THAILAND
Fortify Rights works to ensure human rights for all. We investigate human rights violations, engage governments and others, 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 in close collaboration 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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At the invitation of the Government of Thailand, the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises conducted an official visit to Thailand from March 26 to April 4, 2018. This submission to the U.N. Working Group focuses on key issues of concern for human rights defenders in Thailand working in the context of business and human rights from 2014 to the present day, and it provides detailed recommendations for the Government of Thailand to improve the situation in the country.

Specifically, this submission focuses on two interrelated areas: (1) The ongoing need for protection of human rights defenders in Thailand; and (2) the criminalization of human rights defenders exercising their rights to freedom of expression and peaceful assembly.
I. The protection of human rights defenders

Fortify Rights documented continued attacks and harassment perpetrated against human rights defenders and community leaders working on corporate accountability. These incidents often took place with impunity and without adequate protection from Thai authorities. For instance, more than 100 masked men attacked, detained, and injured residents of Na Nong Bong village and leaders of the Khon Rak Ban Kerd Group (KRBKG)—a community-based organization advocating for the protection of the environment against potentially harmful mining operations in Loei Province—on May 15, 2014. Unknown assailants detained and threatened with sexual assault a woman human rights defender from KRBKG during the May 2014 attack after she attempted to document the attack with her camera.

In May 2016, Loei Provincial Court convicted an Army Lieutenant Colonel and a retired Army Lieutenant General to 36 and 24 months’ imprisonment, respectively, for their involvement in the attacks. In September 2017, the Appeal Court upheld the conviction of the two military officers and increased the sentence to 60 and 40 months respectively. The remaining perpetrators have not been brought to justice. On May 15, 2017, Fortify Rights, KRBKG, and the Community Resource Centre Foundation (CRC) called on the Thai authorities to reopen the investigation and ensure accountability for attacks against the human rights defenders in Loei Province in 2014, noting that the authorities had convicted only two of an estimated 150 masked-men involved in attacks.

In another example, members of the Southern Peasants Federation of Thailand (SPFT)—another community-led organization of farmers advocating for land reform, food security, and fair distribution of resources in Surat Thani Province—experienced violent attacks and killings, largely committed with impunity.
Since 2010, at least four SPFT members have been shot dead by unknown assailants, including Mr. Somporn Pattanaphum, who was killed in 2010; Ms. Montha Chukaew and Ms. Pranee Boonrak, who were killed in the same shooting in 2012; and Mr. Chai Boonthonglek, who was killed in 2015.6 On April 8, 2016, Mr. Supoj Kanlasong, an SPFT member and key witness in Mr. Chai Boonthonglek's killing, survived an attempted assassination but sustained serious injuries with eight bullets wounds in several parts of his body.7

The community representatives repeatedly asked the Department of Special Investigation (DSI) to investigate the killings and assassination attempts, but DSI reportedly refused to investigate on the basis that it did not fall within their jurisdiction.8 On November 28, 2016, the Appeal Court upheld the acquittal of the only suspect in the killing of Mr. Chai Boonthonglek, citing a lack of evidence.9 Similarly, the Wiengsa Provincial Court cited insufficient evidence in its decision to acquit Mr. Santi Wanthong, the only suspect for the attempted assassination of Mr. Supoj Kanlasong, on February 22, 2017.10 The failure to prosecute perpetrators, despite the seriousness of the crimes, has created a persistent culture of impunity in Thailand that has reverberated in communities throughout the country.

Fortify Rights believes the killings of SPFT members are linked to their agenda and activities with regard to land reform, food security, and distribution of resources. SPFT communities are farming and inhabiting disputed land that is also claimed by palm oil and agribusiness companies and the Agricultural Land Reform Office (ALRO), which is a government agency tasked with land management. The ALRO granted Chew Kang Swee Development Company Limited, a Thai-registered palm oil and agribusiness company, a long-term lease over local land, which has expired.11 Following the expiration of the long-term lease, SPFT members inhabited and began farming the land, while urging ALRO to allocate the land to the farmers.

In a related case, the World Resources Development Company Limited, which claimed that it bought land from private owners, filed a criminal complaint with the local police against 14 SPFT members from Nam Daeng Pattana Community, alleging they trespassed and caused damage to their palm oil plantation.12 On June 7, 2017, the Wiangsa Provincial Prosecutor charged the SPFT members and the case is scheduled to go to trial in May 2018.13
Fortify Rights also documented the use of criminal defamation laws, the 2007 Computer-related Crime Act, and the 2015 Public Assembly Act to intimidate and harass human rights defenders, community-based activists and journalists by private companies. For example, since 2014, Tungkum Limited, a Thai-owned gold mining company, brought six criminal defamation complaints against residents and KRBKG members involved in opposing the alleged adverse environmental impacts Tungkum, Ltd.’s mining operations in Thailand’s Loei Province.

In November 2015, Tungkum Ltd. filed two separate complaints against a 15-year-old schoolgirl who attended a youth camp on environmental protection and narrated a Thai Public Broadcasting Service (Thai PBS) news clip, in which she alleged six villages in the gold mining area “have been environmentally affected from the gold mining industry.” She went on to say that “the River Huay has been contaminated,” and “villagers cannot use it for drinking or household consumption.”

On June 2, 2016, the Juvenile Observation and Protection Office in Loei Province informed the girl’s mother that it would not refer Tungkum Ltd.’s complaint to the Juvenile and Family Court. Following a second complaint, the Minburi Metropolitan Police Station in Bangkok commenced an investigation against the girl, which is still pending.

Tungkum Ltd. also filed a criminal-defamation complaint against Thai PBS and four Thai PBS journalists—Ms. Wirada Saelimim, Mr. Somchai Suwanbun, Mr. Korkhet Chanthalerdlaks, and Mr. Yothin Sithhibordeekul—on November 12, 2015, alleging violations of sections 326 and 328 of the Criminal Code, articles 14 and 16 of the 2007 Computer-related Crime Act, and other laws. Tungkum Ltd. alleged Thai PBS and the journalists damaged the company’s reputation when they aired the news clip narrated by the schoolgirl. The company
sought 50 million Thai Baht (US$1.4 million) in compensation and revocation of Thai PBS’s operating license for five years.

The Criminal Court in Bangkok found the complaint lacked merit because Thai PBS and its journalists acted professionally and relied on credible sources, including findings from government agencies and local residents. Following Tungkum Ltd.’s appeal, the Appeal Court on March 20, 2018 disagreed with the lower court’s decision, finding that there was sufficient evidence to proceed with charges under sections 326 and 328 of the Criminal Code, but not articles 14 and 16 of the 2007 Computer-related Crime Act. The case will proceed to trial on May 21, 2018. If convicted, the four journalists face a sentence of up to two-years’ imprisonment or a fine of up to 200,000 Thai Baht (US$5,600).

More recently, immigration authorities arrested Jamon Sonpednarin, a freelance journalist, on the morning of November 29, 2017 at Ban Nam Pu Ron border checkpoint in Kanchanaburi Province and transferred him into the custody of the Wang Sa Phung District Police on November 30. The arrest was carried out under a warrant issued by the Loei Provincial Court on February 3, 2016, under sections 83, 362, and 365 of the Criminal Code for allegedly “disturbing the possession” of—or trespassing on—the site of an open-pit gold mine previously managed by the controversial mining company Tungkum Ltd. On December 1, 2017, the police released him on bail, and he is waiting for confirmation from the Loei Provincial Prosecutor regarding whether the case will proceed to trial.

On November 25, 2016, Loei Provincial Court acquitted two environmental defenders—Surapun Rujichaiyavat and Pornthip Hongchai—for their alleged involvement in the same 2015 protest. In a decision that is final, the Court found the two activists not guilty due to insufficient evidence that the mining company possessed the land at the time of the incident.

Community leaders involved in opposing a mining operation in Pichit Province similarly faced criminal defamation charges. From 2013 to 2016, the Akara Resources Public Company Limited, a Thai gold-mining subsidiary of the Australian firm Kingsgate Consolidated Limited, filed at least five criminal defamation and computer crimes complaints against community leaders, an activist, and an academic. On December 20, 2017, the Pichit Provincial Court sentenced Somlak Hutanuwatr, an activist who posted an online comment critical of Akara Resources PCL’s gold mine, to one year imprisonment, suspended for two years, and a fine of 80,000 Thai Baht (about US$2,550) for violating Article 14(2) of the Computer-related Crime Act and Article 101(1) of the Promotion and Conservation of National Environmental Quality Act.

Courts have convicted human rights defenders advocating for migrant workers’ rights under the 2007 Computer-related Crime Act. For example, following a criminal complaint filed by the Natural Fruit Company Limited in 2013, on September 20, 2016, the Bangkok Criminal Court convicted Andy Hall, a British researcher, of criminal defamation and violations of Article 14(1) of the Computer-
related Crime Act for documenting and reporting on alleged labor rights violations at the company’s factory in Prachaub Kirikhan Province.24 The Court sentenced Hall to three years in prison and a 150,000 Thai Baht (US$4,200) fine.25 Another Thai company, Thammakaset Company Limited, also filed charges against Andy Hall under the 2007 Computer-related Crime Act and criminal defamation laws for sharing information on alleged labor rights abuses against 14 migrant workers at Thammakaset’s poultry-rearing farm.26 Thammakaset Co. Ltd. also filed criminal defamation charges against the 14 migrant workers for submitting a complaint against the company to the National Human Rights Commission of Thailand. The trial was held in the Don Muang Kwang Court in February and April, 2018, and a decision on the case is pending.27

Thai authorities also charged human rights defenders and community activists under the 2015 Public Assembly Act for organizing and participating in peaceful assemblies. For example, on December 18, 2016, Thai police in Wang Sa Phung District, Loei Province summoned seven women leaders of KRBKG for allegedly violating, among other offenses, articles 8 and 10 of the Public Assembly Act for failing to notify the authorities 24-hours prior to engaging in a protest on November 16, 2016.28 On July 25, 2017, the Loei Provincial Prosecutor filed charges under the 2015 Public Assembly Act and Section 309 of the Thai Criminal Code against the seven women for their roles in the protest.29 The case is pending before the Court.

In another example, Akara Resources PCL filed a complaint against 27 community activists for a gathering that allegedly blocked Akara Resources PCL trucks transporting ore in Pichit Province. The Tub Klor District Police later charged the activists for allegedly violating Section 309 of the Criminal Code. Additionally, police charged Thanyarat Sinthornthammathat, a woman community leader, under Article 10 of the 2015 Public Assembly Act for her alleged role as a protest organizer in this peaceful gathering.30 On February 9, 2017, the Pichit Provincial Prosecutor filed charges under Section 309 of the Criminal Code, article 16 of the Public Assembly Act against the 27 protesters, and articles 10 and 15 of the 2015 Public Assembly Act against the woman community leader.31 On September 12, 2017, the 27 protesters pleaded guilty to the charges. Subsequently, the Pichit Provincial Court found the 27 protesters guilty of Section 309 of the Criminal Code and charges under the 2015 Public Assembly Act; however, the Court said it would not impose a sentence but rather a one-year probation because the protesters are residents affected by the gold mining operation, have low incomes, and had not previously committed a crime.32
Khon Rak Ban Kerd Group march to raise awareness and support for environmental protections in Loei Province. Women leaders hold a sign that reads, “Close the Mine Permanently, Rehabilitate and Bring Back Our Mountains.” ©Fortify Rights 2017
Investigate all reported killings, attacks, threats, and other crimes committed against human rights defenders with a view towards holding all perpetrators to account. Provide remedies and ensure access to justice for victims of human rights abuses and their families.

End all legal proceedings against individuals facing investigation, charges, or prosecution for engaging 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 326–328 of Thailand’s Criminal Code, the 2015 Public Assembly Act, and the 2007 Computer-related Crime Act.

Decriminalize defamation by amending sections 326–328 of Thailand’s Criminal Code and articles 14 and 16 of the Computer-related Crime Act in line with international standards on freedom of expression.
ACKNOWLEDGEMENTS

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2 Fortify Rights conducted phone interview with [name withheld], November 22, 2017.


4 See Loei Provincial Prosecutor and nine co-plaintiffs v. Army Lieutenant Colonel Poramin Pomnak and Lieutenant General Porames Pomnak, Verdict, Appeal Court Region IV, Black Case No. Aor. 510/2560, Red Case No. Aor. 1868/2560, September 13, 2017.


8 Fortify Rights conducted phone interview with C.T., March 9, 2018.


See Wiangsa Provincial Prosecutor v Vichit Krodnuan and ten other individuals, Complaint, Wiangsa Provincial Court, Black Case No. 1462/2560, June 7, 2017.

See Wiangsa Provincial Prosecutor v Vichit Krodnuan and ten other individuals, Complaint, Wiangsa Provincial Court, Black Case No. 1462/2560, June 7, 2017.


Fortify Rights, trial monitoring notes, March 20, 2018 (unpublished)


Community leaders, Ms. Chananchida Limnonthakul and Ms. Thanyarat Sinthornthammathat, faced two separated criminal defamation complaints in 2013 for their role in submitting a complaint letter concerning alleged negative impacts of the gold mine to the representative of Australian Embassy and giving interview to the media in May 2013. The public prosecutor dropped both complaints in 2015 and 2016, respectively. See, Office of Special Prosecutor of the 4th Kwaeng Court (Yannawa), “Order of Non-Prosecution to the Superintendent of Tung Mahamek Metropolitan Police Station,” Letter No. Aor Sor 0013.4/1975, July 14, 2015; Office of Special Prosecutor of Bangkok South Criminal Court, “Order of Non-Prosecution to the Super Intendent of Tung Mahamek Metropolitan Police Station,” Letter No. Aor Sor 0037.7/293, March 29, 2016. On March 31, 2016, Akara Resources PCL also brought similar charges against Ms. Somlak Hutanuwatr and Ms. Thanyarat Sinthornthammathat for alleged negative Facebook postings about the company. The Bangkok South Criminal Court dismissed the charges on November 9, 2016. See, Akara Resources Public Co., Ltd. v. Ms. Somlak Hutanuwatr and Ms. Thanyarat Sinthornthammathat, Bangkok South Criminal Court, Black Case No. Aor. 1086/2559, Affidavit (Court of First Instance), March 31, 2016. On June 21, 2016, the company brought a second defamation complaint at against Ms. Somlak Hutanuwatr and Mr. Smith Tungkhasamit, a lecturer at Rangsit University who used blood tests to reveal adverse health impacts among villagers living near the gold mine. The Bangkok South Criminal Court dismissed the case on November 29, 2016. See, Akara Resources Public Co., Ltd. v. Ms. Somlak Hutanuwatr and Mr. Smith Tungkhasamit, Bangkok South Criminal Court, Black Case No. Aor. 2076/2559, Affidavit (Court of First Instance), June 21, 2016. On July 22, 2016, the company brought a third defamation complaint against Somlak Hutanuwatr at Pichit Provincial Court. The Court delivered a guilty verdict in December 2017. See, Akara Resources Public Co., Ltd. v. Ms. Somlak Hutanuwatr, Pichit Provincial Court, Black Case Aor. 1468/2016, Affidavit (Court of First Instance), July 22, 2016.

Article 14(2) of the 2015 Computer-related Crime Act states that any person who perpetrates the following offenses shall be subject to imprisonment up to five years and a fine not exceeding one hundred thousand Thai baht (US$2,800), or both: putting into a computer system computer data in a manner that is likely to damage national security, or cause panic in the public. Article 101(1) of the Promotion and Conservation of National Environmental Quality Act B.E. 2535 states that anyone who spreads or disseminates false information about the danger from any source of pollution with the intention to destroy another's reputation or to undermine public trust on the lawful operation of its business or activity shall be sentenced to one year imprisonment and a fine not exceeding one hundred thousand Thai baht (US$2,800), or both.

The court suspended the sentence on the basis that Hall’s work was “beneficial to Thai society.”


Article 8 of the 2015 Public Assembly Act, which prohibits holding a public gathering that obstructs gateways or services of the offices of government agencies while article 10 requires protest organizer to notify the authorities of the gathering at least 24 hours before its commencement. See “Thailand: Drop Charges, Protect Environmental Defenders,” Fortify Rights, July 24, 2017, http://www.fortifyrights.org/publication-20170724.html

Section 309 of the Criminal Code 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.

Notification of Criminal Complaint, Tub Klor District Police, August 9, 2016

See Pichit Provincial Public Prosecutor v Thanyarat Sinthornthammathat and 26 other defendants, Complaint, Pichit Provincial Court, Criminal Case, Black Case No. 336/2560, February 9, 2017, and Article 15 (2) of the Public Assembly Act states that a public assembly organizer shall have the duty to oversee and supervise a “public assembly from being an obstacle to the public when using a public place immoderately, and overseeing and supervising participants in the act in compliance with section 16.” Article 16 of the Public Assembly Act states that a participant in a public assembly shall have the duty to (1) not obstruct the public from using a public place where the public assembly is held or cause unreasonable inconvenience to any person and (2) not dress to conceal or camouflage himself from being identified intentionally; provided that, there is usual traditional dressing. Both offences carry the sentence of a fine not exceeding 10,000 Thai Baht (US$280).