

Feature

# Thailand: The forest reclamation case: when the court sent the Sapwai villagers to prison and off their land

Friday 27 September 2019, by [TANTIVITAYAPITAK Nutchua](#) (Date first published: 16 August 2019).

**In the case of 14 Sapwai villagers from Chaiphum Province, sentenced to imprisonment and fines by the Court of First Instance and the Court of Appeal after refusing to move from their land under the 'forest reclamation' policy, their lawyer indicated that the problem started from missing survey data leading to a lack of legal documents, and their defence which the court refused to consider.**

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In the forum "Getting the forest back and the impact on the poor: the case of Sai Thong National Park" on 10 July at Rattanakunakorn Building (Building 11), Rangsit University, persons related to the conflict over land and forest between the Sapwai community and Sai Thong National Park, Chaiphum Province, came together and exchanged opinions.

## Arrested for trespassing on forest land passed down from their relatives

Pattama Komet was born in the Sapwai community, Wang Takhe Subdistrict, Nong Bua Rawe District, Chaiphum Province. Title deeds cannot be issued for forest land, but everyone knows that the community has lived there for a long time. Her grandmother also lived there, before giving it to her mother, and then it was passed down to her.

Suddenly, one day in April 2015, while taking her mother to hospital, an official from Sai Thong National Park phoned her to go back. She hurried home and found around 25 officers waiting for her, some with guns, saying that their family had broken the law by trespassing on forest land. They were made to sign a 'letter of agreement to return the area', consenting to return the land according to the forest reclamation policy.

Pattama did not want to sign since she did not want to return land that was hers – her only piece of land that he and her husband had been using to feed themselves, to look after her father, mother, children and 2 other young relatives.

"It took more than 3 hours until my wife agreed to sign it. She had to sign because she was scared of getting a court warrant; she had to sign in tears," Amphon Kaeoching, Pattama's husband, said.

### **Signing consent to return the land unwillingly and then getting sued**

At the same time, in the same area, while Nittaya Muangklang and her two younger sisters were not home, around 25 Sai Thong National Park officials went to see her mother and also asked her to sign a document giving consent to return the land under the forest reclamation policy.

The officials told Nittaya's mother to sign in place of her and her sisters. Even though Nittaya's mother asked them to wait for them to come back and sign it themselves, her request was denied. She was also threatened: if she did not sign it, she would be arrested, sued, and prohibited from harvesting any cassava.

When she found out, Nittaya became a core member in leading Sapwai community members to seek justice for their rights to the land, afraid that in the future her family and her neighbours would have nowhere to farm. Many of her neighbours were also threatened into signing consent forms in a similar manner.

Eventually on 18 July 2016, Nittaya and her mother and sisters, a total of 4 people, received a summons to speak to an investigating officer at Wang Takhe Provincial Police Station, Nong Bua Rawe District, Chaiyaphum Province, to be informed of charges filed by Sai Thong National Park under the Forest Act, National Forest Reserve Act and National Park Act. Apart from Nittaya's family, her neighbours, including Pattama, were also sued, totalling 14 people.

### **The Court sentences 13 to prison**



*Amphon Kaeoching, the husband of Pattama, who was sued for trespassing into Sai Thong National Park in the Forest reclamation case in Chaiyaphum Province*

"After my wife was imprisoned, I had to be responsible alone. My grandmother-in-law is sick and has to stay home. When she goes to see the doctor, we have to rent a car. I have to take my kids to

school, look after the children. We still have a lot of debts to pay, and the money from labouring is not enough," Amphon, Pattama's husband, worried.

14 people faced a total of 19 cases. The Court of First Instance sentenced 13 to prison and gave 1 a suspended sentence. Each person was given a fine of different amounts. Their lawyer appealed. On 3 July, the court reached its verdict on all cases. In summary, everyone received a sentence of imprisonment with some changes to the length of imprisonment and the amount of the fines.

Somnuek Tumsupap, a lawyer for the Isan Land Reform Network, said that right now they were appealing. The Court of Appeal has to agree that there is sufficient reason for the higher Court to bring the case to trial, and once that is finished, appeals will be made for all cases.

## **Getting the forest land back means normal people lose land to feed themselves**

The Forest reclamation policy was created to solve issues of the destruction of forest resources, encroachment on state land and sustainable national resource management. The objective is for at least 40% of the forest or 26 million rai to be in fully preserved condition, up from 31.5% in 2014. It is managed by the Internal Security Operations Command (ISOC) and the Ministry of Natural Resources and Environment, as assigned by the National Council for Peace and Order (NCPO).

A report by Land Watch studying the Forest reclamation policy observed the NCPO's measures to take back the forest. It was found that in ISOC operations, there was no mention of arrests or charges against organisations conducting illegal logging or the capitalists behind forest encroachment. The information did not specify how many of the alleged offenders who were arrested are capitalists, politicians, owners of timber processing factories or state officials, and how many are members of the general public. It is possible that these measures were used against poor people who mainly live inside forest land.

The report also indicated that poor villagers who live on forest land had to face at least 3 types of impacts under the measures implemented to take back forest land:

One, threats, hounding, demolition and charges against villagers who live within forest lands, which has happened at least 226 times. For example, more than 50 soldiers, police and Royal Forest Department officials equipped with weapons detained more than 11 villagers, core members of the protest from the area of Non Din Daeng District, Buriram Province, an area where conflict over forest land has long existed.

Two, slashing and destroying plants which are the source of income of local villagers under administrative orders, which has happened at least 287 times. For example, Huai Nam Dang National Park officials cut down the rice and corn fields of Huai Hok villagers, Wiang Haeng District, Chiang Mai Province.

Three, arresting and filing charges against villagers in the forest, which has happened at least 168 times. At least 1,003 cases have been brought, for example, the cases of Thung Pa Kha villagers in Mae La Noi District, Mae Hong Son Province, and of Ban Chat Rabiap, Phu Phan District, Sakon Nakhon Province.

## **Taking back forest land doesn't have people as the centre**



*Associate Prof. Dr. Anusorn Unno, Dean of the Faculty of Sociology and Anthropology, Thammasat University (Source: Protection International)*

Anusorn Unno, Faculty of Sociology and Anthropology, Thammasat University, noted that the Forest reclamation policy has gone to the hearts of middle class people in the city, for tourism and sightseeing. This middle class is the same group of people that supported the coup during the People's Democratic Reform Committee protests, so it is likely that these people have these thoughts. It is possible that after the last seizure of power, the Forest reclamation policy is an operation for their support team that continues to make demands. But what has gone further than this is that this policy is part of the army's expansion of influence under the name of ISOC, as one of the pawns of the old power network that is trying to revive its political and economic power.

Anusorn posed a question: on this current issue, where do poor people stand? Because of what has been happening in the past 5 years, there have been attempts to establish power and order and direct benefits by conspiring with major investors and doling out income to poor people. That is why it's not strange to see various policies such as the Pracharat project, or Thai Niyom, which are welfare policies. But poverty cannot be solved through welfare policies. The reasons for poverty are being poor in rights, poor in opportunity, poor in power, poor in resources. Therefore, the problem of poverty has to be solved through policies concerning rights, but the Forest reclamation policy does the opposite.

On this issue, the NCPO issued NCPO Order No. 64/2014 on the suppression and prevention of trespassing and destroying forest resources and NCPO Order No. 66/2014 on additional agencies for suppression, which says, for example, that any action must not affect the poor or those without land who were originally living in that area.

But why is it that villagers who originally used to live there were chased out by the authorities? Prachatai questioned Somnuek Tumsupap, lawyer in this case, about this.

### **Issue of missing survey data leads to lack of legal documents**



*Somnuek Tumsupap, defence lawyer, Sapwai land conflict case*

The 14 Sapwai villagers were sued because: one, survey data required by the Cabinet Resolution of 30 June 1998 is missing; and two, they are heirs to the land and yet do not have their names on survey documents.

Somnuek explained that the criteria used in examining and proving the rights of villagers who live on forest land are based on the Cabinet Resolution of 30 June 1998, but that Cabinet Resolution is incomplete. There are conditions, such as the time the surveying authorities can take is limited, the number of personnel is limited, the budget is limited. When the budget ran out, the authorities did not continue operations but allowed villagers to continue living in the area. That is why some groups of people are missing from the survey data and there are new generations of children who did not get surveyed. Because they did not get surveyed, this was then used to claim that these people are a new group of trespassers and they were sued.

Somnuek also said that, speaking honestly, in this court case, officials told the court that it was due to the Forest reclamation policy, because in the past even though the villagers have lived in the forest, there were no court charges filed since there was no policy.

Another point is that even though Order No. 66/2014 states that there is not to be any impact on the poor, the court stated that Order No. 64/2014 is the main justification for taking the land back, while on Order No. 66/2014, the court said that the villagers who have been put on trial cannot receive any benefit since they are not poor, owning 2-3 plots of land and are people who have newly moved in since their names are not listed in the survey under the Cabinet Resolution of 30 June 1998.

### **The defence**

The villagers' initial move was to ask that an agency, namely P-move, solve the issue by slowing down the legal process. P-move submitted the case to the state sector, and a committee and a working group were established, the area was studied, and solutions were proposed to be approved by the agency. The villagers think that if the solution takes this approach it should be able to mitigate the situation. But this procedure did not move forward, and led to the court case.

"We sent these conditions to the court, but they were not considered at all. We tried to argue that the accused should receive a remedy as part of the process," Somnuek said.

Another issue that was used in the argument is Order No. 66/2014. The court ruled that the villagers could not benefit from this, while Somnuek thinks that Orders No. 64/2014 or 66/2014 did not require that the conditions of the Cabinet Resolution of 30 June 1998 have to be implemented, but that the use of these conditions was the discretion of officials. So to use these, the agency has to show that Orders No. 64/2014 or 66/2014 require that the Cabinet Resolution be implemented, but the Orders do not state this, and in this case, since the court interpreted the Orders as laws, then the Orders should override the Resolution. That is why the interpretation should follow the letter and the intention of the Orders. And according to the intention, the villagers must be protected. But the court considered the case according to the Resolution. That is, there must be a survey, there must be a list of names who have been granted exemption, in order to benefit from Order No. 66/2014. They are then protected, or, if they did move into the area later, the Order states that there must be an investigation process first, not charges filed.

"We fought with this argument, but we did not get any consideration on this issue," Somnuek said.

### **Sustainable solution proposal**



*83 civil society organisations held a press conference “Stop the Forest reclamation policy, return justice to the poor” at Rattanakunakorn Building (Building 11), Rangsit University, on 10 July 2019 (Source: Protection International)*

Somnuek said that there is a procedure for solution in place, but it has not moved forward yet. It is arranged jointly between the community and Royal Forest Dept officials. The community has to have a sustainable resource management plan, and now the community has one. If the Provincial Administrative Organization approves, it then sends it to the central administration which is the Ministry or Cabinet for approval, and the villagers will be able to live in their area within the National Park and pass the land on to their children, but will not be able to expand their land outside the permitted area. This solution will ensure that the villagers will not get sued again.

In the forum “Getting the forest back and impacts on the poor: the case of Sai Thong National Park”, 83 organisations from civil society networks held a press conference after the Court of Appeal returned a verdict of imprisonment and fines on the 14 Sapwai villagers, Chaiphum Province, in the Forest reclamation case. They demanded cancellation of the Forest reclamation policy, quick approval of the land management plan of Sai Thong National Park, compensation for the defendants and the opportunity for the villagers to fight the case in the Supreme Court.

In July, 7 out of the 13 villagers were granted bail to fight their case in the Supreme Court. Srinuan Phasang, Pattama Komet, Supaporn Srisuk, and Sakon Prakij were released on 19 July, while Sunee Narin and Phut Sukbongkot were released on bail on 25 July, and Nittaya Muangklang on 31 July.

On 13 August, iLaw reported that three more villagers were granted bail: Suwalee Phongam, Narisara Muangklang, and Thongpan Muangklang.

The remaining 3 villagers are still imprisoned: Suwit Rattanachaisri, Sompit Tarnnork, and Wanchai Arpornkaew. Their lawyer said that their request for appeal is currently being considered by the court.

**Report by Nutch Taktivitayapitak**

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## **History of Sapwai community and the Forest reclamation case**

Local communities settled in Huai Yae Subdistrict and Wang Takhe Subdistrict, Nong Bua Rawe District, Chaiphum Province, after the logging concession of Chaiphum Thammai Co Ltd was cancelled in 1967. The villagers started to move into the area, and later formed a community. There are 5 communities that are in conflict with Sai Thong National Park over land:

1. Ban Nong Phak Waen, established 1958
2. Hin Ru community, established 1969

3. Sapwai community, established 1972
4. The Ban Sap Salete group, established 1975
5. The Ban Sok Takhian group, established 1976

After the communities settled in the area, in 1979 the Nayangklak National Forest Reserve was gazetted, overlapping with the residential and farming areas of the villagers. But no problems occurred until on 30 December 1992 the establishment of the Sai Thong National Park was gazetted. After that, villagers who used land in the area started to be affected, especially the 5 main communities mentioned above, since the villagers' original land overlapped with the declared area of the National Park and the National Park wanted the land. The conflict between the villagers and the Park is still in the middle of negotiations looking for a solution.

The "Forest reclamation policy" was announced in 2014 by the NCPO and the area was affected by the policy in 2015. The state sector deployed military power together with officials from the Department of National Parks, Wildlife and Plant Conservation and many other agencies. Villagers were "asked to return the land", their rubber trees were cut down and charges were filed against them.

Even though the NCPO Order No. 66/2014 stated that all operations must not impact the poor, those with low income and those without farmland who were living in the area before the enforcement of this Order, a total of 14 villagers, who were already living in areas claimed by Sai Thong National Park and who were in the middle of proving their rights, were put on trial to face a total of 19 cases. All the accused used the land to live on and for agriculture, which is to plant cassava.

BBC Thai claimed that Vorapol Deeprasai, Superintendent of Sai Thong National Park said that the 14 villagers refused to leave the area despite already signing consent to return the land, and so they filed charges against all the villagers.

*Illustration by Kittiya On-in*

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