An Economic, Social, and Cultural Rights Analysis: A Case Study on the Proposed Udon Thani Potash Mine in Northeast Thailand

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EXECUTIVE SUMMARY

This report has been prepared in order to uphold the United Nations International Covenant of Economic, Social, and Cultural Rights (ESCR). Thailand signed the ESCR Covenant in 1999. This text supports the ideals set forth in the covenant and stresses the importance of each individual right mentioned. Having studied the potash mining case in the Udorn Thani Province of Northeastern Thailand, known as Isaan, Articles discussed in this record concern people’s inherent rights in regards to the impending potash-mining project. This report presents a factual interpretation and analysis of the events that have taken place and potential events that can occur if the project were approved. This report sheds light on the State’s failure to uphold the regulations and rights specified within the International Covenant of Economic, Social and Cultural Rights.

The format of this report includes the articles as shown in the ESCR Covenant, followed by a summary of the given article in context of the potash mining case. Next, facts pertaining to the article as well as the violations at hand are presented, along with a provisional conclusion that summarizes how the facts represent the violation.

This account concentrates solely on the relevant information according to each specific provision under the covenant and is based on the information provided by villagers, the mining company, the Environmental Impact Assessment report, and the government. The specific rights under which there are violations include Article 1, right to self determination; Article 6, the right to freely chosen work; Article 11, the right to an adequate standard of living; Article 12, the right to mental health; Article 15, the right to take part in cultural life; and Article 25, the right to utilize fully one’s own natural resources.

This report presents relevant facts and an analysis of each article in order, but the authors of this report have placed special emphasis on Article 1 for the reason that it is the article that the State has already breached since the others pertain to pending violations. Our conclusion states

Summary of Events

In 1973, the Thai government began a surveying project throughout Isaan, the region of Northeast Thailand. The survey revealed massive deposits of potash, a potassium salt most commonly used for chemical fertilizers, 80-meters below the surface of the earth in Udorn Thani province. Having no experience in underground mining, the Thai Government handed further exploration over to Thai Agrigo Potash Company Ltd., a Canadian company now under the name of Asia Pacific Potash Corporation (APPC). APPC discovered two major potash deposits: one totaling 225 million tonnes and a second nearly one billion tonnes. They are currently pursuing a license to mine the smaller of the two deposits, designated Udorn South, approximately 18 km from the city of Udorn Thani. The project costs are estimated as 529 million USD and the mine is expected to produce nearly two million tonnes of potash per year for the duration of the mine's 22-year predicted lifespan.
APPC’s Environmental Impact Assessment (EIA), a study required of all developmental projects before approval, was passed by the Office of Environmental Policy in December 2000. In August 2002, the Thai Government passed an amendment to the country’s Minerals Act, making it legal to extract resources from depths greater than 100 meters (previously a 350-meter requirement), without needing permission from the owners of land directly above.

Villagers in potentially affected areas organized the Environmental Conservation Group in October 2001 as a means of opposing the proposed project. Villagers are currently petitioning for a new EIA to correspond with the amended Minerals Act. As of April 2004, APPC continues its concession for the mining license.
Chronology of Events

1973 Ten-year survey of Isaan initiated by the Department of Mineral Resources (DMR) under the Ministry of Industry (MoInd).

1981 Sylvinitite potash discovered 80m below surface in Udorn Thani province.

June 4, 1993 Thai Agrigo Potash Company Ltd. (TAPC) and the DMR sign a survey and production agreement. TAPC begins to survey for potash in Udorn Thani.

1994 TAPC buys 400 hectares on which to build the potash processing facility, and continues surveying in Nong Tagai village/Nong Najalern village, Nong Pai sub-district, Udorn Thani province.

June 29, 1994 TAPC changes its name to the Asia Pacific Potash Corporation (APPC) Ltd. Crew Development Corporation becomes the largest shareholder in APPC.

1997 APPC completes surveying in Udorn Thani.

September 8, 1997 Amendment to the Minerals Act of 1967 is proposed which would grant the MoInd the power to change the depth companies are allowed to mine without notifying or obtaining permission from land owners. This begins a five-year conflict over the constitutionality of the changes to the Act.

October 11, 1997 The Thai Constitution of 1997 is enacted, section 56 of which guarantees all Thai citizens the right to participation in the management of their natural resources and protection of the environment.

April 1999 TEAM Consulting Engineering and Management Co. conducts independent survey in project area as part of Environmental Impact Assessment (EIA) guidelines.

April 9, 1999 APPC holds a public relations meeting with villagers from the sub-district of Huey Samphat, at the temple in Non Somboon village.

June 2, 2000 The Minister of Industry, the Canadian Ambassador to Thailand, and the President of APPC come together for the opening of a public park built by the sub-district with money given by APPC.

September 7, 2000 A special commission is appointed by the National Assembly to further consider proposed changes to the Minerals Act. No community members from the proposed mining area were included on the commission. (Hereafter referred to as ‘government commission’)

November 3, 2000 The MoInd grants APPC a special three-year survey license covering about 20,000 hectares.
December 26, 2000 The Office of Environmental Policy approves the EIA for APPC’s Udorn project.

November 19, 2001 Representatives from the project area present a petition about the amendments to the Minerals Act to the government commission.

November 21, 2001 National Human Rights Commission visits project area in Udorn Thani.

December 12, 2001 At a meeting in Chiangkom village, the Environmental Conservation Group of Udorn Thani (Conservation Group) is formed. In January, 60 members representing 16 villages in 3 sub-districts hold their first official meeting.

January 28-29, 2002 Representatives of the Conservation Group send petitions in protest of the potash-mining project and the changes in the Minerals Act to the Prime Minister of Thailand, Thaksin Shinawatra, the head of the government commission, the Canadian Ambassador, and the Environmental Policy & Planning Office.

April 1-2, 2002 Nine-hundred people from 16 villages congregate in front of the Provincial Hall in Udorn Thani to deliver a petition to the governor. Community members request a local commission that would include villager representatives be set up to study the impacts of the project.

April 4, 2002 Leaders of the Conservation Group present a petition to the head of the government commission, protesting the amendments to the Minerals Act. They also hold a meeting that includes senators, academics, and the Thai media to discuss the proposed changes to the Minerals Act.

May 7-8, 2002 Leaders from the Conservation Group meet with the National Human Rights Commission and draft a resolution to reject the amendments to the Minerals Act because they are in violation of human rights and The Thai Constitution of 1997.

May 20, 2002 Village representatives hold a meeting with provincial officials and draft a resolution appointing two bodies to study the potential impacts of the project: the Rajapat Institute of Udorn Thani and villager representatives from the Conservation Group.

June 13, 2002 The National Human Rights Commission sends Prime Minister Thaksin their opinion about the Udorn mining project, including a proposal to dismiss the changes to the Minerals Act.

August 21, 2002 The House of Representatives approve the amended Minerals Act. Soon after this decision was made, 77 senators submitted a petition to the Constitutional Court for consideration for whether or not the new amendments are constitutional.
**November 2002** The Constitutional Court decides that the amendments to the Minerals Act are constitutional.

**March 2003** The newly established Ministry of Natural Resources and Environment (MNRE) set up a six-person committee to reconsider the EIA and suggest improvements.

**April 2003** Approximately 300 villagers go to Bangkok to protest in front of the MoInd and present a petition demanding the creation of a committee that includes Conservation Group members to review the contract between the MoInd and APPC.

**May 2003** APPC submits a response to the concerns over the EIA that answers specific questions of the villagers concerning the potash mining mine.

**May 29, 2003** APPC formally submits a mining lease application to develop the Udorn South Deposit. Approval of the mining license is required before APPC can proceed.

**July 2003** The EIA review committee presents 26 weaknesses find in the EIA to be insufficient and it recommends to the MoInd that APPC should be required to submit an improved EIA.

**September 2003** Conservation Group members submit a petition to the Department of Basic Industry demanding participation in any MoInd decree involving the Udorn potash project.

**September 13, 2003** The MNRE completes a review of the EIA and recommends a new EIA that would include villager participation at every stage.

**November 3, 2003** APPC’s three-year special surveying license expires and is not renewed by the MoInd. APPC’s mining license application is still under review.

**November 18, 2003** Nong Pai sub-district officials complete a survey of 2,000 people concluding that over two-thirds of community members oppose the project.

**March 2004** Prime Minister Thaksin appoints a new Minister of Natural Resources and Environment.

**April 21, 2004** Prime Minister Thaksin speaks at Ratchapat Institute in Udorn Thani Province. Members of the Conservation Group present him with a letter of protest and speak with him about their opposition to the mine.
Overview of the Status of Economic, Social, and Cultural Rights in Regards to Potential Potash Mining Project

Article 1

1. All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Summary:

Article 1 sets out the foundational concept for the entire ESCR Covenant. In broad strokes, it affirms the right for “all peoples to have the right to self determination.” This amongst other things means that the people have the power to “freely pursue their economic, social, and cultural development.”

Section 2 of Article 1 extends the definition of this right to include that people “may, for their own ends, freely dispose of their natural wealth and resources.” This clause is further conditioned by noting that the right “to freely dispose of their natural wealth and resources,” will not be limited or denied due to any agreement a given State may make with other States’ private entities, or other stipulations in international law.

Of particular importance of Section 2, is the stipulation of whatever a State may do in terms of natural resources, it may, “in no case” deprive a people “of its own means of subsistence.” Section 3 clearly specifies that not only must the State recognize the above as inherent rights to the people; the State must actively promote the realization of these rights of Sections 1 and 2.

What would a given people need to clarify the term “self-determination,” which is the principle concept embodied in this Article? They would need complete information in a timely manner, a forum to allow for such information to be realized in a participatory manner, and the power structure that would allow such informed peoples to make the decision “freely,” and “for their own ends.” The signatory States to the ESCR Covenant must take a pro-active role in this respect. This means, that the State must produce and disseminate relevant, complete, and balanced information at the time that information
becomes available and/or is responsible for the production of such information if otherwise not available.

Secondly, the State needs to provide a space and structure for such information to be exchanged in order to allow the people to meaningfully participate to make an informed decision. Finally, the State cannot make any prior decisions or agreements without providing and promoting for these first two principles. In other words, the given people must have access to information prior to determining any decisions in order to ensure they attain the optimal benefit.

**The Facts:**

1. The Thai Agrigo Potash Company Ltd. (TAPC) asked permission to survey the land in the Udorn Thani district because TAPC suspected to find a high concentration of potash underneath the land. As part of a ten-year survey in the Northeast of Thailand carried out by the Department of Mineral Resources, sylvinite potash was discovered below the surface of Udorn Thani Province. Shortly after, the government granted permission for the Thai Agrigo Potash Company Ltd., now known as APPC to make a more detailed survey of the Udorn Thani areas where potash was discovered. Individual landowners were told that the drill surveys were for oil. Although individual landowners were compensated for the boreholes that were drilled, apparently no one knew in the area that the government had granted permission to TAPC Ltd. to survey specifically for potash deposits.

2. Since the granting of the survey license until 2000, survey activity as well as discussions continued with the company and government. As proof of this, namely in 1993, a contract was agreed upon between the government and the company stipulating the percentage of royalties going to the Thai government, the needed percentage of Thai shareholders, etc,. Not only were villagers unaware of agreements made between the government and the potash mining company, there is good reason to believe that the word “potash” itself was completely unknown to the residents of the area until 2000 or 2001.¹

3. In 1999, the company, now called APPC, hired TEAM Consulting Engineering Co. to conduct an Environmental Impact Assessment report. The final form of the report was submitted in English. A summarized version in Thai was later added. Neither the company nor the government made any efforts to distribute the English EIA report or its summarized Thai version to residents of the area. In fact, the first entire copy of the EIA, in English only, made it to the communities in 2002 or 2003.

4. In the past few years, APPC has presented a great variety of information to villagers, generally focusing on potential benefits that the mine might create. For instance, the company's information has pointed out the number of jobs potentially created in the area, how the mine's activities will create greater economic growth in the area, and so

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¹ Sunthon Sapanao, head of the community radio committee, Non Somboon. Interview 18 April 2004.
on. Since villagers organized an opposition to the mine in 2001, the company has begun to address the potential negative impacts of the mine as well. Generally, though, the information from the company seems to understate even what its own EIA report stated. For instance, the EIA states that subsidence could be as great as 70 centimeters. The company's most recent information claims subsidence will be no greater than 60 centimeters.

5. Prior to this particular mining case, the Minerals Act only addressed strip mining. However, when the law changed to allow for underground mining (post Udorn Thani deposit survey period), the State should require a new, legally updated EIA on underground mining to assess the project.

6. The government body that initially approved the EIA completed on the potash project, along with the EIA report itself, has come under question. In 2002, a committee was set up by the government to review the EIA report, and the final report of this committee pointed out 26 deficiencies of the original EIA. The MNRE initiated a series of meetings to address the deficiencies in the present EIA procedures.

The MNRE's main complaint regarding the present EIA procedure includes that, “Some villagers did not have a clue about development projects being launched in their neighborhoods.” And, under the newly proposed EIA procedure people would be allowed

“to have a say in state and private development projects. They would be allowed to suggest what environmental and social issues in the EIA needed protection, comment on the report, and be included in state-private sectors panel to monitor whether project operators were following environmental protection measures stipulated in the EIA.”

The previous minister of the MNRE, Praphat Panyachartrak, was in fact moving toward canceling the original EIA and ordering a new one to be done. With the original EIA in question and the entire EIA procedure under discussion, there would be reason to call for a new EIA to be done.

7. The EIA does discuss the environmental impacts that the mining operation would cause, which would have a direct effect on the surrounding land of the community. Since the community subsists predominantly on agriculture, and given that the EIA may not accurately predict the potential negative effects of the mine, the opening and the operation of the mine could, at least in the eyes of villagers, easily threaten their “means of subsistence.”

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2 Wanvipula, Ranjana. “Experts set to table proposals with Suvit,” The Nation. 29 April, 2004. Unfortunately this move to revise the EIA procedure has been postponed, if not cancelled by the new minister of natural resources and environment, Suvit Khunkiti.
**Provisional Conclusion:**

When the government granted the license for exploratory surveys to be done in the 1980s, the villagers should have known what the survey was being conducted for. The government failed to inform the villagers about the survey, the nature of both what was being surveyed for, or the implications of such a mine. The government did not inform or allow for villager participation in the making of a contract with a private company. Without such information or participation, the government clearly denied information that was necessary for people to determine the future of their communities.

Furthermore, when the EIA was finished and approved by the government, the government should have made all efforts to make the EIA available in Thai in its entirety. Lacking such information, the villagers’ right to meaningful participation was denied, a key aspect in the right to determination. The government is obliged to know what information the company is providing to the villagers in the local area. The government also should provide more complete information if such from the company is insufficient, in order for villagers to make an informed decision of the project.

Finally, the government is responsible for fulfilling the requirements of the EIA. The EIA, at least on paper, seems to attempt to fulfill the basic spirit of Article 1 of the ESCR Covenant. However in practice, as shown by the government’s own efforts to improve the EIA, villagers are usually in the dark about decisions about development projects carried out in their area.

In terms of the right to determination embodied in the three principles outlined above—full and timely information, forum for participation, and the power to make decisions that will influence their lives—the actions of the Thai government in respect to the potash mining project are clearly in violation of the spirit and the letter of Article 1.

The State may not act in any way that deprives the people of their own means of subsistence, there is reasonable concern that the protective stipulations within the EIA are not sufficiently strong or practiced; In other words, if the mine were to begin operations it seems quite possible that the environmental damage from the increased salinization of the area will impair farming as a primary occupation.
Article 25

1. Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Summary:

Article 6 asserts that all people have the “right to work” and provide for themselves by engaging in work they “freely choose[s] or accept[s].” The State is responsible in upholding this right. The right to work encompasses security for one’s opportunity to work, place of occupation, and the resources needed to fulfill the requirements of work. The relationship between the farmer and his/her work is particularly sensitive in this case, due to the entire dependency on the health of the land to ensure crop yield. Any environmental degradation induced on the arable land adversely affects the farmer's ability to carry out his/her daily work for a sustainable living. The State is obligated in protecting the work of the farmer and by that, restricting any outside forces from damaging arable land.

Articles within the ESCR Covenant are interdependent; pertaining to the farmer, in order to fully ensure the protection of Article 6, Article 25 must also be recognized. Article 25 states that no part of the covenant can be “interpreted as impairing the inherent rights” of the people in connection to their “natural wealth and resources.”

These two articles prove to be complimentary in respect to the strong connection between a farmer’s livelihood and their natural resources. A farmer relies on the health of his/her land to provide for him/her. It is the ultimate responsibility of the government to safeguard one’s choice of work from any outside threats caused by any third party so that one can “gain his living by work, which he freely chooses or accepts.” This means that one’s opportunity to work be safeguarded, the place of work preserved, and the needed resources to work are also protected by the State. Any conflicting actions within these limits will be considered a violation of this right.
The Facts:

1. The initial exploration in 1993 assessed both the potash reserves and the groundwater in the proposed mining area. The survey totaled 260 boreholes over an area of 425 rai. Following the mine exploration, villagers encountered and still face problems from saline water coming up out of the boreholes and running off into nearby fields and ponds; the result has often been such that the fields have become barren and such ponds can no longer support freshwater fish or be given to livestock, etc. Farmers in the affected areas of the exploration survey experience barren land that does not yield any crops.

2. An environmental impact that will affect farmers’ agricultural land is subsidence. Land subsidence is the vertical movement of the ground resulting from removal of materials underlying rock, either naturally or by mining. APPC’s estimates for land subsidence are 60 cm over 250-meter² rea in 20 years. The EIA and separate researchers are certain that subsidence will be a result of the mine because the mining will take place under agricultural land, which is clay stone, soft rock. Farmers will be affected by the transformation of their agricultural land and this will directly have an effect on their ability to grow crops.

3. Salt is a major waste product of potash mining and salt dust will be continually emitted during the extraction and processing of potash. Increase in soil salinity will alter the land and affect crop yields and damage forest areas. The predicament of soil salinity is worsened by the fact that the 20 million tonnes of salt waste that will be stored on land in a 40-meter-high tailings pile that is to remain uncovered, exposed to wind and rainfall. The 460-meter-long conveying system to transport tailings from the processing plant to tailings pile is also to remain exposed and hence generate significant volumes of dust. Salt emitted from the entire process distributed over the land, will have an adverse affect on the output of the land. Salt concentrations in the soil damage the structure of the soil by retaining water. This retention impedes the plants’ ability to draw water from the soil. Plants, including rice, cannot grow where there is a high concentration of salt in the soil and leaves the land barren.

4. A growing concern of villagers includes the level of protection provided by APPC against salt emissions from the salt tailings pile. The salt tailings pile will stand at approximately 40-meters-high and the retention wall will stand at about 4-meters-high. The wall serves as a protection barrier between the salt and the surrounding fields and water supply, however the significant height difference is a concern among villagers.

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6 Ibid 5.
**Provisional Conclusion:**

This case presents two arguments involving the violation of Article 25 and the risk of future violations that directly injure farmers’ ability to maintain their livelihoods. The government neglected the rights of the residences of Udorn Thani to “fully and freely” make use of their land by allowing for the exploration survey to take place. The repercussion of that survey comprised of damaged land, which then restricts the ways in which the residents could use the land. In doing so, Article 25 in the covenant is breached by inhibiting people’s right to “enjoy and utilize fully and freely their natural wealth and resources.”

The exploration case provides a good example of the potential dangers to villagers’ source of living if the potash mine and factory is built. Their lack of crop yield resulting from the salinity of the soil can be mirrored in future potash mining of the area. Using the exploration as a point of reference, it can be deduced as well as verified in documents provided by EIA, APPC and villagers, that future mining will transform the arable land. Transformations such as subsidence and increased salinity of the soil impede the ability to farm and hence destroy farmers’ livelihood.

The ability to choose one's occupation is at risk due to the potash-mining project. The project can render the land incapable to provide the same yield as it previously could have due to the damage caused by high concentration of salt in the soil. The farmers’ fields are risking infertility, directly endangering the farmers’ livelihood and no longer serve as a means of survival. By consenting to this project the government will fail to recognize the farmer’s right to utilize his natural wealth.

In conclusion, we may reasonably expect under present conditions, that if the mining operations were to take place, then there would be a great chance that Articles 6 and 25 would be violated.
Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

General Comment 4 on Art.11 (1)\(^7\)

8. (b) Availability of services, materials, facilities and infrastructure. An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services;

(f) Location. Adequate housing must be in a location which allows access to employment options, health-care services, schools, child-care centres and other social facilities. This is true both in large cities and in rural areas where the temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households. Similarly, housing should not be built on polluted sites or in immediate proximity to pollution sources that threaten the right to health of the inhabitants;

9. As noted above, the right to adequate housing cannot be viewed in isolation from other human rights contained in the two International Covenants and other applicable international instruments. Reference has already been made in this regard to the concept of human dignity and the principle of non-discrimination. In addition, the full enjoyment of other rights – such as the right to freedom of expression, the right to freedom of residence and the right to participate in public decision-making is indispensable if the right to adequate housing is to be realized and maintained by all groups in society. Similarly, the right not to be subjected to arbitrary or unlawful interference with one’s privacy, family, home or correspondence constitutes a very important dimension in defining the right to adequate housing.

\(^7\) General comments are an extension of the covenant provided by the Office of the High Commissioner for Human Rights. General Comment 4 further details Article 11 and has been added to the covenant as of 13 December 1991.
Summary:

For the intentions of this report, Article 11 addresses the “right to adequate housing” by providing stipulations on how this right can be upheld, particularly by securing safe drinking water and ensuring public participation.

The right to Article 11 also pledges to the “continuous improvement of living conditions,” to which meaning any action to deprive the people of something already in possession would be considered a regression in living conditions. General Comments on Article 11 further describes that “housing should not be […] in immediate proximity to pollution sources that threaten the right to the health of the inhabitants.” This clause protects the nearby surrounding area of people’s homes from potentially polluting sources to any of the provisions included in adequate housing. Such provisions include, amongst other things, the protection of safe drinking water. This means that anything to harm or put the community’s drinking water at risk shall be considered a violation of Article 11 since safe drinking water is considered a necessity for “the right to health of the inhabitants.”

This right to adequate housing “cannot be viewed in isolation from other human rights – such as […] the right to participate in public decision-making.” This clause explains the importance of public decision-making in order to realize and maintain the right to adequate housing because it is up to the people to decide upon their own living conditions. However, as signatory to the ESCR Covenant, it is the State’s responsibility to “take the appropriate steps to ensure the realization of this right,” which implies that the State needs to make sure that such public decision-making on housing conditions is indeed occurring, and if not, to “take the appropriate steps” to realize this right. Such appropriate steps should include, as similarly outlined to Article 1’s stipulations to ensure the right to self-determination since this “cannot be viewed in isolation from other human rights,” communication of complete information at the community level in a timely manner, the forum to allow for such a decision-making process to occur, as well as recognizing and promoting the power of the people to make informed decisions.

Article 11 includes the “right to freedom of residence,” so that any possible change to one’s housing situation is considered vital to be brought to the people’s attention prior to the change occurring so that the people, after being fully informed of the consequences, are able to pursue a fair decision making process on the issue.

The Facts:

1. As stated in the EIA, the shallow groundwater is fresh only because it has a short flow path (from where water enters the ground to where it discharges) and is continuously replenished with fresh rainfall and runoff. Deeper aquifers of longer flow paths that are in contact with salt bearing rocks are highly saline; hence the shallow aquifer system is extremely fragile and susceptible to subtle changes in land use and water supply.  

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Therefore, there is risk if tailing ponds are located directly above groundwater reserves used for human consumption and use, particularly if that reserve (aquifer) lies only 1-2 meters underground.9

2. Local citizens fear that contamination from the mine will pollute their land and water, denying them sufficient food and drinking water. Some such environmental impacts have been confirmed and analyzed by the EIA such as the contamination of community wells with salt leaking from the tailings pile and brine/evaporation ponds. The company claims that it will prevent this by lining the ponds and installing leakage detection systems but it is widely accepted by the international scientific community that such liners are designed to leak and will do so.10 Approximately, 14,000 tonnes/day of tailings will be conveyed 460m from the concentrator to the tailings pile. There are no plans approved by the EIA to minimize salt being lost from this conveying system by rainfall and wind, which will then carry it to waterways and rice fields.

3. APPC is planning on building the brine pond to be lined with 2 liners separated with sand and gravel fill with a system of detection and collection systems. The EIA only recommends that the collection system be pumped dry each day, but no concrete plans actually exist for this to occur.

4. APPC has responded by proposing a number of systems that might be used, without directly addressing fears about the tailings ponds: “if necessary, hydrodynamic containment can be established by interceptor pumping wells, or APPC may also be reducing the size of the tailings pile and brine pond to ultimately reduce the potential of groundwater contamination.”11 Mention of the possibility of groundwater contamination when combined with the saline land and water results from exploration sites, exacerbates the reason for villagers’ fear and distrust of APPC’s claims and theoretical assurances.

5. The mining plan requires an industrial unit to be built on site so that the mining can take place. The villagers pride themselves on their rural community and do not consent to a mining plant as a neighbor. The creation of a more industrial and polluted atmosphere violates the villagers' freedom of location of residence, if they are resisting such development in their community.12

Provisional Conclusion:

9 Ibid 8. p5
12 Sunthon Sapanao, head of the community radio committee, Non Somboon. Interview 18 April 2004.
The EIA has not calmed the villagers' fears of environmental contamination, specifically in regards to safe drinking water. Villagers worry about their fresh water supply because fresh water aquifers are highly susceptible to any changes in land use and water supply. This vulnerability does not seem to be considered when large salt tailings piles and/or tailing ponds will be located directly above these groundwater reserves used for human consumption and use, especially given that these shallow water reserves are only 1-2 meters below the surface.

The State will appear to be in violation of this right as stated under Article 11.1 and 11-8.b as it has not yet taken the appropriate steps to ensure that APPC officially pledges to address water contamination if it occurs. If the State decides to allow APPC to pursue the mining project without taking into account the worries of Udorn Thani residents, the State will then be responsible for denying the right to public-decision making as stated under Article 11-9.0.

Although APPC has responded to villagers’ concerns by suggesting how the company will work to prevent groundwater contamination, no official steps have been taken to concretely carry out these suggestions. It is up to the State to require these steps from APPC as part of its duty to protect the community's right to safe drinking water as a right to an adequate standard of living, as stated under the ESCR Covenant.

### Article 12

2. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

### Article 15

1. The States parties to the present Covenant recognize the right of everyone:
   a. To take part in cultural life;

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

### Summary:

Article 15 maintains that everyone possesses the right to “take part in cultural life” and that the government is obligated to find the median between “conservation, development and the diffusion of science and culture.” The government is held liable to this provision by advocating change that does not impinge on the rights of the people’s ability to participate in cultural life.
Cultural life, for Isaan farmers, includes primarily an agricultural means of subsistence, and the daily routines that surround a farmer’s schedule, such as fishing during the off-season, as well as the general knowledge about the environment and the close relationship farmers hold with nature in these communities. Since this has been the custom for the past generations, Isaan farmers have become experts in their fields, giving them a serene and composed lifestyle.

Article 12 highlights the right to all to “enjoy the highest attainable standard of physical and mental health.” This means that all people are entitled to a healthy standard of living, both physically and mentally. As they are free to benefit from “the highest attainable” measure of health, anything that would displease or hurt the farmers, physically or mentally, would be considered a weakening in the standard of health. This would then conflict with the right to “the highest attainable standard” of health outlined in Article 12. A lack of the State’s efforts to “achieve full realization of this right” will be considered the State’s failure to uphold the ESCR Covenant. In fact, it is outlined in Article 15 that such steps “include[s] those necessary for the conservation […] of culture,” and thus requires the State to be fully aware of what local residents consider as their cultural lifestyle, and thus recognize and preserve such a chosen way of life as an inherent right to the people.

The Facts:

1. The way of life in Isaan is rooted in the health of the land and rural farming. The mine can devastate the agricultural land because of future salinization and subsidence argued with Article 6 and 25. Along with concerns about the land, community members fear that the industrialization and commercialization that will accompany the mine will lead to deterioration of their agricultural lifestyle. Losing the ability to farm, an integral factor in their way of life, will inevitably lead to out migration from Udorn Thani to larger cities, as families are forced to seek other ways to support their families.

2. In order to maintain and protect their way of life community members of Udorn Thani are coming together through different avenues, the main being the community Conservation Club, to take a stance against the mining project. Club members have and are continuing to present petitions protesting the mine, mobilize demonstrations in front of government buildings and organize marches to spread awareness of the potential mine. The Conservation Club acts as the driving force behind all such activities.

3. Even before the full effects of the mine take place, villagers’ days are consumed with the struggle to protect their desired lifestyle. This is one concrete example how villagers’ lives have already been forced to change from daily routines in order to protect these same practices. They feel obligated to sacrifice their time to work, in

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order to protect their community’s rights against the potash mine. This in turn, has resulted in anguish and distress amongst farmers and local residents because they are overcome with worry and fear.

Provisional Conclusion:

The rights of the residents living in the proposed vicinity will be violated if the Thai Government permits the potash-mining project. The way of life for the majority of the people in these areas is based around agriculture. The culture is not that of commercial wealth but rather of self-sustenance, which they will be unable to keep up if the mine is permitted. If the land no longer can yield crops and supply the residents with food, then the villagers will have no choice but to leave their homes and look for work.

Within arguing Article 15, Article 12 becomes relevant. Article 12 highlights the right to all to “enjoy the highest attainable standard of physical and mental health.” Plans for the potash project trouble the villagers’ mental health and sense of security. Having no control over their future living conditions or occupations, they worry about what their future may be if the government will allow APPC to proceed with the mine.

CONCLUSION:

In 1999, the Thai Government ratified the Covenant on Economic, Social and Cultural Rights, making a commitment to promote and protect these human rights for its citizens. After reviewing the potash mining project in Udorn Thani, this report finds that the government of Thailand has breached its obligations to protect the right to self determination within the covenant. The violations that will occur if the potash mining project is approved include the right to preferred occupation, to free use of natural resources, to adequate standard of living, to the highest attainable standard of mental health, and to take part in cultural life.

Prior to the government’s approval of a project that may lead to negative impacts of this scale, it is imperative that the government follow the rights set forth in the ESCR Covenant. This report urges the government to take action to remedy the current situation and prevent further abuses of the inherent rights of the people. The role of the government is to find a solution to these rights’ violations that will show its commitment to the ESCR Covenant.

Works Cited

14 Interview with Head of Community Radio Committee: Paw Sunthon Sapanao. Bahn Non Somboon: April 18, 2004. Translated by David Streckfuss, Ph.D.


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