohibiting a gathering or a meeting); NCPO Order No. 7/2557, May 22, 2014 (prohibiting the gathering of five or more people). The military officer told KRBKG leaders that “a rally held under this period is the time under the Martial Law, although it is not a political gathering, but holding a rally within community like this is not the right thing.” Fortify Rights transcription of video recording between military officers and Samai Phakmee and other residents, August 26, 2014.

³⁰³ See, ICCPR, arts. 21 and 22.

³⁰⁴ See, *Rujichaiyavat*, Black Case No. 4471/2557; *Hongchai*, Black Case No. 4472/2557; *Rujichaiyavat*, Black Case No. 1430/2558; Royal Thai Police, Testimony Surapun Rujichaiyavat and Phattraporn Kaengjampa, Tak Province, Thailand, July 14, 2015; Ministry of Justice, “Invitation Letter to Parents of [name withheld] to Provide Testimonies,” Royal Thai Police, Minburi Metropolitan Police, First Summon Order to [name withheld], December 14, 2015. Tungkum Ltd. has also sought 320 million Thai Baht (US\$9.8 million) from Loei residents through civil defamation suits. See, *Phakmee*, Civil Case No. 859/2556; *Rujichaiyavat*, Civil Case No. 132/2557; *Rujichaiyavat*, Civil Case No. 974/2556; *Rujichaiyavat*, Civil Case No. 574/2558, Complaint.

³⁰⁵ See, *Saelim*, Criminal Case No. 3756/2558, Complaint.

³⁰⁶ OHCHR, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, U.N. Doc. AL THA 3/2017, April 10, 2017.

³⁰⁷ See, Ministry of Justice, “Invitation Letter to Parents of [name withheld] to Provide Testimonies,” Royal Thai Police, Minburi Metropolitan Police Station, First Summon Order to [name withheld], December 14, 2015.

³⁰⁸ See, ICCPR, Art. 19; CRC, Art. 12.

³⁰⁹ See, Thailand Constitution, Sec. 35.

³¹⁰ U.N. Human Rights Committee, *CCPR General Comment No. 34*, September 12, 2011, para. 47.

³¹¹ See, Thailand Criminal Code, secs. 326 and 328; Computer Crimes Act, Art. 14(1).

RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY

Article 20 of the UDHR and Article 21 of the ICCPR protect the right to freedom of peaceful assembly. Like the right to freedom of expression, the right to peaceful assembly is qualified—meaning that restrictions on the right are allowed only in exceptional circumstances when the restriction is provided by law and necessary and proportionate to achieve a legitimate aim.³¹²

Section 44 of the 2017 Thai Constitution—which protects the right to “enjoy the liberty to assemble peacefully and without arms” and allows restrictions only “for the purpose of maintaining security of the State, public safety, public order or good morals, or for protecting the rights or liberties of other persons”—is in line with international standards.³¹³

Thai authorities have restricted peaceful assemblies in the country through Section 11 of the Martial Law Act, NCPO Order No. 7/2557, and Article 12 of NCPO Order No. 3/2558. Martial law, imposed during the military coup in May 2014, prohibited “any assembly or meeting” and NCPO Order No. 7/2557 prohibited political gatherings of more than five people.³¹⁴ NCPO Order No. 7/2557 carries a penalty of up to one-year imprisonment and/or a fine up to 20,000 Thai Baht (US\$600). After the military government lifted martial law on April 1, 2015, the government introduced NCPO Order No. 3/2558 to continue prohibiting political gatherings of more than five people.³¹⁵ Violations of NCPO Order No. 3/2558 carry criminal penalties of up to six months’ imprisonment and/or a fine of up to 10,000 Thai Baht (US\$300).³¹⁶

The restriction on political gatherings is neither necessary nor proportionate to achieve a legitimate aim. In its review of Thailand’s obligations under the ICCPR, the U.N. Human Rights Committee expressed concern about “the excessive restrictions imposed on the freedom of peaceful assembly since the military coup of 2014, in particular the strict banning of any public gathering of more than five people.”³¹⁷

Thai authorities used the Martial Law Act and NCPO Order No. 7/2557 to restrict the rights of environmental defenders in Loei Province. Thai authorities summoned, arbitrarily detained, and threatened environmental defenders with charges for alleged violations of the Martial Law Act and the NCPO Order No. 7/2557.³¹⁸ Thai authorities also used the Martial Law Act and Order No. 7/2557 to justify the confiscation of public announcement equipment.³¹⁹ These actions amount to violations of the right to peaceful assembly.

Environmental defenders in Loei Province also faced charges under the 2015 Public Assembly Act for their involvement in rallies, marches, and other peaceful gatherings. In particular, Loei environmental defenders faced charges and criminal penalties for alleged violations under articles 8 and 10 of the Public Assembly Act. Article 8 of the 2015 Public Assembly Act prohibits holding a public gathering that obstructs access to government agencies and carries a sentence of

³¹² See, U.N. Human Rights Council, *Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, May 21, 2012, para. 16. See, ICCPR, arts. 21 and 22(2). See also, U.N. Human Rights Committee, *General Comment No. 31*, para. 6; Nowak, *U.N. Covenant on Civil and Political Rights*, p. 387–87.

³¹³ Thailand Constitution, Sec. 44.

³¹⁴ Martial Law, Sec. 11. NCPO Order No. 7/2557, May 22, 2014.

³¹⁵ See, NCPO Order No. 3/2558, Art.12.

³¹⁶ *Ibid.*

³¹⁷ U.N. Human Rights Committee, *List of Issues in Relations to the Second Periodic Report of Thailand*, U.N. Doc. CCPR/C/THA/Q/2, August 12, 2016, para. 19.

³¹⁸ See, Martial Law Act, secs. 11 and 15; NCPO Order No. 7/2557.

³¹⁹ See, NCPO Order No. 7/2557.

six months' imprisonment and/or a fine of up to 10,000 Thai Baht (US\$300).³²⁰ Article 10 requires organizers to obtain consent from the chief of the district police at least 24 hours in advance of a public assembly, providing information about the purpose of the protest, logistics of the event, the length and location of the event.³²¹ Failure to obtain advanced consent to hold a public assembly can result in a fine of up to 10,000 Thai Baht (US\$300).³²²

The restrictions under articles 8 and 10 of the 2015 Public Assembly Act violate international law. With regard to Article 8 and its ban on gatherings that obstruct access to government agencies, U.N. special rapporteurs have held that blanket bans, including bans on the exercise of the right entirely or in specific places or at particular times, “are intrinsically disproportionate, because they preclude consideration of the specific circumstances of each proposed assembly.”³²³ With regard to the consent requirement provided in Article 10 of the Public Assembly Act, under international law, states may require organizers of public assemblies to notify authorities of planned gatherings; however, requirements for advanced official authorization to hold an assembly violate international law.³²⁴ International law also includes exceptions for the notice requirement when the “assembly” happens spontaneously.³²⁵ Regardless, any failure to comply with administrative requirements for holding an unapproved peaceful assembly should not lead to fines or imprisonment.³²⁶

On May 27, 2016, the U.N. Special Procedures issued a communication to the Thai Government expressing concern with the 2015 Public Assembly Act, highlighting that “[t]he Act places limitations on the exercise of the right to peaceful assembly by imposing strict rules on locations allowed for public assembly.”³²⁷ Thailand responded to the communication, claiming the law was “to ensure that public order and social harmony prevail.”³²⁸ However, this reason is not a legitimate aim that would justify a restriction on the right to freedom of assembly under international law.

Environmental defenders in Loei Province have also faced trespass charges under sections 362 and 365 of the Thailand Criminal Code and the 1992 Highway Act for their protest-related activities.³²⁹ These charges amount to impermissible time-and-place restrictions. The U.N. Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association noted with concern the use of aggravated trespass, particularly by private companies, to curtail the right to freedom of peaceful assembly.³³⁰

RIGHT TO A HEALTHY ENVIRONMENT

Under international law, the right to a healthy environment is protected as part of the right to health articulated by the UDHR and key international treaties that are binding on Thailand,

³²⁰ See, Public Assembly Act, arts. 8 and 27.

³²¹ *Id.* at Art. 10.

³²² *Id.* at Art. 28.

³²³ U.N. General Assembly, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, U.N. Doc. A/HRC/31/66, February 4, 2016, para. 30.

³²⁴ See, U.N. Human Rights Council, *Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai*, U.N. Doc. A/HRC/20/27, para. 28.

³²⁵ *Id.* at para. 29.

³²⁶ *Ibid.* U.N. Human Rights Council, *Joint Report of the Special Rapporteur*, U.N. Doc. A/HRC/31/66, para. 23.

³²⁷ OHCHR, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, U.N. Doc. AL THA 4/2016, May 27, 2016.

³²⁸ Permanent Mission of Thailand to the United Nations and Other International Organizations in Geneva, “Letter to the Special Procedures of the UN Human Rights Council,” Letter No. 52101/472, June 1, 2016.

³²⁹ Thailand Criminal Code, secs. 362 and 365; Highway Act, arts. 38 and 39.

³³⁰ Fortify Rights, “Thailand: Court Acquits Environmental Defenders of Wrongful Charges,” news release, November 25, 2016, <http://www.fortifyrights.org/publication~20161125.html> (accessed on February 5, 2018).

including the ICESCR and the CRC.³³¹ As a party to the ICESCR, Thailand is required to improve “all aspects of environmental and industrial hygiene” in order to prevent, treat, and control “epidemic, endemic, occupational and other diseases.”³³² This includes:

[T]he requirement to ensure an adequate supply of safe and potable water and basic sanitation [and] the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.³³³

Although the right to health is subject to progressive realization based on available resources, states are obligated take deliberate, concrete, and targeted steps towards the full realization of the right to health.³³⁴ This includes formulating and implementing “national policies aimed at reducing and eliminating pollution of air, water and soil.”³³⁵ The obligation on states to reduce and eliminate pollution extends not only to state activities but also activities by third parties.³³⁶

The Committee on Economic, Social and Cultural Rights affirmed that any state “which is unwilling to use the maximum of its available resources for the realization of the right to health is in violation of its obligations.”³³⁷ In addition, all victims of violations of the right to health are entitled to “adequate reparation, which may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.”³³⁸ Section 58 of the 2017 Constitution of Thailand also guarantees the right to equitable remedies for individuals and communities affected by environmental and biodiversity damage as a result of the projects implemented or approved by the Thai government.³³⁹

In 2007, the government acknowledged the failure of Tungkum Ltd. to put into place proper environmental safeguards in its mining activities in Loei Province. Government testing of water, soil, and food in Loei Province verified the presence of contaminants commonly used in mining processes.³⁴⁰ However, the authorities failed to fully investigate the causes of the contamination and failed to take timely measures to prevent further pollution and initiate restorative actions. In response to a request for information on the government’s findings of water and soil contamination in Loei Province by the U.N. Special Rapporteur on July 1, 2014, the government said the cause of the local environmental contamination was “unclear” and may be due to “volcanic activities in the past.”³⁴¹ While the government warned residents to avoid using local water sources due to the contamination, it failed to provide access to sustained alternative sources to water.³⁴²

³³¹ UDHR, Art. 25; ICESCR, Art. 12; CRC, arts. 24(2)(c) and (e).

³³² ICESCR, Art.12.

³³³ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)*, U.N. Doc. E/C.12/2000/4, 2000, para. 15.

³³⁴ *Id.* at paras. 30–31.

³³⁵ *Id.* at para. 36.

³³⁶ *Id.* at paras. 34, 51.

³³⁷ *Id.* at para. 47.

³³⁸ *Id.* at para. 59.

³³⁹ Thailand Constitution Art. 58(3) (stating that “In the implementation or granting of permission under paragraph one, the State shall take precautions to minimise the impact on people, community, environment, and biodiversity and shall undertake to remedy the grievance or damage for the affected people or community in a fair manner without delay.”)

³⁴⁰ See, Ministry of Industry, Department of Primary Industry and Mining, “Inspectors Report on Mining and Metallurgical Processing of Tungkum Ltd.,” May 16, 2007, cited in EARTH, *Myths and Facts*, p. 27–28. Ministry of Natural Resources and Environment, “Letter No. Thor Sor 0305/2140.”

³⁴¹ OHCHR, *Communication from the Special Procedures of the UN Human Rights Council to Thailand*, Allegation Letter, U.N. Doc. AL THA 5/2014, July 1, 2014; Permanent Mission of Thailand to the U.N., “Letter to the Special Procedures of the UN Human Rights Council,” Letter No. 52101/472.

³⁴² Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, March 22, 2016. Fortify Rights interview

The government also accepted plans from Tungkum Ltd. to restore the environment in Loei Province without consultation with affected communities, and environmental defenders in Loei Province remain concerned that the plans do not go far enough to ensure proper land reclamation and the rehabilitation of the natural environment surrounding the mine site.³⁴³

International law emphasizes that the right to health includes the right to comprehensive and meaningful public participation in determining the use of natural resources as well as the right to “seek, receive and impart information and ideas concerning health issues.”³⁴⁴ To uphold its obligations under international law, the Thai government must ensure proper consultation with the community on issues relevant to their health and environment.

Affected communities and residents, including those who tested positive for high levels of cyanide, mercury, and arsenic in their blood and have experienced adverse health conditions consistent with such poisoning, have not received adequate reparations for violations to their right to health.³⁴⁵ Children may be particularly impacted by potential environmental hazards in Loei Province. Under the CRC, Thailand is obligated “to address the dangers and risks that local environmental pollution poses to children’s health.”³⁴⁶ However, in evaluating Thailand’s compliance with its obligations under the CRC, the Committee on the Rights of the Child found in 2012 that “Thailand lacks legal institutional framework to regulate the activities of companies doing business in the country to ensure effective responses to issues of health and nutrition.”³⁴⁷

CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

As part of the obligation to uphold human rights, governments have a duty to “prevent, investigate, and redress” human rights abuses by business actors both through “effective policies, legislation, regulation and adjudication” as well as effective enforcement.³⁴⁸ Corporations are also increasingly required by international law to uphold human rights standards and are accountable for abuses. The Guiding Principles on Business and Human Rights, which the U.N. Human Rights Council

with Somboon Sriburin, Loei Province, Thailand, March 23, 2016. Fortify Rights interview with Yanisa Wongkhamso, Loei Province, Thailand, March 25, 2016. Fortify Rights interview with Lamplearn Ruengrith and Boonraeng Sri-Thong, Loei Province, Thailand, April 2, 2017. Fortify Rights interview with Suphat Khunna, Loei Province, Thailand, April 4, 2017. Fortify Rights interview with Pornthip Hongchai, Loei Province, Thailand, July 23, 2016. The Committee on Economic, Social and Cultural Rights has affirmed that water required for personal or domestic use must be free from microbes and parasites, chemical substances, and radiological hazards that constitute a threat to a person’s health. CESCR, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)*, U.N. Doc. E/C.12/2002/1120, January 2003, para. 12(b).

³⁴³ See, Tungkum Ltd., Rehabilitation Plan for Gold Mining Area,” KRBKG, “Letter No. 0011/2560.”

³⁴⁴ CESCR, *General Comment No. 14*, para. 12. See, Human Rights Council, *Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation*, U.N. Doc. A/HRC/24/44/Add.3, para. 54.

³⁴⁵ Mahidol University, Faculty of Medicine, Ramathibodi Hospital, “Results of Toxic Contamination in Blood Samples.” See, *Rujichaiyavat*, Black Case No. 600/2559, Red Case No. 401/2560, p. 6–8.

³⁴⁶ Human Rights Council, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/25/53, December 30, 2013; U.N. Committee on the Rights of the Child (CRC), *General Comment 15, The Right to the Highest Attainable Standard of Health*, U.N. Doc. CRC/C/GC/15, 2013, para. 49.

³⁴⁷ U.N. CRC, *Concluding Observations, Thailand*, U.N. Doc. CRC/C/THA/CO/3-4, February 17, 2012, para. 29; U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee, Thailand*, U.N. Doc. CCPR/CO/84/THA, July 8, 2005, para. 19.

³⁴⁸ U.N. Human Rights Council, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. A/HRC/17/31, March 2011. The Guiding Principles note that states should “[e]nforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps.” OHCHR, *Guiding Principles on Business and Human Rights*, B. 3.

endorsed in 2011, provides authoritative guidance on the application of existing international human rights standards in the context of business activities.³⁴⁹ Specifically, the Guiding Principles set out: 1) the obligation of the state to protect human rights in the context of business activities; 2) the responsibility of business actors to respect human rights; and 3) the provision of remedies for victims of business-related human rights abuses.³⁵⁰

The Guiding Principles emphasize the need for business and government due diligence to identify potential human rights risks and implement plans to mitigate such risks in advance of engaging in or approving business activities.³⁵¹ Such assessment and planning is particularly necessary for high-risk industries, like mining.³⁵²

Under these Principles, Tungcum Ltd. has a duty to uphold rights protected by international law, including the right of human rights defenders to engage in their work, the right to freedom of expression and peaceful assembly, and the right to a healthy environment. The Thai government is also responsible for ensuring Tungcum Ltd. and other business actors respect rights protected under international law.

³⁴⁹ See, U.N. Human Rights Council, *Statement of the Office of the United Nations High Commissioner for Human Rights on Mandates of the U.N. Working Group on Business and Human Rights*, July 3, 2014.

³⁵⁰ OHCHR, *Guiding Principles on Business and Human Rights*.

³⁵¹ *Id.* at Principles 17–21.

³⁵² The Guiding Principles note that companies should possess “a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.” *Id.* at II(A)(15)(b).

RECOMMENDATIONS

TO THE GOVERNMENT OF THAILAND

- **FULLY** investigate and prosecute individuals responsible for attacks and threats against environmental defenders, KRBKG members, and residents in Loei, including residents attacked by masked men on May 15, 2014.
- **END** all forms of arbitrary detention, including "attitude adjustment" programs.
- **END** all arbitrary legal proceedings against environmental defenders, community leaders, and journalists involved in legitimate activities protected by international human rights law.
- **REPEAL** or amend laws and orders that are incompatible with the rights to freedom of expression and peaceful assembly, including sections 326 to 328 of Thailand's Criminal Code, the 2015 Public Assembly Act, and NCPO Order No. 3/2558.
- **ENSURE** access to information and proper consultation with the community on issues relevant to their health and environment.
- **TAKE** concrete steps to provide access to a safe and adequate water supply for affected communities in Loei Province and prevent exposure to harmful substances, including cyanide, arsenic, mercury, and other chemicals commonly used in mining processes.
- **FULLY** investigate allegations of environmental and health impacts resulting from the gold-mining operations in Loei Province and provide adequate and effective redress for communities and individuals affected.
- **ENSURE** proper reparations, including restitution, compensation, satisfaction, or guarantees of non-repetition, for all victims of human rights violations.
- **ENSURE** responsible parties conduct thorough and adequate land reclamation in the areas surrounding the gold mine in Loei Province.

TO TUNGKUM LTD. AND ITS RELATED BUSINESS ENTITIES

- **END** all arbitrary legal proceedings against environmental defenders, community leaders, and journalists involved in legitimate activities protected by international human rights laws.
- **UPHOLD** human rights protections in all of Tungcum Ltd.'s business activities, taking effective and concrete steps to prevent and address human rights abuses. Endorse and implement the U.N. Guiding Principles on Business and Human Rights.
- **CREATE** and make public a human rights policy that guarantees human rights protections in all of Tungcum Ltd.'s business activities and ensure redress for abuse.
- **FACILITATE** an independent, comprehensive assessment of the company's past, ongoing, and potential human rights impacts in Loei Province.
- **PROVIDE** proper redress for human rights abuses linked to the company's business activities in Loei Province.
- **CONDUCT** thorough and adequate land reclamation in the areas surrounding the gold mine in Loei Province
- **FACILITATE** access to information and proper consultation with the community on issues relevant to their health and environment.
- **PUBLISH** comprehensive information related to the gold-mining operation, including mining applications, shareholders, and waste and toxic management to ensure transparency.

ACKNOWLEDGEMENTS

This report is based on research conducted by Fortify Rights from October 2015 to August 2018. Fortify Rights' Thailand Human Rights Specialist Sutharee Wannasiri is the primary author of this report. Executive Director Amy Smith provided research oversight and led the writing process. Associate Human Rights Specialist John Quinley III provided research assistance and administrative support. Chief Executive Officer Matthew Smith and Legal Director Eric Paulsen edited the report text. A person who wished to remain anonymous assisted with document translation and transcriptions of audio files of interviews with witnesses and community leaders. Fortify Rights' Graphic Design Associate Iuri Kato created the layout and design of the report. Khon Rak Ban Kerd Group, Jamon Sonpednarin, and Luke Duggleby provided photographs and multimedia files.

Fortify Rights extends a special thanks to witnesses and survivors of the May 2014 attack on Na Nong Bong village, members of Khon Rak Ban Kerd Group, environmental defenders, journalists, residents of affected communities in Loei Province, Sor Rattanamanee Polkla and the legal team at the Community Resource Centre Foundation, and others who contributed to the research and generously shared their time, energy, and experiences with Fortify Rights. Fortify Rights also extends solidarity to environmental defenders not only in Loei Province, but throughout Thailand and the world who engage in their work, often at great personal risk, for the betterment of their community and the environment.

Fortify Rights' work would not be possible without the support of our funding partners and gifts from individuals. Thank you for sponsoring this work.

ANNEX A:

LETTER TO THE THAI GOVERNMENT



August 23, 2018

Prime Minister General Prayut Chan-o-cha
Office of the Permanent Secretary
Office of the Prime Minister
Government House
1 Phitsanulok Road
Dusit, Bangkok 10300

Dear Prime Minister,

Fortify Rights is a nongovernmental organization based in Southeast Asia. We investigate human rights violations, engage governments and others on solutions, and strengthen the work of human rights defenders, affected communities and civil society.

Fortify Rights is preparing a report about the situation of environmental defenders engaged in activities in Wang Sa Phung District, Loei Province, particularly with regard to Tungkum Limited's gold mining operations. Our research examines alleged attacks and threats against environmental defenders, arbitrary detention, restrictions on the right to freedom of expression and peaceful assembly, and potential violations on the right to a healthy environment. Our findings are based on first-person interviews with affected community members and local authorities as well as court documents, photographs, and other recordings.

We are writing to ensure that our report accurately represents the policies and practices of the Royal Thai Government with regard to ensuring the protection of environmental defenders, accountability and remedies for victims of human rights violations, the implementation of the U.N Guiding Principles on Business and Human Rights, and the general situation of ensuring basic rights and protections in Loei Province, particularly in the context of Tungkum Ltd.'s business operations in Wang Sa Phung District.

Fortify Rights endeavors to produce objective human rights publications based on all available information. We hope your office will respond at your earliest opportunity to the attached questions so that we may reflect your views in our reporting. Please also feel free to include any additional information, materials, or statistics that might be relevant to our research.

To fully incorporate your views in our forthcoming publication, we would appreciate a response no later than September 7, 2018. If an in-person meeting would be preferable, we would be happy to discuss our research in detail at a time that is most convenient for your schedule.

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Thank you for your consideration of this matter. We look forward to engaging with your office to further advance human rights protection in Thailand.

Sincerely,

Amy Smith
Executive Director

cc:

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Deputy Prime Minister and Minister of Justice
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Loei Provincial Office
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What Tingsamitr
Chair of the National Human Rights Commission of Thailand
Government Complex Building B
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Lak Si, Bangkok 10210

Enclosures (1)



Questions from Fortify Rights to the Royal Thai Government

1. Could you please provide information on what the Thai Government has done to prevent, investigate, and redress human rights abuses related to the activities of business enterprises operating in the country? We are particularly interested in any policies, legislation, regulations and adjudication as well as effective enforcement processes that have been put in place.
2. Could you please provide information on Tongkah Harbour Public Company Limited and Tungkom Limited's business activities in Thailand? What, if any, interests do members of the Thai government have in Tongkah Harbour PCL and/or Tungkom Ltd.?
3. Are you aware of any human rights abuses within the business operations of Tongkah Harbour PCL and/or Tungkom Ltd., particularly with regard to the gold mining operations of Tungkom Ltd. in Loei Province? What, if any, administrative, legislative, and judicial measures have Thai authorities taken to prevent, investigate, and redress human rights abuses by Tongkah Harbour PCL and/or Tungkom Ltd.?
4. What, if any, measures have Thai authorities taken to ensure protections and effective remedies for environmental defenders, including members of the Khon Rak Ban Kerd Group (KRBKG) in Loei Province?
5. Could you please provide information on the investigations and its finding into attacks and death threats against members of KRBKG and residents in Wang Sa Phung District, including the attack on May 15, 2014 in Na Nong Bong village? What, if any, actions have Thai authorities taken to ensure accountability for perpetrators and effective remedy for victims of these attacks?
6. What was the legal basis for Thai authorities to subject 13 community leaders and KRBKG members from Wang Sa Phung District to "attitude adjustment" sessions in 2014 and for removing the public announcement system from Ban Na Nong Bong village?
7. What formal and/or informal measures or mechanisms exist to ensure restrictions imposed by Thai authorities on the right to liberty, freedom of expression, and freedom of peaceful assembly are necessary to achieve a legitimate aim in line with international law? In particular, what measures exist to prevent the misuse of the Thai justice system to effect reprisals on human rights defenders or others engaged in protected activities?

8. What formal and/or informal measures or mechanisms exist to prevent disproportionate punishments, including terms of imprisonment, for engaging in free speech and peaceful assembly activities?
9. How many criminal complaints and lawsuits have Thai authorities initiated against members of KRBKG and/or other residents in Wang Sa Phung District? Who are the defendants of and what are the bases for and status of these complaints and lawsuits?
10. Could you please provide information on measures taken to implement the Head of National Council for Peace and Order No.72/2559, suspending all gold mine operations in Thailand effective January 1, 2017—particularly with respect to Tungcum Ltd.'s operations in Wang Sa Phung District?
11. How has the government monitored Tungcum Ltd.'s operations in Wang Sa Phung District to ensure its operations did not pose adverse environmental impacts? What, if any, measures did Thai authorities take to mitigate potential adverse environmental impacts since the start of Tungcum Ltd.'s operations in Wang Sa Phung District?
12. Are you aware of any adverse health or environmental impacts resulting from Tungcum Ltd.'s operations in Wang Sa Phung District? What, if any, measures are planned or have been taken to address adverse health or environmental impacts that may have resulted from Tungcum Ltd.'s operations in Wang Sa Phung District?
13. Could you please provide information on the most recent environmental tests conducted in areas surrounding Tungcum Ltd.'s operations in Loei Province, including the results of tests on natural water, underground water supplies, soil, plants, and aquatic species tests?
14. Could you please provide information on the status of Tungcum Ltd.'s proposed environmental rehabilitation plan in Wang Sa Phung District? How, if at all, was the government involved in the development or implementation of this plan?



(คำแปล)

24 สิงหาคม 2561

นายกรัฐมนตรีพลเอกประยุทธ์ จันทร์โอชา
สำนักงานปลัดสำนักนายกรัฐมนตรี
ทำเนียบรัฐบาล
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เรียน นายกรัฐมนตรี,

ฟอร์ตี้ไรท์เป็นองค์กรพัฒนาเอกชนในเอเชียตะวันออกเฉียงใต้ เราสออบสวนกรณีการละเมิดสิทธิมนุษยชน ร่วมมือกับภาครัฐและภาคส่วนอื่น ๆ เพื่อหาทางออกและส่งเสริมการทำงานของนักปกป้องสิทธิมนุษยชนชุมชนและภาคประชาสังคมที่ได้รับผลกระทบ

ฟอร์ตี้ไรท์อยู่ระหว่างจัดทำรายงานเกี่ยวกับสถานการณ์ของนักปกป้องสิ่งแวดล้อมซึ่งดำเนินการในอำเภอวังสะพุง จังหวัดเลย โดยเฉพาะที่เกี่ยวกับการทำเหมืองทองคำของบริษัททุ่งคำ จำกัด งานวิจัยของเราตรวจสอบข้อกล่าวหาว่ามีการทำร้ายและคุกคามนักปกป้องสิ่งแวดล้อม การควบคุมตัวโดยพลการ การจำกัดสิทธิที่จะมีเสรีภาพในการแสดงออกและการชุมนุมอย่างสงบ และความเสี่ยงที่จะเกิดการละเมิดสิทธิที่จะอาศัยอยู่ในสิ่งแวดล้อมที่ดี ผลการศึกษาของเราอยู่บนพื้นฐานการสัมภาษณ์ผู้ที่เกี่ยวข้องโดยตรง รวมทั้งสมาชิกของชุมชนที่ได้รับผลกระทบและหน่วยราชการในท้องถิ่น รวมทั้งการเก็บข้อมูลจากเอกสารของศาล ภาพถ่ายและการบันทึกข้อมูลอย่างอื่น

เหตุที่เขียนจดหมายนี้เพื่อประกันว่ารายงานของเราจะให้ข้อมูลอย่างเที่ยงตรงเกี่ยวกับนโยบายและการปฏิบัติของรัฐบาลไทยในแง่การคุ้มครองนักปกป้องสิ่งแวดล้อม การตรวจสอบได้ และการเยียวยาผู้เสียหายจากการละเมิดสิทธิมนุษยชน การปฏิบัติตามหลักการชี้ว่าแห่งสหประชาชาติว่าด้วยธุรกิจและสิทธิมนุษยชน และสถานการณ์ทั่วไปเกี่ยวกับการปกป้องสิทธิขั้นพื้นฐานและการคุ้มครองอื่น ๆ ในจังหวัดเลย โดยเฉพาะในบริบทเกี่ยวกับการดำเนินงานทางธุรกิจของบริษัททุ่งคำ จำกัด ในอำเภอวังสะพุง

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ฟอร์ตี้ไฟว์ไรต์พยายามจัดทำรายงานด้านสิทธิมนุษยชนอย่างเป็นทางการตั้งอยู่บนพื้นฐานข้อมูลที่มีอยู่ทั้งหมด เราหวังว่าหน่วยงานของท่านจะช่วยตอบคำถามที่แนบมานี้โดยเร็วสุดเท่าที่จะเป็นไปได้ เพื่อให้รายงานของเราครอบคลุมความเห็นของท่านด้วย กรุณาให้ข้อมูลใด ๆ เอกสาร หรือข้อมูลเชิงสถิติเพิ่มเติม หากท่านเห็นว่าเกี่ยวข้องกับงานวิจัยของเรา

ขอแสดงความนับถือ



เอมี สมิธ

ผู้อำนวยการบริหาร ฟอร์ตี้ไฟว์ไรต์

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เอกสารแนบหนึ่งฉบับ คำถามจากฟอร์ตไฟวไรต์ถึงรัฐบาลไทย (จำนวน 2 หน้า)



คำถามจากฟอร์ตี้ไรต์ถึงรัฐบาลไทย

1. กรุณาให้ข้อมูลเกี่ยวกับการดำเนินงานของรัฐบาลไทยเพื่อป้องกันสอบสวนและเยียวยาเมื่อเกิดการปฏิบัติมิชอบด้านสิทธิมนุษยชนอันเป็นผลมาจากการดำเนินงานด้านธุรกิจเหมืองแร่ในประเทศของท่าน เราสนใจอย่างยิ่งเกี่ยวกับนโยบาย กฎหมาย ระเบียบ และคำตัดสินของศาลใด ๆ รวมทั้งกระบวนการบังคับใช้อย่างเป็นผลที่เกิดขึ้น
2. กรุณาให้ข้อมูลเกี่ยวกับการดำเนินงานด้านธุรกิจในประเทศไทยของบริษัท ฟุงคาฮาเบอร์ จำกัด (มหาชน) และบริษัทฟุงคา จำกัด ไม่ทราบว่ามีบุคคลใดในรัฐบาลไทยมีผลประโยชน์ใด ๆ เกี่ยวกับบริษัท ฟุงคาฮาเบอร์ จำกัด (มหาชน) และ/หรือบริษัทฟุงคา จำกัดหรือไม่?
3. ทราบหรือไม่ว่า มีการปฏิบัติมิชอบด้านสิทธิมนุษยชนเนื่องจากการดำเนินงานด้านธุรกิจของบริษัท ฟุงคาฮาเบอร์ จำกัด (มหาชน) และ/หรือบริษัทฟุงคา จำกัด โดยเฉพาะที่เกี่ยวกับการทำเหมืองทองคำของบริษัทฟุงคา จำกัดในจังหวัดเลย? ทางหน่วยงานราชการไทยได้ใช้มาตรการของฝ่ายบริหาร นิตบัญญัติ และตุลาการ เพื่อป้องกันสอบสวน และเยียวยาเมื่อเกิดการปฏิบัติมิชอบด้านสิทธิมนุษยชนหรือไม่?
4. หน่วยงานราชการไทยได้ใช้มาตรการใด ๆ หรือไม่เพื่อประกันให้มีการคุ้มครองและการเยียวยาอย่างเป็นผลสำหรับนักปกป้องสิ่งแวดล้อม รวมทั้งสมาชิกกลุ่มคนรักรักษาบ้านเกิด ในจังหวัดเลย?
5. กรุณาให้ข้อมูลเกี่ยวกับการสอบสวนและผลการสอบสวนกรณีการโจมตีทำร้ายและการฆ่าสมาชิกกลุ่มคนรักรักษาบ้านเกิดและชาวบ้านที่อำเภอวังสะพุง รวมทั้งการโจมตีทำร้ายเมื่อวันที่ 15 พฤษภาคม 2557 ที่บ้านนาหนองบงหน่วยงานราชการไทยได้ดำเนินการใด ๆ หรือไม่เพื่อประกันให้มีความรับผิดชอบคนร้ายและให้มีการเยียวยาอย่างเป็นผลสำหรับผู้เสียหายจากการโจมตีเหล่านี้?
6. หน่วยงานราชการไทยใช้เหตุผลทางกฎหมายใด เพื่อบังคับให้แกนนำชุมชนและสมาชิกกลุ่มคนรักรักษาบ้านเกิด 13 คนจากอำเภอวังสะพุงต้องเข้ารับ "การปรับทัศนคติ" ในปี 2557 และการยึดอุปกรณ์เครื่องกระจายเสียงในหมู่บ้านนาหนองบง?
7. มีมาตรการหรือกลไกอย่างเป็นทางการและ/หรือไม่เป็นทางการหรือไม่ เพื่อประกันว่า การจำกัดสิทธิที่จะมีอิสรภาพเสรีภาพในการแสดงออกและเสรีภาพในการชุมนุมอย่างสงบของหน่วยงานราชการไทยเกิดขึ้นด้วยเหตุสุดที่จำเป็นเพื่อบรรลุเป้าหมายที่ชอบธรรมสอดคล้องกับกฎหมายระหว่างประเทศ? โดยเฉพาะอย่างยิ่งมีมาตรการใดหรือไม่เพื่อป้องกันการใช้ประโยชน์โดยมิชอบของระบบยุติธรรมไทยส่งผลให้เกิดการตอบโต้ต่อนักปกป้องสิทธิมนุษยชนหรือบุคคลอื่นที่เกี่ยวข้องกับการทำงานคุ้มครองสิทธิ?

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8. มีมาตรการหรือกลไกอย่างเป็นทางการและ/หรือไม่เป็นทางการหรือไม่ เพื่อป้องกันการลงโทษอย่างไม่ได้สัดส่วน ทั้งในแง่ระยะเวลาการคุมขัง ที่มีกานำมาใช้กับบุคคลที่ใช้เสรีภาพในการแสดงออกและการชุมนุมอย่างสงบ?
9. หน่วยงานราชการไทยได้ฟ้องคดีอาญาและอื่น ๆ กับสมาชิกกลุ่มคนรักบ้านเกิด และ/หรือชาวบ้านที่อำเภอวังสะพุงทั้งหมดกี่คดี? ใครบ้างที่เป็นจำเลย เป็นการฟ้องด้วยเหตุผลใด และมีการดำเนินคดีและได้สวนไปถึงชั้นตอนใดแล้ว?
10. กรุณาให้ข้อมูลเกี่ยวกับมาตรการ เพื่อการบังคับใช้ตามคำสั่งหัวหน้าคณะรักษาความสงบแห่งชาติ ที่ 72/2559 รวมทั้งการชะลอการทำเหมืองทองคำในประเทศไทย ซึ่งมีผลตั้งแต่วันที่ 1 มกราคม โดยเฉพาะในส่วนของกิจการดำเนินงานของบริษัททุ่งคำ จำกัดในอำเภอวังสะพุง
11. รัฐบาลได้ติดตามตรวจสอบการดำเนินงานของบริษัททุ่งคำ จำกัดในอำเภอวังสะพุงอย่างไรบ้างเพื่อประกันว่าการดำเนินงานของบริษัทจะไม่ส่งผลกระทบต่อสิ่งแวดล้อม? หน่วยงานราชการไทยได้นำมาตรการใดมาใช้เพื่อบรรเทาผลกระทบร้ายแรงด้านสิ่งแวดล้อมที่อาจเกิดขึ้น นับแต่มีการดำเนินงานของบริษัททุ่งคำ จำกัดในอำเภอวังสะพุง?
12. ท่านทราบข้อมูลเกี่ยวกับผลกระทบร้ายแรงด้านสุขภาพและสิ่งแวดล้อม อันเป็นผลมาจากการดำเนินงานของบริษัททุ่งคำ จำกัดในอำเภอวังสะพุงหรือไม่? มีการวางแผนใช้มาตรการใด หรือได้ใช้มาตรการใดแล้วเพื่อแก้ไขผลกระทบร้ายแรงด้านสุขภาพและสิ่งแวดล้อม อันอาจเป็นผลมาจากการดำเนินงานของบริษัททุ่งคำ จำกัดในอำเภอวังสะพุง?
13. กรุณาให้ข้อมูลเกี่ยวกับการตรวจสอบด้านคุณภาพสิ่งแวดล้อมล่าสุดในพื้นที่รอบเหมืองของบริษัททุ่งคำ จำกัดในจังหวัดเลย รวมทั้งการตรวจสอบน้ำตามธรรมชาติ น้ำใต้ดิน การตรวจสอบดิน การตรวจสอบพืช และสัตว์น้ำ
14. กรุณาให้ข้อมูลเกี่ยวกับความคืบหน้าของแผนการฟื้นฟูสิ่งแวดล้อมตามข้อเสนอของบริษัททุ่งคำ จำกัด รัฐบาลได้เข้าไปมีส่วนเกี่ยวข้องในการจัดทำหรือการดำเนินงานตามแผนนี้อย่างไรบ้าง?

ANNEX B:

LETTER TO TUNGKUM LIMITED



August 23, 2018

Chief Executive Officer
Tungkum Limited
179 Moo 3
Khao Luang, Wang Sa Phung
Loei Province 42130

Dear Sir/Madam,

Fortify Rights is a nongovernmental organization based in Southeast Asia. We investigate human rights violations, engage governments and others on solutions, and strengthen the work of human rights defenders, affected communities and civil society.

Fortify Rights is preparing a report about the situation of environmental defenders engaged in activities in Wang Sa Phung District, Loei Province, particularly with regard to Tungkum Limited's gold mining operation. Our research examines alleged attacks and threats against environmental defenders, arbitrary detention, restrictions on the right to freedom of expression and peaceful assembly, and potential violations on the right to a healthy environment. Our findings are based on first-person interviews with affected community members and local authorities as well as court documents, photographs, and other recordings.

We are writing to ensure that our report accurately represents the policies and practices of Tungkum Ltd. during the period of the investigation between 2015-2016, with regard to alleged attacks against environmental defenders and residents of Ban Na Nong Bong on May 15, 2014, civil and criminal complaints and lawsuits initiated by Tungkum Ltd., and the company's activities to ensure basic rights and protections within its business operations.

Fortify Rights endeavors to produce objective human rights publications based on all available information. We hope your office will respond at your earliest opportunity to the attached questions so that we may reflect your views in our reporting. Please also feel free to include any additional information, materials, or statistics that might be relevant to our research.

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To fully incorporate your views in our forthcoming publication, we would appreciate a response no later than September 7, 2018. If an in-person meeting would be preferable, we would be happy to discuss our research in detail at a time that is most convenient for your schedule.

Thank you for your consideration of this matter. We look forward to engaging with your office.

Sincerely,

Amy Smith
Executive Director

cc:

Mr. Wichit Chiamwichitkun
Chief Executive Officer
Tongkah Harbour Public Company Limited
Muang Thai – Phattara Building No. 1, 7th Floor
252/11 Ratchadapisek Road
Huay Kwang, Bangkok 10310

Enclosures (1)



Questions from Fortify Rights to the Management of Tungcum Limited

1. What is the current status and plans of Tungcum Limited's business operations in Loei Province, Thailand?
2. Could you please explain policies and practices Tungcum Ltd. has in place to ensure human rights protections within its business operations?
3. What steps has Tungcum Ltd. taken to monitor and address potential human rights abuses within its business operations? Are you aware of any human rights abuses within Tungcum Ltd.'s business operations, and what, if any, measures have been taken to address abuses?
4. What is your understanding of the activities and concerns of the Khon Rak Ban Kerd Group (KRBKG)? Has Tungcum Ltd. representatives met with members of KRBKG to exchange information and discuss ways to address concerns? What, if any, were the outcomes of those meetings?
5. Could you please provide any information you have about the attacks on residents of Na Nong Bong village on May 15, 2014? Are you aware of any company employees involved or injured in the May 15 attacks? What, if any, action did the company take to report or respond to the May 15 attacks?
6. Are you aware of any company employees or members of the management team involved in threatening residents in Wang Sa Phung District, Loei Province? What, if any, action did the company take to respond to alleged threats, intimidations by company employees or members of the management team against the residents?
7. Could you please provide information on the movement of trucks and/or the transportation of ore from the Tungcum Ltd. mine site during the late evening of May 15, 2014?
8. How many human rights and environment-related criminal and civil complaints and lawsuits has Tungcum Ltd. initiated since its establishment as a company in Thailand? Who are the parties to and what are the bases for and status of these complaints and lawsuits?
9. How many human rights and environment-related complaints or legal proceedings has Tungcum Ltd. been subject to since its establishment as a company in Thailand? Who are the complainants and what are the bases for and status of these complaints and lawsuits?

10. Could you please provide information on the plans and measures taken at the outset of Tungkum Ltd.'s operations in Wang Sa Phung District to ensure a healthy environment and prevent potentially adverse environmental impacts as the result of Tungkum Ltd.'s operations?
11. Are you aware of any adverse health or environmental impacts resulting from Tungkum Ltd.'s operations in Wang Sa Phung District? What, if any, measures are planned or have been taken to address adverse health or environmental impacts that may have resulted from Tungkum Ltd.'s operations in Wang Sa Phung District?
12. Could you please provide information on the most recent environmental tests conducted in areas surrounding Tungkum Ltd.'s operations in Loei Province, including the results of tests on natural water, underground water supplies, soil, plants, and aquatic species tests?
13. Could you please provide information on how Tungkum Ltd. develop the 2017 rehabilitation plan, including any consultations conducted with members of the community in Wang Sa Phung District? What measures have been taken to implement this plan?



(คำแปล)

24 สิงหาคม 2561

กรรมการผู้จัดการ
บริษัททุ่งคำ จำกัด
179 หมู่ 3 ตำบลเขาหลวง อำเภอวังสะพุง
จังหวัดเลย 42130

เรียน ท่านกรรมการผู้จัดการ,

ฟอร์ตีฟายไรต์เป็นองค์กรพัฒนาเอกชนในเอเชียตะวันออกเฉียงใต้ เราสอบสวนกรณีการละเมิดสิทธิมนุษยชน ร่วมมือกับภาครัฐและภาคส่วนอื่น ๆ เพื่อหาทางออกและส่งเสริมการทำงานของนักปกป้องสิทธิมนุษยชนชุมชนและภาคประชาสังคมที่ได้รับผลกระทบ

ฟอร์ตีฟายไรต์อยู่ระหว่างจัดทำรายงานเกี่ยวกับสถานการณ์ของนักปกป้องสิ่งแวดล้อมซึ่งดำเนินการในอำเภอวังสะพุง จังหวัดเลย โดยเฉพาะที่เกี่ยวกับการทำเหมืองทองคำของบริษัททุ่งคำ จำกัด งานวิจัยของเรามุ่งตรวจสอบข้อกล่าวหาว่ามีการทำร้ายและคุกคามนักปกป้องสิ่งแวดล้อม การควบคุมตัวโดยพลการ การจำกัดสิทธิที่จะมีเสรีภาพในการแสดงออกและการชุมนุมอย่างสงบ และความเสี่ยงที่จะเกิดการละเมิดสิทธิที่อาศัยอยู่ในสิ่งแวดล้อมที่ตีผลการศึกษาของเราอยู่บนพื้นฐานการสัมภาษณ์ผู้ที่เกี่ยวข้องโดยตรง รวมทั้งสมาชิกของชุมชนที่ได้รับผลกระทบและหน่วยราชการในท้องถิ่น รวมทั้งการเก็บข้อมูลจากเอกสารของศาล ภาพถ่ายและการบันทึกข้อมูลอย่างอื่น

เหตุที่เขียนจดหมายนี้เพื่อประกันว่ารายงานของเราจะให้ข้อมูลอย่างเที่ยงตรงเกี่ยวกับนโยบายและการปฏิบัติของบริษัททุ่งคำ จำกัด ในระหว่างการศึกษาข้อมูลของเราเมื่อปี 2558-2559 เกี่ยวกับข้อกล่าวหาว่ามีการโจมตีทำร้ายนักปกป้องสิ่งแวดล้อมและชาวบ้านที่บ้านนาหนองบง เมื่อวันที่ 15 พฤษภาคม 2557 การฟ้องคดีทั้งทางแพ่งและอาญา และการฟ้องคดีของบริษัททุ่งคำ จำกัด และการดำเนินงานอื่น ๆ ของบริษัทเพื่อคุ้มครองสิทธิขั้นพื้นฐานในระหว่างการดำเนินธุรกิจ

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ฟอร์ตีฟายไรต์พยายามจัดทำรายงานด้านสิทธิมนุษยชนอย่างเป็นทางการเป็นกลางตั้งอยู่บนพื้นฐานข้อมูลที่มีอยู่ทั้งหมด เราหวังว่าหน่วยงานธุรกิจของท่านจะช่วยตอบคำถามที่แนบมานี้โดยเร็วที่สุดเท่าที่จะเป็นไปได้ เพื่อให้รายงานของเราครอบคลุมความเห็นของท่านด้วย กรุณาให้ข้อมูลใด ๆ เอกสารหรือข้อมูลเชิงสถิติเพิ่มเติมหากท่านเห็นว่าเกี่ยวข้องกับงานวิจัยของเรา

เพื่อให้รายงานของเราครอบคลุมความเห็นของท่าน เราขอความกรุณาให้ส่งคำตอบกลับมามากมายในวันที่ 7 กันยายน 2561 และหากท่านประสงค์ที่จะพบกับเจ้าหน้าที่วิจัยของเรา เรายินดีที่จะส่งเจ้าหน้าที่ไปพบเพื่อพูดคุยรายละเอียดของงานวิจัยในเวลาที่เหมาะสมที่สุดสำหรับท่าน

ขอบคุณที่รับฟังความเห็นนี้ เราหวังว่าจะได้ร่วมมือกับหน่วยงานของท่านต่อไป

ขอแสดงความนับถือ



เอมี สมิธ

ผู้อำนวยการบริหาร ฟอร์ตีฟายไรต์

สำเนาถึง

นาย วิจิตร เจียมวิจิตรกุล
ประธานคณะกรรมการบริหาร
บริษัท ฟุงคาซาเบอร์ จำกัด (มหาชน)
อาคารสำนักงานเมืองไทย-ภัทร อาคาร 1 ชั้น 7
252/11 ถนนรัชดาภิเษก เขตห้วยขวาง
กรุงเทพฯ 10310

เอกสารแนบหนึ่งฉบับ คำถามจากฟอร์ตีฟายไรต์ถึงรัฐบาลไทย (จำนวน 2 หน้า)



คำถามจากฟอร์ตี้ไรท์สำหรับฝ่ายบริหารของบริษัท พุงคำ จำกัด

1. อายกทราบสถานะในปัจจุบันและแผนการดำเนินงานด้านธุรกิจของบริษัท พุงคำ จำกัด ในจังหวัดเลย ประเทศไทย?
2. กรุณาอธิบายถึงนโยบายและการปฏิบัติของบริษัทพุงคำ จำกัด เพื่อประกันให้มีการคุ้มครองด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจ
3. บริษัทพุงคำจำกัดได้ดำเนินการใด ๆ บริษัทพุงคำเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่? ท่านทราบหรือไม่ว่าได้เกิดการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัทพุงคำ จำกัด และที่ผ่านมาได้มีการใช้มาตรการใดเพื่อแก้ไข การปฏิบัติมิชอบนี้หรือไม่ ?
4. ท่านมีความเห็นอย่างไรต่อการดำเนินงานและข้อกังวลของกลุ่มคนรักรักษาบ้านเกิด? ตัวแทนของบริษัทพุงคำ จำกัดได้พบปะกับสมาชิกกลุ่มคนรักรักษาบ้านเกิด เพื่อแลกเปลี่ยนข้อมูลและหาทางแก้ไขตามข้อกังวลหรือไม่? หากมีผลลัพธ์ของการประชุมเป็นอย่างไร?
5. กรุณาให้ข้อมูลที่ท่านทราบเกี่ยวกับการโจมตีทำร้ายชาวบ้านที่บ้านนาหนองบงเมื่อวันที่ 15 พฤษภาคม 2557 ท่านทราบหรือไม่ว่ามีพนักงานบริษัทเข้าไปเกี่ยวข้องหรือได้รับบาดเจ็บจากเหตุการณ์โจมตี เมื่อวันที่ 15 พฤษภาคม? ทางบริษัทได้ดำเนินการใด ๆ เพื่อรายงานหรือตอบสนองต่อการโจมตีเมื่อวันที่ 15 พฤษภาคม?
6. ท่านทราบหรือไม่ว่า มีพนักงานบริษัทหรือฝ่ายบริหารคนใด เกี่ยวข้องกับการคุกคามชาวบ้านที่อำเภอวังสะพุง จังหวัดเลย? ทางบริษัทได้ดำเนินการใด ๆ หรือไม่เพื่อแก้ไขปัญหาดังกล่าวตามข้อกล่าวหาว่าพนักงานบริษัทหรือฝ่ายบริหารได้ข่มขู่และคุกคามชาวบ้านเหล่านี้?
7. กรุณาให้ข้อมูลเกี่ยวกับขบวนรถบรรทุก และ/หรือการขนส่งแร่ออกจากเหมืองแร่ของบริษัทพุงคำ จำกัด ในช่วงค่ำของวันที่ 15 พฤษภาคม 2557
8. ทางบริษัทพุงคำ จำกัดได้ฟ้องคดีทั้งทางแพ่งและอาญา และคดีอื่น ๆ ในประเด็นเกี่ยวกับสิทธิมนุษยชนและสิ่งแวดล้อมทั้งหมดกี่คดี นับแต่มีการก่อตั้งบริษัทในประเทศไทย? มีใครเป็นคู่กรณีบ้างและมีข้อกล่าวหาอย่างไร รวมทั้งมีความคืบหน้าของคดีเหล่านี้อย่างไรบ้าง?
9. บริษัทพุงคำ จำกัดได้ถูกฟ้องร้องดำเนินคดีทั้งทางแพ่งและอาญา และคดีอื่น ๆ ในประเด็นเกี่ยวกับสิทธิมนุษยชนและสิ่งแวดล้อมทั้งหมดกี่คดี นับแต่มีการก่อตั้งบริษัทในประเทศไทย? มีใครเป็นผู้กล่าวหา และมีข้อกล่าวหาอย่างไร รวมทั้งมีความคืบหน้าของคดีเหล่านี้หรือไม่บ้าง?

10. กรุณาให้ข้อมูลเกี่ยวกับแผนและมาตรการที่บริษัททุ่งคำได้นำมาใช้ นับแต่เริ่มการดำเนินงาน ทั้งนี้เพื่อคุ้มครองสิ่งแวดล้อมและป้องกันไม่ให้เกิดผลกระทบร้ายแรงด้านสิ่งแวดล้อมอันเนื่องมาจากการดำเนินงานของบริษัททุ่งคำ จำกัด?
11. ท่านทราบหรือไม่มีผลกระทบต่อสุขภาพและสิ่งแวดล้อม ที่อาจเกิดขึ้นจากการดำเนินงานของบริษัททุ่งคำ จำกัด ในอำเภอวังสะพุง จังหวัดเลย? มีการวางแผนใช้มาตรการใด หรือได้ใช้มาตรการใดแล้วเพื่อแก้ไขผลกระทบต่อสุขภาพและสิ่งแวดล้อม อันอาจเป็นผลมาจากการดำเนินงานของบริษัททุ่งคำ จำกัด ในอำเภอวังสะพุง?
12. กรุณาให้ข้อมูลเกี่ยวกับการตรวจสอบด้านคุณภาพสิ่งแวดล้อมล่าสุดในพื้นที่รอบเหมืองของบริษัททุ่งคำ จำกัด ในจังหวัดเลย รวมทั้งการตรวจสอบแหล่งน้ำตามธรรมชาติ น้ำใต้ดิน การตรวจสอบดิน การตรวจสอบพืช และสัตว์น้ำ
13. กรุณาให้ข้อมูลเกี่ยวกับแผนฟื้นฟูที่จัดทำโดยบริษัททุ่งคำ จำกัด ในปี 2560 รวมทั้งมีการปรึกษาหารือกับสมาชิกชุมชนในอำเภอวังสะพุงหรือไม่? ได้นำมาตรการใดมาใช้เพื่อปฏิบัติตามแผนนี้บ้าง?

RESPONSE TO FORTIFY RIGHTS FROM TONGKAH HARBOUR PUBLIC COMPANY LIMITED



บริษัท ท่าอากาศยานบอร์ จำกัด (มหาชน)

TONGKAH HARBOUR PUBLIC COMPANY LIMITED

สำนักงานใหญ่ ชั้น 7 อาคารสำนักงานตึกเอไอเอส 1 ถนนที่ 250/11 แขวงปทุมวัน เขตปทุมวัน กรุงเทพมหานคร 10310 โทร (82) 095-4912-28 โทรสาร (82) 094-4428

BANGKOK: 7th Floor, Maung Thai Office Tower 1, 250/11 Ratchadaphluk Road, Huay Khwang, Bangkok 10310 Thailand Tel:(66-2)995-4912-28 Fax (66-2)694-4428

พค.598-025/8/2561

วันที่ 29 สิงหาคม 2561

เรื่อง ขอบปฏิเสธการให้ข้อมูล

เรียน นายสมิทธิ์ สมิทธิ์ ผู้อำนวยการบริหาร ฟอรั่มทีฟายไนด์

อ้างถึง หนังสือสอบถามสำหรับฝ่ายบริหารของบริษัท ท่าอากาศยานบอร์ จำกัด ฉบับลงวันที่ 24 สิงหาคม 2561

ตามที่ท่านได้มีหนังสือสอบถามข้อมูลของบริษัท ท่าอากาศยานบอร์ จำกัด เพื่อจัดทำรายงานเกี่ยวกับสถานการณ์ของนักปกป้องสิทธิพลเรือนนั้น รายละเอียดปรากฏตามหนังสือสอบถามสำหรับฝ่ายบริหารของบริษัท ท่าอากาศยานบอร์ จำกัด ตามที่ได้อ้างถึงทางบริษัท ท่าอากาศยานบอร์ จำกัด (มหาชน) ("บริษัทฯ") ขอเรียนให้ท่านทราบว่าปัจจุบันบริษัท ท่าอากาศยานบอร์ จำกัด มิได้มีความเกี่ยวข้องกับบริษัทฯ แต่ประการใด ดังนั้น ทางบริษัทฯจึงไม่สามารถให้ข้อมูลใดๆ กับท่านได้
จึงเรียนมาเพื่อทราบ

ขอแสดงความนับถือ

(นายสมชาย โกรสุทจิวงศ์)

เลขาธิการบริษัท

บริษัท ท่าอากาศยานบอร์ จำกัด (มหาชน)

[Unofficial Translation]

Tor Kor 598-025/8/2561

August 29, 2018

RE: Decline to provide information

TO: Mr. Amy Smith, Executive Director of Fortify Rights

REF: Letter to the Management of Tungkum Limited dated August 24, 2018

Pursuant to the letter you sent requesting information on Tungkum Limited to be included in a report on the situation of environmental defenders based on the details mentioned in the abovementioned letter to the Management of Tungkum Limited:

Tongkah Harbour Public Company Limited would like to inform you that currently the company is not related to Tungkum Limited in any way; therefore, we cannot provide you any information.

Sincerely yours,

Somchai Kraisuthiwong
Secretary
Tongkah Harbour PCL

For more than a decade, members of Khon Rak Ban Kerd Group (KRBKG) or “People Who Love Their Homeland,” a community-based organization of environmental defenders, have demanded accountability and protection from the alleged adverse impacts of a gold mine in Loei Province, northeast Thailand. They have faced reprisals and violations of their basic rights as a result of their activism.

This report documents human rights violations and abuses against KRBKG members and other environmental defenders in Loei Province, including restrictions on their rights to liberty and security, rights to freedom of expression and peaceful assembly, and right to a healthy environment.

Based on a three-year-long investigation involving more than 59 interviews with survivors and eyewitnesses, government officials, and others in multiple locations in Thailand, ***“We Fight to Protect Our Home”: Reprisals Against Environmental Defenders in Loei Province, Thailand*** details the laws, policy, and business practices used to violate the rights of environmental defenders in Thailand and makes recommendations for the Government of Thailand and business entities in Thailand to protect the work of human rights defenders and provide effective remedies.



**FORTIFY
RIGHTS**