"WE FIGHT TO PROTECT OUR HOME"

Reprisals Against Environmental Defenders in Loei Province, Thailand

OCTOBER 2018
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.
# TABLE OF CONTENTS

SUMMARY ................................................................. 8

METHODOLOGY ......................................................... 19

BACKGROUND ............................................................. 21

I. HUMAN RIGHTS VIOLATIONS AND ABUSES ......................... 27
   Attacks on Environmental Defenders ................................ 27
      Death Threats ...................................................... 32
   Arbitrary Detention: “Attitude Adjustment” ....................... 33
   Restrictions on the Right to Freedom of Expression ............... 35
   Restrictions on the Right to Freedom of Peaceful Assembly .... 42
   Violations of the Right to a Healthy Environment ................. 46
      Lack of Adequate Access to Water ............................. 47
      Adverse Health Impacts ......................................... 49

II. HUMAN RIGHTS DEFENDERS .................................... 51
   Khon Rak Ban Kerd Group (KRBKG) ............................... 51
   Community Resource Centre Foundation (CRC) .................... 52

III. LEGAL ANALYSIS .................................................... 55
   Protection for Environmental Human Rights Defenders .......... 56
   Right to Liberty ....................................................... 57
   Right to Freedom of Expression ................................... 59
   Right to Freedom of Peaceful Assembly ........................... 61
   Right to a Healthy Environment ................................... 62
   Corporate Responsibility to Respect Human Rights ............... 64

RECOMMENDATIONS .................................................... 67
   To the Government of Thailand ..................................... 67
   To Tungkum Ltd. and its Related Business Entities ............... 68

ACKNOWLEDGEMENTS ................................................ 69

ANNEX A: ................................................................. 70
   Letter to the Thai Government ...................................... 70

ANNEX B: ................................................................. 79
   Letter to Tungkum limited ............................................ 79
   Response to Fortify Rights from Tongkah Harbour Public Company Limited .... 87
We Fight to Protect Our Home
Residents of Na Nong Bong village at a peaceful protest against Tungkurn Limited gold-mining company.

©KRBKG, November 2016
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 Tungkum 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.
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.
This report reveals that Thai authorities and Tungkum 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 Tungkum 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 Tungkum 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 Tungkum 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 Tungkum Ltd.’s operations in Loei Province, a 2007 government report found that Tungkum 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.
KRBKG leader Surapun Rujichayavat 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 Tungkum Ltd.’s gold mining operations in Loei Province and provide adequate and effective redress for communities and individuals affected.

Fortify Rights also recommends that Tungkum 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 Tungkum 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.
A teenage girl accused of criminal defamation by Tungkum Limited for her narration in a news clip on an environmental youth camp in Loei Province published by the Thai Public Broadcasting Service.

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 Tungkum Limited’s gold mine sites.
©Private, 2016
An aerial image of Tungkum 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 Tungkum 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 Tungkum 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 Tungkum 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 Tungkum Ltd. and response from Tongkah Harbour PCL is included in this report as Annex B.
Loei Province is in northeast Thailand, with a population of approximately 640,000 persons. 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. The average monthly household income for Loei farmers is approximately 15,000 Thai Baht (US$450). 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. 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.

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

founded in 1906 by Australian Edward T. Miles. 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. 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.

In 1992, Tungkum 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). In accordance with Thai law, Tungkum 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 Tungkum Ltd.’s proposed mining plans in Loei Province. 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." The EIA also warned that flash floods as the result of heavy rainfall may result in "heavy metal and chemical substances" affecting surrounding areas.

The Office of Natural Resources and Environmental Policy and Planning approved Tungkum Ltd.’s EIA on December 23, 1998. Between September 2002 and January 2003, the Department of Mineral Resources granted Tungkum Ltd. permission to mine six plots of land in Wang Sa Phung District for

---


11 Tungkum 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 0804/1769.”
the next 25 years. The Forestry Department of the Ministry of Natural Resources and Environment and the Agricultural Land Reform Office also granted Tungkum Ltd. a ten-year land-use permit to mine the six plots of land in Phu Tab Fah and Phu Sum Pa Bon.

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

A few months after Tungkum 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. 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.

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.

Starting in late 2006, residents of Na Nong Bong and nearby villages called for an investigation into the environmental and health impacts of Tungkum Ltd.’s mining operations in Wang Sa Phung District. Responding to these demands, the Loei Provincial Office established a working group in December 2006 to monitor Tungkum Ltd.’s mining operation and conduct environmental testing. The Environmental Office of Region 9 from Udon Thani Province first tested the water

---


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. Tungkum 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.


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.
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 Tungkum Ltd.’s mining factory collapsed, raising fears among local residents of potential contamination of nearby farmland. The Loei Industrial Office under the Ministry of Industry suspended the Tungkum Ltd.’s operation from November 2012 to March 2013 following the breach, allowing Tungkum Ltd. to resume its operations only after the company repaired the wall. The authorities never investigated potential contamination of the surrounding farmland due to the collapsed wall. However, the Department of Primary Industry and Mining ordered Tungkum 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.

In December 2010, Tungkum Ltd.’s permission to use the land in Phu Sum Pa Bon expired. In December 2012, Tungkum Ltd.’s permission to use the land in Phu Tab Fah also expired. Due to strong opposition by residents in Wang Sa Phung District against Tungkum Ltd.’s mining operations, the Forestry Department has not renewed permission for the company to use the land for its mining operations. As a result, Tungkum 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 Tungkum 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. As part of the requisite Environmental and Health Impact Assessment or EHIA, Tungkum 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. In advance of both forums, KRBKG mobilized...
hundreds of residents and students from Khon Kaen and Mahasarakham University to participate in the forums and oppose Tungkum Ltd.’s request to extend its operations. As a result of these efforts, the Department of Forestry did not provide Tungkum Ltd. permission to use the land in Khok Phu Lhek forest where Phu Tab Fah is located, and Tungkum Ltd. permissions to mine in Na Pong village and Phu Lhek are still pending.

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

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. 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, KR Ba Kg 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.
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. During the attack, residents observed at least 11 trucks transporting ore out of the mine through a local road. 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.

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

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

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.

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.

Surapun Rujichaiyavat, a 43-year-old rubber farmer and leader of KRKKG 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.

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.

Wanlop Phuangpria wan, 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:
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. The 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.

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.

Phattraporn Kaengjumpa, 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.

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.

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.”

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.

56 Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017.
58 Ibid.
60 Ibid.
I. Human Rights Violations and Abuses

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 KRKKG 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

---

63 Fortify Rights interview with Oh Khamlai, Loei Province, Thailand, April 5, 2017.
64 Fortify Rights phone interview with Phattraporn Kaengjampa, November 22, 2017.
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.65

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.”66

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.”67

Some, but not all, were wearing ski masks or covering their faces.68 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].69

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.”70

The Thai Government acknowledged that 13 residents were injured on the night of the attack, including members of KRBKG.71 Some received treatment at the hospital.72 Others treated themselves at home.73

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.74 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.75

---

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.
72 Fortify Rights interview with Phattraporn Kaengjumpa, Loei Province, Thailand, February 17, 2016.
73 Fortify Rights interview with Yon Khunna, Loei Province, Thailand, March 29, 2016.
77 Fortify Rights interview with Surapun Rujichaiyavat and Phattraporn Kaengjumpa, Loei Province, Thailand, February 17, 2016.
78 Fortify Rights interview with Phattraporn Kaengjumpa, Loei Province, Thailand, February 17, 2016.
79 Fortify Rights interview with Phattraporn Kaengjumpa, Loei Province, Thailand, February 17, 2016.
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.\textsuperscript{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.\textsuperscript{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).\textsuperscript{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.\textsuperscript{82}

Although at least 150 unidentified men were allegedly involved in the May 15\textsuperscript{th} attack, Lt. Col. Poramin Pomnak and Lt. Gen. Porames Pomnak were the only two individuals charged and convicted.\textsuperscript{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 Rujichaiyavat, 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.”\textsuperscript{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.”\textsuperscript{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.”\textsuperscript{86}

\textsuperscript{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.

\textsuperscript{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).

\textsuperscript{81} See, Pomnak, Black Case No. Aor. 5440/2557, Red Case No. Aor. 1983/2559, p. 45-47.

\textsuperscript{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.

\textsuperscript{83} Ibid.

\textsuperscript{84} Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, April 4, 2017.

\textsuperscript{85} Fortify Rights interview with Surapun Rujichaiyavat, Loei Province, Thailand, April 4, 2017.

\textsuperscript{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. 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.

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.

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.”

**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.

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.” This form of arbitrary detention can involve interrogation and incommunicado detention for up to seven days. Failure to comply with...
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).  

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.

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. 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.

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.”

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.”

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.

---

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.”


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 Rujichaiyavat, 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

103 Fortify Rights interview with Surapun Rujichaiyavat, 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.
106 Fortify Rights interview with Surapun Rujichaiyavat, Loei Province, Thailand, February 17, 2016.
members and environmental defenders in Loei. One of these complaints remains pending at the time of writing.

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.” 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). 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). 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.

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).

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.

---

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.


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, Tungkum Ltd. filed a criminal defamation complaint at the Minburi Metropolitan Police in Bangkok against a 15-year-old schoolgirl. 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.” She went on to say that “the River Huay has been contaminated” and “residents cannot use it for drinking or household consumption.” Thai PBS broadcasted the program on national television and the internet on September 1, 2015.

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.

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

Tungkum Ltd. similarly filed criminal defamation complaints against two KRBKG members for interviews provided to Thai-language media outlets. One complaint, filed against Surapun Rujichaiyavat, related to an interview that aired on TNN24 Channel on May 17, 2014. 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.”

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. In the interview, Pornthip said:

115 Tungkum 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.


117 Ibid.

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

119 Ibid.


121 In addition to the criminal penalties, Tungkum 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 Tungkum 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.\footnote{129}

On December 4, 2014, following a negotiation mediated by the Governor of Loei between Tungkum Ltd. and KRBKG leaders, Tungkum Ltd. agreed to withdraw these two complaints against Surapun Rujichaiyavat and Pornthip Hongchai.\footnote{124}

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, Tungkum 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.\footnote{127} Although the Criminal Court in Bangkok dismissed the complaints on November 16, 2016, the Appeal Court overturned the decision on March 20, 2018.\footnote{128} As of the time of writing, the case is under a mediation process.\footnote{129}

Tungkum 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.\footnote{122} On June 22, 2015, Tungkum Ltd. filed a criminal defamation case against 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, Tungkum 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, Tungkum Ltd. v. Wirada Saelim and four others, Criminal Court, Criminal Case No. 3756/2558, Complaint (Court of First Instance), November 12, 2015.

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 320(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 Tungkum 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).

Tungkum 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 Tungkum Ltd. to pay outstanding wages and compensation owed to the employees. On March 24, 2015, the Labor Court Region IV also found that Tungkum 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—Muti 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 Tungkum 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 Tungkum Ltd. on September 16, 2015 at the Phuket Provincial Court for giving interviews to Thai language daily *Mati Loei* in which they accused Tungkum 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, Tungkum 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, Tungkum Ltd. withdrew the complaint following a court mediation session.\(^{135}\)

On December 26, 2014, Tungkum Ltd. filed two similar criminal defamation complaints with the Mae Sot District Police against KRBKG leaders Surapun Rujichaiyavat and Phattraporn Kaengjampa.\(^{136}\) The complaint was related to a Facebook post of a letter that Surapun Rujichaiyavat and Phattraporn Kaengjampa wrote to the Loei Provincial Governor asking the Governor to investigate Tungkum 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.\(^{138}\)

---

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

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


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.\textsuperscript{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.\textsuperscript{140} Since 2007, Tungkum 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.\textsuperscript{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.\textsuperscript{142} On May 29, 2015, Tungkum Ltd. filed a complaint against six residents, seeking 50 million Thai Baht (US$1.5 million) in damages.\textsuperscript{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.”\textsuperscript{144}

On March 30, 2016, the Loei Provincial Court ruled against Tungkum 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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{147}

\begin{itemize}
  \item \textsuperscript{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.
  \item \textsuperscript{140} See, Thailand Civil and Commercial Code, B.E. 2535 (1992), secs. 420–437.
  \item \textsuperscript{141} See, Phakmee, Civil Case No. 859/2556; Rujichaiyavat, Civil Case No. 974/2556; Tungkum 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.
  \item \textsuperscript{142} The complaint alleged violations under Thailand Civil and Commercial Code. See, Rujichaiyavat, Black Civil Case No. 574/2558, Complaint.
  \item \textsuperscript{143} Ibid.
  \item \textsuperscript{144} Fortify Rights interview with Samai Phakmee, Loei Province, Thailand, July 25, 2016.
  \item \textsuperscript{145} See, Tungkum 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.
  \item \textsuperscript{146} See, Tungkum 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.
  \item \textsuperscript{147} Ibid.
\end{itemize}
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.”

Challenging these lawsuits is even more difficult when they are filed in jurisdictions outside of Loei Province, which is common in cases brought by Tungkum 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 Tungkum 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.”

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.”

One former employee of Tungkum 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.”

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 [Tungkum Ltd.] dropped in exchange for ore transportation.”

---

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.
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 Tungkum 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 Tungkum Ltd. initiated seven legal proceedings against KRBKG members and environmental defenders in Loei for their involvement in peaceful assembly activities. Two of these complaints are pending at the time of writing.

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. On November 16, 2016, more than 200 residents from Na Nong Bong village gathered at the office to oppose a request by Tungkum Ltd. to use land in the area for its mining operations. The protesters also called for the administrative council to involve them in the decision-making process. The protesters held banners and sang songs about their environmental concerns and the challenges faced by their community.

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.” Suphat Khunna, a 45-year-old woman who took part in the protest, also reported seeing a representative of Tungkum 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.”

The administrative council ultimately called off the meeting due to the protest. 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. 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. Both women refused to pay the fine.

---

153 See, Tungkum 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; Tungkum Co. Ltd. v. Surapun Rujichaiyavat and six others, Loei Provincial Court, Criminal Case No. 605/2557, 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 Kongsaen, Mon Khunna, Wannisa Sutthi, Wiron Ruchichaiyavat, and Phattrapon 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.


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.

On March 8, 2017, the Wang Sa Pung District police charged Pornthip Hongchai (age 46), Wiron Ruchichaiyawat (age 46), Ranong Kongsaen (age 55), Mon Khunna (age 39), Suphat Khunna (age 45), Boonraeng Srithong (age 51), and Lemplearn Ruengrith (age 56) for allegedly violating Section 309 of Thailand’s Criminal Code. 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).

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). On June 13, 2017, the police added Article 8 of the 2015 Public Assembly Act to the charges against the seven women. 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).

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. The court ruled that the seven women “have exercised legitimate rights to express [their] opinion which is protected under Thailand’s Constitution.” The court also held that the gathering was lawful because residents were “invited by the local administrative council to participate in the meeting.” At the time of writing, the case is pending before the Appeal Court.

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. During the meeting, the administrative council was expected to determine Tungkum Ltd’s application for mining in Loei Province.

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.” 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.” 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:

---

166 Thailand Criminal Code, Sec. 309.
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).
175 Ibid.
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.’

Ranong Kongsaen, 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.”

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

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.” Trespassing carries a sentence of up to one year imprisonment and/or a fine of up to 20,000 Thai Baht (US$600). 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. Five of the complaints against KRBKG members and environmental defenders in Loei Province allege trespass.

In one case, Tungkum 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. 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.

178 Fortify Rights interview with Wiron Ruchichaiyawat, Loei Province, Thailand, February 17, 2016.
180 Loei Provincial Court, Order Ror Cho No. 1/2559, February 16, 2016.
182 Thailand Criminal Code, Sec. 362.
183 Ibid.
184 Id. at Sec. 365.
185 See, Rujichaiyavat, Criminal Case No. 665/2557; 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 Tungkum Ltd. v. Samai Phakmee and a Criminal Complaint Between Tungkum Ltd. v. [name withheld],” Loei Province, Thailand, November 5, 2010.
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. Tungkum 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.\footnote{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).} 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.\footnote{Fortify Rights, online communication with Jamon Sonpednarin, June 22, 2018.}

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.\footnote{See, Rujichaiyavat, Criminal Case No. 615/2557; Rujichaiyavat, Civil Case No. 132/2557.} 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).\footnote{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. 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.} 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. 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.\footnote{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).}

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.\footnote{On July 26, 2011, the Loei Provincial Prosecutor declined to proceed with the case.} On July 26, 2011, the Loei Provincial Prosecutor declined to proceed with the case.\footnote{See, Rujichaiyavat, Civil Case No. 132/2557.}

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.\footnote{See, Memorandum of Understanding between Tungkum Ltd. and KRBKG, December 4, 2014.} On July 24, 2017, the Loei Provincial Court convicted the 22 defendants of violating sections 38 (i) and 39 of the Highway Act after the defendants pled guilty to the charges.\footnote{Royal Thai Police, “Suspsect 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.} However, the court suspended the decision to impose a penalty for one year.\footnote{Loei Provincial Prosecutor Office, “Letter No. 0037 Yor Lor/3840,” July 26, 2011.}

The 22 KRBKG members and Loei residents include: Samai Phakmee, Surapun Rujichaiyavat, Wiron Ruchichaiyavat, Thanin Phakmi, 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.

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.

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.


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, Phattraphon Kaengjampa, Wannisa Sutthi, Thulida Khunna, Angsana Phuangpraiwan, Ar-phon Ninsri, Ranong Kongsaen, and Bopha Nawongsri. See, Phakmee, Criminal Case No. 2068/2560.

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 blocking public roads or placing any sharp objects or any objects on public roads 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(i) 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).

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.\(^\text{199}\) Through these suits, the company demanded a total of 120 million Thai Baht (US$3.7 million) in damages.\(^\text{200}\) However, Tungkum Ltd. dropped the suits following a negotiation mediated by the Governor of Loei between Tungkum Ltd. and KRBKG leaders.\(^\text{201}\)

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.”\(^\text{202}\)

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.\(^\text{203}\)

### 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.\(^\text{204}\) 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.\(^\text{205}\) 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.\(^\text{206}\)

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.\(^\text{207}\) Later warnings cautioned against eating river snails and crabs from local rivers.\(^\text{208}\)

---

\(^\text{199}\) The KRBKG members who faced legal action included: Surapun Rujichaiyawat, Soom Sri-thong, Mr. Samai Phakmee, Konglai Phakmi, Tiem Peena, and Pattaraporn Kaengjampa, Mol Khunna, Put Inthasorn, Mana Phakmee, Lerdsk Srithong, Thavorn Chaisith, Chammien Khunna, Sathien Sanom, Lumduan Tongwan, Dokmai Moonkongsri, and Wiron Rujichaiyawat. See, Rujichaiyavat, Civil Case No. 974/2556; Phakmee, Civil Case No. 859/2556.

\(^\text{200}\) *Ibid*.

\(^\text{201}\) See, Memorandum of Understanding between Tungkum Ltd. and KRBKG, December 4, 2014.


\(^\text{203}\) Fortify Rights interview with Soom Sri-thong, Loei Province, Thailand, March 23, 2016.


\(^\text{205}\) Ministry of Natural Resources and Environment, “Letter No. Thor Sor 0305/2140.”

\(^\text{206}\) 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.


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 Tungkum 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 Tungkum 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 Kongsaen, 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

---


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

211 Id. at Art. 3.

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


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.”

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. Residents have since had to purchase water for drinking and cooking, increasing their household expenses.

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.

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. 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. The Cabinet also ordered stricter monitoring and evaluation of the company’s mining operations and procedures to prevent cyanide leakage.

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. At the time of writing, this periodic testing is continuing.

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.”

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. In March 2015, the authorities also reported high levels of arsenic, manganese, and cyanide in Huay Lhek stream.

---

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

Ibid.
Ibid.
Ministry of Natural Resources and Environment, “Letter No. Thor Sor 0305/2140.”
Fortify Rights phone interview with Samai Phakmee, August 20, 2018.
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.

Since 2014, residents have avoided eating any produce grown or sourced from affected areas. 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.”

**Adverse Health Impacts**

Since the Tungkum 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. Residents with such blood poisoning complained of fatigue, muscle weakness, and pain in their limbs and body.

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.” 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.” Long-term exposure to arsenic can result in skin lesions, peripheral neuropathy, diabetes, cardiovascular diseases, and cancer.

Some residents in Loei Province with elevated levels of toxic metals in their blood have undergone treatment for their condition. 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.

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. In some

---

231 Ministry of Natural Resources and Environment, “Letter No. Thor Sor 0905/2140.”


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


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.”\(^{246}\)

---

\(^{242}\) 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.


II. HUMAN RIGHTS DEFENDERS

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 Tungkum 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.”

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.”

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.”

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

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...
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.


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).

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.

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.

---


264 Id. at arts. 32, 45, 53, 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.  

**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.” 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.”

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.” 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.”

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.” 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.”

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.


267 Id. at 12.


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.”\textsuperscript{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.”\textsuperscript{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).\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{278} Deprivation of liberty is only permissible on grounds and procedures that are established in domestic law and aligned with international law.\textsuperscript{279} According to the U.N. Working
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.  

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. In at least one case, Thai authorities summoned and held a KRBKG leader multiple times for her engagement in legitimate activities.

The authorities relied on the military's declaration of martial law to justify the “attitude adjustment” sessions against environmental defenders in Loei Province. 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.

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.” 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.”

Thai authorities also have an obligation under international and domestic law to prevent arbitrary detention by non–state actors. 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.

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

284 Martial Law, Sec. 15(ii).
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. 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.

Under Article 9(5) of the ICCPR, victims of unlawful detention have an enforceable right to compensation, including financial compensation, for such violations. This remedy must “operate effectively and payment must be made within a reasonable period of time.” 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. 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.

RIGHT TO FREEDOM OF EXPRESSION

Article 19 of the UDHR and ICCPR protects the right to freedom of expression. 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. 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.”

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. Article 19 of the ICCPR expressly protects all means to engage in free expression.
expression. 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. 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.” 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. Tungkum Ltd. also initiated one criminal and civil defamation complaint against Thai PBS and its journalists. 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.”

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. The ICCPR and the CRC provide further specific protections to ensure the right to free expression for children and members of the press. 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.”

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. 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.

---

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.
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.\footnote{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.}

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.\footnote{Thailand Constitution, Sec. 44.}

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.\footnote{Martial Law, Sec. 11. NCPO Order No. 7/2557, May 22, 2014.} 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.\footnote{See, NCPO Order No. 3/2558, Art.12.} 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).\footnote{Ibid.}

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.”\footnote{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.}

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.\footnote{See, Martial Law Act, secs. 11 and 15; NCPO Order No. 7/2557.} Thai authorities also used the Martial Law Act and Order No. 7/2557 to justify the confiscation of public announcement equipment.\footnote{See, NCPO Order No. 7/2557.} 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
six months’ imprisonment and/or a fine of up to 10,000 Thai Baht (US$300). 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. Failure to obtain advanced consent to hold a public assembly can result in a fine of up to 10,000 Thai Baht (US$300).

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.” 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. International law also includes exceptions for the notice requirement when the “assembly” happens spontaneously. Regardless, any failure to comply with administrative requirements for holding an unapproved peaceful assembly should not lead to fines or imprisonment.

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.” Thailand responded to the communication, claiming the law was “to ensure that public order and social harmony prevail.” 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. 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.

**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,
including the ICESCR and the CRC. 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.” This includes:

[The 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.]

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. This includes formulating and implementing “national policies aimed at reducing and eliminating pollution of air, water and soil.” The obligation on states to reduce and eliminate pollution extends not only to state activities but also activities by third parties.

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.” 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.” 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.

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. 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.” 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.

---

331 UDHR, Art. 25; ICESCR, Art. 12; CRC, arts. 24(2)(c) and (e).
332 ICESCR, Art. 12.
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.”)
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.\footnote{See, Tungkum Ltd., Rehabilitation Plan for Gold Mining Area;} KRBKG, “Letter No. 0011/2560.”

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.”\footnote{CESCR, General Comment No. 14, para. 12.} 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.\footnote{See, Rujichaiyavat, Black Case No. 600/2559, Red Case No.401/2560, p. 6–8.} 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.”\footnote{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.} 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.”\footnote{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/C/ THA/CO/84/THA, July 8, 2005, para. 19.}

**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.\footnote{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]nsure 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.} Corporations are also increasingly required by international law to uphold human rights standards and are accountable for abuses.

---

endorsed in 2011, provides authoritative guidance on the application of existing international human rights standards in the context of business activities. 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.

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. Such assessment and planning is particularly necessary for high-risk industries, like mining.

Under these Principles, Tungkum 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 Tungkum Ltd. and other business actors respect rights protected under international law.

---

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).
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 Tungkum 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 Tungkum 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.

Fortify.Rights@FortifyRights.org
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:

Air Chief Marshal Prajin Juntong
Deputy Prime Minister and Minister of Justice
Government Complex Building A
Chaeng Wattana Road
Lak Si, Bangkok 10210

Uttama Savanayana
Minister of Industry
Rama VI Road
Bangkok 10400

General Surasak Karnjanarat
Minister of Natural Resources and Environment
Phayathai, Bangkok 10400

Dr. Piyasakol Sakolsatayadorn
Minister of Public Health
Tiwanon Road,
Talad Kwan, Nonthaburi 11000

Chaiwat Chuenkosum
Loei Provincial Governor
Loei Provincial Office
Maliwan Road
Kudpong Sub-District, Muang, Loei 42000

What Tingsamitr
Chair of the National Human Rights Commission of Thailand
Government Complex Building B
Chaeng Wattana Road
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 Tungkum Limited’s business activities in Thailand? What, if any, interests do members of the Thai government have in Tongkah Harbour PCL and/or Tungkum Ltd.?

3. Are you aware of any human rights abuses within the business operations of Tongkah Harbour PCL and/or Tungkum Ltd., particularly with regard to the gold mining operations of Tungkum 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 Tungkum 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 Tungkum Ltd.’s operations in Wang Sa Phung District?

11. How has the government monitored Tungkum 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 Tungkum Ltd.’s operations in Wang Sa Phung District?

12. 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?

13. 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?

14. Could you please provide information on the status of Tungkum 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

นายกรัฐมนตรี พลเอกประยุทธ์ จันทร์โอชา
ส้านักงานปลัดสานักนายกรัฐมนตรี
ท่ามกลางรัฐบาล
1 ถนนพิษณุโลก
คุ้นศึก กรุงเทพฯ 10300

เรียน นายกรัฐมนตรี,

ฟอร์ตี้ฟายไรท์เป็นองค์กรพัฒนาเอกชนในเอเชียตะวันออกเฉียงใต้ เราสอบสวนกรณีการละเมิดสิทธิมนุษยชน ร่วมมือกับภาครัฐและภาคส่วนอื่น ๆ เพื่อหาทางออกและส่งเสริมการทำงานของนักปกป้องสิทธิมนุษยชนชุมชนและภาคประชาชนที่ได้รับผลกระทบ

ฟอร์ตี้ฟายไรท์อยู่ระหว่างจัดทำรายงานเกี่ยวกับสถาบันการเรียนของนักปกป้องสิ่งแวดล้อม ซึ่งดำเนินการในอำเภอวังสะพุง จังหวัดเลย โดยเฉพาะที่เกี่ยวกับการดำเนินคดีของบริษัททุ่งค้าจ้างคดี งานวิจัยของเราเน้นที่จะเสนอข้อมูลให้สามารถพิจารณาได้ว่ามีการท่าทีและคุกคามนักปกป้องสิ่งแวดล้อมทางกฎหมายโดยพลการ การทำกิจกรรมที่มีผลกระทบต่อสิ่งแวดล้อมและชุมชน รวมถึงการปิดล้อมและคุกคามนักปกป้องสิ่งแวดล้อมที่มีการเรียกเก็บค่าความเสียหายจากการเข้าไปในพื้นที่ที่คุกคาม

การดำเนินการให้เรียกคืนสิ่งแวดล้อมและป้องกันการละเมิดสิทธิของประชาชนที่ได้รับผลกระทบ และการดำเนินการให้ความช่วยเหลือผู้ที่ได้รับผลกระทบ

เหตุที่เขียนจดหมายนี้เพื่อประกันว่ารายงานของเราจะให้ข้อมูลอย่างที่จริงถูกต้องกับนโยบายและ

Fertilizer Rights
United States
P.O. Box 110
Belfast, Maine 04915
+1.207.518.7983

FertilizerRights@FertilizerRights.org

Switzerland
78, Route de Florissant
CH 1206 Geneva

Thailand
P.O. Box 314
Phra Kanong Post Office
Bangkok 10110
+66.87.975.5454
ฟอร์ตี้ฟายไรต์พยายามจัดทำรายงานด้านสิทธิมนุษยชนอย่างเป็นกลางดังรูปแบบฐานข้อมูลที่มีอยู่ทั่วโลก เราหวังว่าหน่วยงานของท่านจะช่วยตอบคำถามที่แนบมาโดยเร็วสุดเท่าที่จะเป็นไปได้ เพื่อให้รายงานของเราครอบคลุมความเห็นของท่านด้วย ท่านสามารถให้ข้อมูลใด ๆ ตามที่ท่านเห็นว่าเกี่ยวข้องกับงานวิจัยของเรา

ขอแสดงความนับถือ

เอมิ สมิธ
ผู้อานวยการบริหาร ฟอร์ตี้ฟายไรต์
นายวัส ติงสมิตร
ประธานกรรมการสิทธิมนุษยชนแห่งชาติ
ศูนย์ราชการเฉลิมพระเกียรติ 80 พรรษา 5 ธันวาคม 2550 อาคารรัฐประศาสนภักดี (อาคาร B)
ถนนแจ้งวัฒนะ แขวงทุ่งสองห้อง
เลขที่ 10210

เอกสารแนบหนึ่งฉบับ คำถามจากฟอร์ตี้-ฟายไรต์ถึงรัฐบาลไทย (จำนวน 2 หน้า)
คำถามจากฟอร์ตี.ฟายไรต์ถึงรัฐบาลไทย

1. ท่านได้ใช้ข้อมูลเกี่ยวกับการดำเนินงานของรัฐบาลไทยเพื่อป้องกันความรุนแรงและมีรายงานเกี่ยวกับการปฏิบัติผิดกฎหมายที่ส่งผลต่อสิทธิมนุษยชนในประเทศไทยในอนาคตของท่าน เฉพาะที่อยู่เกี่ยวกับ นโยบาย กฎหมาย ระเบียบ และค่าตัดสินของศาลใด ๆ รวมถึงกระบวนการบังคับใช้กฎหมายที่เกี่ยวข้อง

2. ท่านได้ใช้ข้อมูลเกี่ยวกับการดำเนินงานของรัฐบาลไทยในประเทศไทยของบริษัท ทุ่งค้า จัดเกิด (นักการศึกษา) และบริษัททุ่งค้า จัดเกิด ไม่ทราบว่าบุคคลใดในรัฐบาลไทยมีผลประโยชน์ใด ๆ เกี่ยวกับบริษัท ทุ่งค้า จัดเกิด (นักการศึกษา) และบริษัททุ่งค้า จัดเกิด หรือไม่?

3. ท่านทราบหรือไม่ว่า มีการปฏิบัติผิดกฎหมายซึ่งมีผลกระทบต่อการดำเนินงานของรัฐบาลไทยของบริษัท ทุ่งค้า จัดเกิด (นักการศึกษา) และบริษัททุ่งค้า จัดเกิด โดยเฉพาะที่เกี่ยวกับการดำเนินการของศาลว่าด้วยการ ปฏิบัติผิดกฎหมายและตุลการ เพื่อป้องกัน ตนเอง และเปลี่ยนมือถึงการปฏิบัติผิดกฎหมายที่ท่านไม่ทราบหรือไม่?

4. หน่วยราชการที่ได้ใช้มาตรการใด ๆ หรือไม่เพื่อป้องกันการใช้รุนแรงทางร่างกายของประชาชนเพื่อแสดงออกในประเทศไทยในอนาคต

5. ท่านได้ใช้ข้อมูลเกี่ยวกับการดำเนินงานของรัฐบาลไทยที่มีการปฏิบัติผิดกฎหมายที่ส่งผลต่อสิทธิมนุษยชนในอนาคตของท่าน เฉพาะที่อยู่เกี่ยวกับ นโยบาย กฎหมาย ระเบียบ และค่าตัดสินของศาลใด ๆ รวมถึงกระบวนการบังคับใช้กฎหมายที่เกี่ยวข้อง

6. หน่วยราชการที่ได้ใช้ข้อมูลจากกฎหมายเกี่ยวกับ นโยบาย กฎหมาย ระเบียบ และค่าตัดสินของศาลใด ๆ รวมถึงกระบวนการบังคับใช้กฎหมายที่เกี่ยวข้อง

7. มีมาตรการใดเพื่อป้องกันการใช้ผิดกฎหมายที่ส่งผลต่อสิทธิมนุษยชนในอนาคตของท่าน เฉพาะที่อยู่เกี่ยวกับ นโยบาย กฎหมาย ระเบียบ และค่าตัดสินของศาลใด ๆ รวมถึงกระบวนการบังคับใช้กฎหมายที่เกี่ยวข้อง

Switzerland
78, Route de Florissant
CH 1206 Geneva

United States
P.O. Box 110
Belfast, Maine 04915
+1.207.518.7983

Thailand
P.O. Box 314
Phra Kanong Post Office
Bangkok 10110
+66.87.795.5454

FortifyRights@FortifyRights.org
8. มีมาตรการหรือกลไกอย่างเป็นทางการและหรือไม่เป็นทางการหรือไม่ เพื่อป้องกันการลงโทษอย่างไม่ได้ส่วน ทั่วไปและระยะเวลาการคุมขัง ที่มีการนำมาใช้บังคับคดีที่ใช้เสรีภาพในการแสดงออกและการชุมนุมอย่างสงบ?

9. หน่วยราชการไทยให้ข้อมูลเกี่ยวกับการใช้ตามคำสั่งหน้า สำหรับความสงบแห่งชาติ ที่ 2/2559 รวมทั้งการระดมทัพเจ้าหน้าที่ในประเทศไทย ซึ่งเมื่อผล爬上เร็วที่สุด 1 มกราคม โดยเฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่?

10. ท่านทราบข้อมูลเกี่ยวกับมาตรการ เพื่อป้องกันการใช้ตามคำสั่งหน้า สำหรับความสงบแห่งชาติ ที่ 2/2559 รวมทั้งการระดมทัพเจ้าหน้าที่ในประเทศไทย ซึ่งเมื่อผล爬上เร็วที่สุด 1 มกราคม โดยเฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่?

11. รัฐบาลได้ติดตามตรวจสอบการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่? สามารถเวลาใช้ตามคำสั่งหน้า สำหรับความสงบแห่งชาติ ที่ 2/2559 รวมทั้งการระดมทัพเจ้าหน้าที่ในประเทศไทย ซึ่งเมื่อผล爬上เร็วที่สุด 1 มกราคม โดยเฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่?

12. ท่านทราบข้อมูลเกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่? สามารถเวลาใช้ตามคำสั่งหน้า สำหรับความสงบแห่งชาติ ที่ 2/2559 รวมทั้งการระดมทัพเจ้าหน้าที่ในประเทศไทย ซึ่งเมื่อผล爬上เร็วที่สุด 1 มกราคม โดยเฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่?

13. ท่านทราบข้อมูลเกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่? สามารถเวลาใช้ตามคำสั่งหน้า สำหรับความสงบแห่งชาติ ที่ 2/2559 รวมทั้งการระดมทัพเจ้าหน้าที่ในประเทศไทย ซึ่งเมื่อผล爬上เร็วที่สุด 1 มกราคม โดยเฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่?

14. ท่านทราบข้อมูลเกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่? สามารถเวลาใช้ตามคำสั่งหน้า สำหรับความสงบแห่งชาติ ที่ 2/2559 รวมทั้งการระดมทัพเจ้าหน้าที่ในประเทศไทย ซึ่งเมื่อผล爬上เร็วที่สุด 1 มกราคม โดยเฉพาะในส่วนที่เกี่ยวกับการดำเนินงานของบริษัททุ่งค้า จริงหรือไม่?
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.

FortifyRights@FortifyRights.org
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 Tungkum Limited

1. What is the current status and plans of Tungkum Limited’s business operations in Loei Province, Thailand?

2. Could you please explain policies and practices Tungkum Ltd. has in place to ensure human rights protections within its business operations?

3. What steps has Tungkum Ltd. taken to monitor and address potential human rights abuses within its business operations? Are you aware of any human rights abuses within Tungkum 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 Tungkum 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 Tungkum 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 Tungkum 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 Tungkum 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?
We Fight to Protect Our Home

Fortify Rights

Switzerland
78, Route de Florissant
CH 1206 Geneva

United States
P.O. Box 110
Belfast, Maine 04915
+1.207.518.7983

Thailand
P.O. Box 314
Phra Kanong Post Office
Bangkok 10110
+66.87.795.5454

Fortify.Rights@FortifyRights.org

กรรมการผู้จัดการ
บริษัททุ่งค้า จำกัด
179 หมู่ 3 ต.เขาหลวง อ.วังสะพุง
จ.เลย จังหวัด 87100

เรียน ท่านกรรมการผู้จัดการ,

ฟอร์ตี ฟายไรต์เป็นองค์กรพัฒนาเอกชนในเอเชียตะวันออกเฉียงใต้ ดำเนินงานในการศึกษาและการสนับสนุนการบังคับใช้สิทธิมนุษยชน ทั้งในด้านการศึกษาและการทำงานร่วมกับภาคีต่างๆ เพื่อให้เกิดการทบทวนและจัดการที่มีประสิทธิภาพในการปกป้องสิทธิมนุษยชนในชุมชนที่ได้รับผลกระทบ.

ฟอร์ตี ฟายไรต์อยู่ระหว่างจัดทำรายงานเกี่ยวกับกรณีการละเมิดสิทธิมนุษยชนในใช้งานสิ่งแวดล้อม ซึ่งดำเนินการในอำเภอวังสะพุง จังหวัดเลย โดยเฉพาะกรณีการละเมิดสิทธิของผู้ประกอบการที่ดำเนินการในพื้นที่นี้ ซึ่งฟอร์ตี ฟายไรต์มีการดำเนินการในพื้นที่นี้โดยการมีส่วนร่วมของชุมชนที่ได้รับผลกระทบในพื้นที่ และมีการเรียกร้องให้รัฐบาลมีการดำเนินการเพื่อให้ชุมชนมีสิทธิในการดำเนินการที่มีความเป็นธรรม.

เหตุที่เขียนจดหมายนี้เพื่อขอให้ได้รับการเข้าใจถึงการดำเนินการของฟอร์ตี ฟายไรต์ในการดำเนินการที่มีความเป็นธรรมในการดำเนินการในพื้นที่นี้.

24 สิงหาคม 2561

83
For the avoidance of doubt, a summary of relevant information and the methodology used is presented below.

We hope that you will answer our questions as soon as possible so that we can incorporate your views into our report.

Pleas take some time to review the attached questions and provide answers to them.

We appreciate your cooperation and look forward to continuing our collaboration.

Yours sincerely,

Emily Smith

Annex B
คำถามจากฟอร์ตถี่ฟายไรต์สำหรับฝ่ายบริหารของบริษัท ทุ่งค้า จำกัด

1. อยากทราบสถานะในปัจจุบันและแผนการดำเนินงานด้านสิทธิมนุษยชนของบริษัท ทุ่งค้า จำกัด ในจังหวัดเลย ประเทศไทย?

2. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

3. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้งดดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

4. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

5. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

6. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

7. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

8. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?

9. บริษัททุ่งค้า จำกัด ได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจหรือไม่ บริษัททุ่งค้าได้ดำเนินการใด ๆ บริษัททุ่งค้าเพื่อตรวจสอบและแก้ไขการปฏิบัติมิชอบด้านสิทธิมนุษยชนในระหว่างการดำเนินธุรกิจของบริษัท ทุ่งค้า จำกัด หรือไม่?
10. ผู้นำได้ข้อมูลเกี่ยวกับแผนและมาตรการที่บริษัททุ่งค้าได้นำมาใช้ในการดำเนินงานที่นั้นเพื่อคุ้มครองสิ่งแวดล้อมและป้องกันไม่ให้เกิดผลกระทบที่อาจส่งผลต่อสิ่งแวดล้อมและเนินมาจากจากการดำเนินงานของบริษัททุ่งค้า จำเป็นหรือไม่?

11. จำเป็นจะต้องมีการครอบคลุมการดำเนินงานด้านการสุขภาพและสิ่งแวดล้อมที่อาจเกิดขึ้นจากการดำเนินงานของบริษัททุ่งค้าจำเป็นหรือไม่ มีการวางแผนหรือมาตรการใดหรือไม่ที่ได้ใช้มาช่วยในมีผลต่อการดำเนินงานด้านการสุขภาพและสิ่งแวดล้อมที่อาจเกิดขึ้นจากการดำเนินงานของบริษัททุ่งค้าจำเป็นหรือไม่?

12. ผู้นำได้ข้อมูลเกี่ยวกับการตรวจสอบด้านการสุขภาพและสิ่งแวดล้อมที่อาจเพิ่มขึ้นจากการดำเนินงานของบริษัททุ่งค้าจำเป็นหรือไม่ มีการวางแผนหรือมาตรการใดให้ดำเนินการตรวจสอบและดำเนินการที่จำเป็นหรือไม่?

13. ผู้นำได้ข้อมูลเกี่ยวกับแผนฟื้นฟูที่ได้จัดทำโดยบริษัททุ่งค้าจำเป็นหรือไม่ มีการดำเนินการตามแผนตามที่ได้กำหนดไว้หรือไม่ ได้นำมาตรการใดมาใช้เพื่อปฏิบัติตามแผนนั้นบ้าง?
RESPONSE TO FORTIFY RIGHTS FROM TONGKAH HARBOUR PUBLIC COMPANY LIMITED
[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.