

Five years post-tsunami: Land conflicts yet to be resolved

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“Where shall we go? Our home is here; where then shall we move? All islands and seas already belong to others. We also can’t live in national parks. Even if there is a place for us to stay, the capitalists try to drive us away. We Chao Lay [sea-gypsies] have made our livelihood by the sea for generations; if we cannot live by the sea, how we can survive? We are also human.”

These are the deepest, darkest thoughts of Orrawan Haantalay, a 23-year-old Moken woman in Thailand’s Thaptawan village, Takuapa district, Phang Nga province. The lives of the Moken community, as well as other minorities are harsh, despite the tsunami having past five years ago. When it struck the Andaman coast (southern Thailand) on 26 December 2004, it swept away numerous lives and completely destroyed property and housing. Communities living along the coast lost were overcome by the sorrow of losing family members, homes and the means of earning a livelihood. They have yet to truly recover from this disastrous event.

The lives of the tsunami victims along the Andaman coast today does not differ significantly to what they experienced in the immediate wake of the disaster. This is largely due to the greed and selfishness of their fellow men, who grabbed their small pieces of land, just enough to sleep, and drove them out.

According to Haantalay, the tsunami passed a long time ago and villagers try to exercise self-control and composure when talking about its destruction. “Nowadays we can recover from the tsunami. There is something else that we cannot accept, which is growing bigger and bigger, even more so than the tsunami itself.” Haantalay is referring to the grabbing of community land by developers and industrialists. “They grab our land and turn it into their own property through the legal system and selfish lawyers. They went to court to evict the Moken from their own homes. These cruel people also worked with the officials to obtain title deeds for the mangrove forests and public land used by our community to earn livelihoods.

“We are merely Chao Lay who have no knowledge about the law. We have never gone to court and know nothing about fighting for land rights. Although there is clear evidence that the Moken have settled here for a long time, after the tsunami people came to forcibly evict the Thaptawan community from their new houses, built by kind persons who came to help us after the tsunami.

“What kind of persons are they, to force us out of our homes? These lands are our home. Many people acknowledged that we, Moken people, have been staying here on the Andaman coast for a long time. Moken are the ethnic group who have been here before others.

“When the tsunami destroyed our homes and all evidence establishing our existence, the cruel people saw this as an opportunity for exploitation. They thought the Moken had no proof of residing on the land and so took legal action to evict us. But we are human, we can confirm that we live here and we are Moken in this area. It is not only the Thaptawan community facing this problem in the aftermath of the tsunami; the Lhampom community in Takuapa district of Phang Nga province, the Ban Nai Rai community in Thay Mheuang of Phang Nga, the Yao Yai island community of Phang Nga, the Lawai beach community in Phuket province, the Pa Khlok community in Phuket, and several other communities are also facing similar problems. Victims of the tsunami are already facing tremendous suffering from the loss of their family and destruction of property. Those people should not add to our suffering by evicting us from our lands.”

According to Mr Pakphum Vithantirawat, [photo2] a member of the National Economic and Social Advisory Council (NESAC), an independent body set up to advise the government, the land conflicts along the Andaman coast is very serious. Private developers are grabbing public and private lands. When they investigated the initial complaints from the Moken community regarding such land problems, NESAC found many other communities facing similar situations. After investigating numerous such cases, the Council made recommendations to the Thai government on 31 August 2007. A Cabinet resolution of 1 November 2007 acknowledged NESAC's comments and recommendations. The Cabinet also acknowledged considerations by government agencies related to this problem, including the ministries of finance, foreign affairs, agriculture, transport, education, health, industry, interior, tourism and sports, and the National Economic and Social Development Board. However, as of yet there are no concrete solutions to the problem.

The comments and recommendations by NESAC include several important points, such as, the problematic issuing of ownership certificates for mangrove forests by the Department of Lands. At the intersection between land and sea, these mangrove forests support a multitude of life and are among the most productive and biologically complex ecosystems on the planet. One such certificate for instance, was issued in Nai Rai village, Na Toei sub-district, Thay Mueuang, Phang Nga province, which the Department of Maritime and Coastal Resources noted was a mangrove reservation under a 1996 Cabinet resolution. The maritime department further recommended the Thay Mueuang branch of the provincial land office to withdraw seven 'nor sor 3 kor' or land utilization certificates (a legal document allowing for use of land) concerning 59.02 rais (1 rai = 400 square meters) of mangrove forests. It also advised the Phang Nga provincial governor's office to confirm its objections to providing land deeds for these areas. Unfortunately, during the long process of considering the certificate withdrawals, the government has not been able to postpone or prevent the deforestation and destruction of the mangroves in question.

In Ku Ku village, Ratsada sub-district, Muang Phuket district, Phuket province, the Department of Lands issued a private company with a title deed of 21 rais, which overlap with a mature mangrove forest of 69 rais, which is a 'royal celebrated' (public space created/managed in celebration of Thailand's royal family) mangrove. Ku Ku village also has a pending title deed application for an area of 29 rais of mangroves and forest by the same company. Together, this is an area of 98 rais, which has already been ploughed to destroy forest and mangrove. Due to protests by the villagers, some areas are still protected, but the long delay in the legal procedure means there is little that can be done to prevent deforestation.

Apart from the problematic issuing of ownership and utilization certificates by the lands department, the NESAC also came across cases where public lands and natural resources necessary for the survival of local communities were appropriated by private developers. The case of Yamu village in the Thalhang district of Phuket province is such an instance. On 17 September 2007, the Prachachart newspaper reported an interview with Mr Ian Michael Charles Henry, the managing director of Campbell Can (Thailand) Company. According to the report, Mr Henry was developing 'The Yamu project' on an area estimating 220 rais, comprised of three separate projects. One is the Cape Yamu project, consisting of 32 deluxe villas sold to European and Asian customers, the project value of which is 2500 million Thai baht (1 USD = 34.2928 Thai baht). Second is the Yamu luxury hotel project, with 63 rooms, the investment budget for which is 3500 million baht. Third, the Yamu Villa Estate is an elegant villa to be sold for 145.75- 274.34 million baht.

The NESAC investigation found that the land to be used by the company for the three projects—for which the Department of Lands issued a utilization certificate—overlaps with a public path that is five meters in width and 150 meters in length. The Yamu villagers complained to the Phuket provincial governor, who asked them to negotiate with the company.

Later, the company constructed a new public path without consulting the villagers. The path is only three meters wide, and it ends at the cliff, from which are 147 perpendicular footsteps down to the beach. This makes it impossible for the villagers to transfer their fishnets, fishing tools and daily catch from the sea to the village. The investigation committee appointed by the provincial governor found that the public trail used by the Yamu community has a long history and goes from the village to the sea.

The community has coherently articulated that the law provides for public land to be under public rule and management. The official investigation into the matter has taken over a year now, and the main recommendation continues to be only that the community negotiate with the private company to resolve the problem. In the meantime, the company has been continuing its work: putting up fences, ploughing land, building a reservoir and houses. [photo 3]

There is also another land project in Yamu, concerning the harbour. The project involves dredging the seaway and building a footpath, pier and pontoon. After receiving complaints, NESAC went to investigate, discovering that the public area comprises of a black sand beach, stony shore and seagrass bed. The area is used by the local population to collect shells and install fishnets, from which they make their livelihood. It is also used as a place for recreation, since Phuket has few public beaches. Not only will the private project affect the lives of the locals, but the dredging and construction would destroy the seagrass bed.

Mr Pakphum of NESAC also spoke of a case in the Ya Mhi Hill and Chonglhard Mountain area, Koh Yao Yai sub-district. This is a mountainous area consisting of the National Chonglhard Forest and Koh Yao Yai Forest, with natural springs providing water for the local community. The area was declared to be national protected forest in 1968 and in 1984. However, the Department of Lands issued 29 certificates of ownership covering 585 rais of land in this national forest to a private company during 1977-1978. This amounts to land from the mountains to the seashore at Klongson gulf. The local community, most of whom are Thai Muslims, have complained to the related government agencies, resulting in an investigation by the country's Department of Special Investigation, the top criminal investigation agency. While the protracted investigation continues, no measures have been taken to stop or slow down deforestation. [photo 4: Muslim villagers holding a prayer gathering against land grabbing]

According to a representative from the Royal Forest Department, the government agency administering national protected forest reserves, the Department cannot investigate the case because of the ownership certificates issued. If an area has been issued with an ownership certificate, it is the duty of the Department of Lands to first investigate and revoke the certificate. The representative of the lands department however, informed NESAC that the investigation procedure must begin from the provincial level to verify and send the complaint to their office. Then the lands department would investigate, and if legitimate grounds for the complaint are found, the department would establish an investigation committee to officially examine and revoke the title deed. After a year, the inspection at the provincial level has not progressed, while deforestation continues.

In the Khlungson gulf, Phang Nga province, the Marine Department gave permission to construct a marina, to build a checked dam, to dredge the seaway for navigation and to build a pontoon. The Ministry of Natural Resources and Environment protested against the project, as it would adversely affect seagrass beds, the Khlungson gulf maritime ecosystem and the beach. After questioning and debate in the legislative assembly, in March 2007 the permission was revoked. The private developers continue attempts to move ahead with their project however. [photo5: Villagers protesting against the marina project]

In all of these cases, NESAC has found that when public land is granted to private interest groups, there is adverse impact upon the surrounding natural environment as well as the community using the natural resources for survival. Furthermore, the sluggishness of the government inspection system offers opportunities to these groups to encroach and destroy the public lands. [photo6]

Five years have passed since the tsunami, and yet the victims are still bogged down in these conflicts. While the tsunami waves died into the sea, the wave of human greed is still sweeping over the Andaman coast. The future of its victims remains unknown.