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## Contested Rights of Local Communities and Indigenous Peoples in Conflicts over Biocultural Diversity: The case of Karen communities in Thung Yai, a World Heritage Site in Thailand

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*Contested Rights of Local Communities and  
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Heritage Site in Thailand*

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**Abstract**

The conceptualization of interrelations between biological and cultural diversity since the 1980s indicates a biocultural turn in discourses and policies regarding nature conservation, sustainable development, and indigenous peoples. These interrelations frequently manifest as conflicts between local communities who derive their livelihoods and identity from their lands and resources, and external actors and institutions who claim control over these areas, invoking superior interests in nature conservation, development, and modernization. In these asymmetric conflicts over biocultural diversity, framed in discourses that demand the preservation of both biological and cultural diversity, the opportunities for local communities to assert their claims crucially depend on external discursive and legal frameworks.

Based on a study of the Karen ethnic minority groups in the Thung Yai World Heritage Site in Thailand, this article explores challenges and chances for local communities to assert claims and rights to lands, resources, and self-determination in the context of the biocultural turn in environment and development discourses as well as heterogeneous legal frameworks. Human rights as individual rights are widely recognized, but may be difficult to enforce and of limited suitability in conflicts over biocultural diversity. Group rights like indigenous rights are increasingly devised to protect ethnic minorities and perpetuate cultural diversity, but are often disputed on the national level and may be ambiguous regarding heterogeneous communities. In Thailand and globally, community rights provide another promising framework with regard to conflicts over biocultural diversity if the claims of communities to livelihoods and self-determination are respected.

## Global discourses on interrelations between cultural and biological diversity

Biological diversity and cultural diversity have become prominent concepts in the discourses on nature conservation, development, indigenous rights, and globalization. Biodiversity conservation is widely conceived of as a prerequisite for ecologically sound relations between humans and their natural environments, while cultural diversity is increasingly recognized as important factor regarding the coexistence of human communities as well as their sustainable development. Since the late 1980s, furthermore, interrelations between biological and cultural diversity have come into the focus of academic, political, and economic interests and discourses. The interrelations between these two kinds of diversity, increasingly termed biocultural diversity,<sup>1</sup> are predominantly conceptualized as mutually supportive and promising with regard to conservation and development objectives. Empirically, however, these interrelations between biological and cultural diversity predominantly appear as conflicts between the livelihood and identity claims of local communities, on the one hand, and national or global interests in nature conservation, development, and modernization, on the other hand. The case of the Karen ethnic minority communities in the Thungyai Naresuan Wildlife Sanctuary and World Heritage Site in Thailand is an example of such conflicts over biocultural diversity. Based on an analysis of the history and context of this particular conflict, the article will explore the relevance and impacts of what may be termed a 'biocultural turn' in environment and development discourses and policies<sup>2</sup> with regard to the chances of local communities to assert claims and rights to lands, local resources, participation, and self-determination.

The conceptualization of interrelations between cultural and biological diversity mainly occurred in three interdependent and overlapping discourses and problem areas: in the arguments and conflicts about the rights of indigenous peoples to lands,

<sup>1</sup> See, for example, Maffi, L. (ed.) (2001), *On biocultural diversity* (Washington: Smithsonian Institution Press) or Haverkort, B. and Rist, S. (eds) (2007), *Endogenous development and bio-cultural diversity* (Leusden: COMPAS).

<sup>2</sup> See Buergin, R. (2013), *Contested rights of local communities and indigenous peoples in the context of the biocultural turn in environment and development discourses* (University of Freiburg, SEFUT Working Paper 16): <http://www.freidok.uni-freiburg.de/volltexte/9346>, [accessed 4 February 2015].

local resources, and self-determination; in the debates on the modernization and sustainable development of non-modern populations in developing countries; and in the context of the conceptualization and implementation of global strategies for nature conservation. Together, these re-conceptualizations of interrelations between biological and cultural diversity amount to a biocultural turn in environment and development discourses and policies.

The issue of cultural diversity on a global scale was already at stake in the ongoing disputes about the ‘occidental roots and biases of ‘universal human rights’,<sup>3</sup> predominantly framed in terms of relativistic versus universalistic positions,<sup>4</sup> and frequently implying a problematic antagonism between the concepts of ‘culture’ and ‘rights’.<sup>5</sup> Particular rights of groups based on cultural differences were originally peripheral and ambiguous in the context of the conceptualization of human rights with their focus on the inalienable rights of individuals, and are still disputed. However, since the 1970s, the concept of group rights as a particular field of human rights and international law has received increasing attention, not least with regard to the conceptualization of the rights of indigenous peoples.<sup>6</sup> In the arguments about ‘indigenous peoples’ and their particular rights to lands, local resources, and self-determination, cultural diversity and environmental conservation were crucial issues from the beginning.<sup>7</sup> In the context of the United Nations Environmental Conference held in Stockholm in 1972, for the first time these groups established organizations to support their claims on the international stage, which frequently referred to a special relationship to their natural environment and the land they live on. The ‘Declaration on the Rights of Indigenous Peoples’ was adopted in 2007 by the UN General Assembly, ‘recognizing that respect for indigenous knowledge, cultures and traditional practices

<sup>3</sup> American Anthropological Association (1947), ‘Statement on human rights’, *American Anthropologist*, 49:4, pp. 539–543.

<sup>4</sup> See Brems, E. (2001), *Human rights: Universality and diversity* (The Hague: Kluwer) or Donders, Y. (2010), ‘Do cultural diversity and human rights make a good match?’, *International Social Science Journal*, 61, pp. 15–35.

<sup>5</sup> Cowan, J. K., Dembour, M.-B. and Wilson, R. A. (eds) (2001), *Culture and rights: Anthropological perspectives* (Cambridge: Cambridge University Press).

<sup>6</sup> For example, Lerner, N. (1991), *Group rights and discrimination in international law* (Dordrecht: Nijhoff) or Bisaz, C. (2011), ‘The concept of group rights in international law’, PhD thesis, University of Zürich.

<sup>7</sup> Niezen, R. (2003), *The origins of indigenism: Human rights and the politics of identity* (Berkeley, California: University of California Press).

contributes to sustainable and equitable development and proper management of the environment'.<sup>8</sup> Nevertheless, the concept of 'indigenous peoples' remains contested and the status of these groups in most countries, precarious.<sup>9</sup> Disputes focus on conceptions of the particularly sustainable environmental relations of indigenous groups, on the compatibility of universal human rights with the particular entitlements of indigenous and cultural minorities, as well as on the justification for and achievement of their claims to local resources, self-determination, and autonomy.<sup>10</sup>

Besides the debates on indigenous rights, cultural diversity and its relationship to biological diversity also became an issue in the discourses on modernization and sustainable development. Since the 1970s, the disappointing results of modernization strategies in developing countries were increasingly related to the neglect of cultural differences on the national and local level.<sup>11</sup> As 'traditional', pre-modern forms of knowledge and social organizations, these differences were at first primarily analysed and utilized for modernization purposes. It was not until the 1980s that the intrinsic values of this diversity and the opportunities it provides regarding sustainable or alternative ways of development received broader attention,<sup>12</sup> frequently related to approaches advocating community-based natural resource management.<sup>13</sup> Since the late 1990s, furthermore, rights-based approaches increasingly emphasize

<sup>8</sup> United Nations (2007), *Declaration on the Rights of Indigenous Peoples* (New York: UN General Assembly).

<sup>9</sup> For example, Kingsbury, B. (1998), "'Indigenous peoples" in international law: A constructivist approach to the Asian controversy', *American Journal of International Law*, 92:3, pp. 414–457 or Jentoft, S., Minde, H. and Nilsen, R. (eds) (2003), *Indigenous peoples: Resource management and global rights* (Delft: Eburon).

<sup>10</sup> See, for instance, Buege, D. J. (1996), 'The ecologically noble savage revisited', *Environmental Ethics*, 18:1, pp. 71–88; Fottrell, D. and Bowring, B. (eds) (1999), *Minority and group rights in the new millennium* (Dordrecht: Kluwer); Deveaux, M. (2000), *Cultural pluralism and dilemmas of justice* (Ithaca, New York: Cornell University Press); Minde, H. (ed.) (2008), *Indigenous peoples* (Delft: Eburon).

<sup>11</sup> See, for example, Brokensha, D. W., Warren, D. M. and Werner, O. (eds) (1980), *Indigenous knowledge systems and development* (Washington, DC: University Press of America); Cernea, M. M. (ed.) (1985), *Putting people first* (New York: Oxford University Press).

<sup>12</sup> See Williams, N. M. and Baines, G. (eds) (1988), *Traditional ecological knowledge* (Canberra: Centre for Resource and Environmental Studies) or Berkes, F. (ed.) (1989), *Common property resources* (London: Belhaven).

<sup>13</sup> For example, Ostrom, E. (ed.) (1990), *Governing the commons* (Cambridge: Cambridge University Press) or Bromley, D. W. (ed.) (1992), *Making the commons work* (San Francisco, California: Institute for Contemporary Studies).

the relevance of human rights and community rights for sustainable and equitable development.<sup>14</sup> Controversies regarding interrelations between cultural diversity and development are concerned with the epistemological status of local knowledge systems, the significance of cultural differences for different ways into modernity or alternative developments, as well as the relevance of such differences for policies supporting sustainable development.<sup>15</sup>

Alongside the discourses on indigenous peoples and sustainable development, cultural diversity likewise became a focus of global debates on nature conservation. Modern conservation approaches, in the context of prevailing images of an inherent antagonism between man and nature, initially tried to restrict human impacts on ‘nature’ and to remove local residents from protected areas.<sup>16</sup> Since the 1980s, this ‘old conservation’ or ‘fortress conservation’ approach has been increasingly questioned and subsequently replaced by new conservation approaches that emphasize ‘community based’ or ‘people centred’ conservation and recommend ‘co-management strategies’ to account for the claims of local residents and integrate them into the management of protected areas.<sup>17</sup> This change in international conservation discourses went hand in hand with numerous projects in developing countries aimed at mobilizing local people for nature

<sup>14</sup> See Cornwall, A. and Nyamu-Musembi, C. (2004), ‘Putting the “rights-based approach” to development into perspective’, *Third World Quarterly*, 25:8, pp. 1415–1437 or Uvin, P. (2007), ‘From the right to development to the rights-based approach: how “human rights” entered development’, *Development in Practice*, 17:4–5, pp. 597–606. Regarding Thailand, see Johnson, C. and Forsyth, T. J. (2002), ‘In the eyes of the state: Negotiating a “rights-based approach” to forest conservation in Thailand’, *World Development*, 30:9, pp. 1591–1605.

<sup>15</sup> For instance, Agrawal, A. (1995), ‘Dismantling the divide between indigenous and scientific knowledge’, *Development and Change*, 26:3, pp. 413–439; Nederveen Pieterse, J. (1998), ‘My paradigm or yours?’, *Development and Change*, 29:2, pp. 343–373; Briggs, J. and Sharp, J. P. (2004), ‘Indigenous knowledges and development’, *Third World Quarterly*, 25:4, pp. 661–676; Meuleman, L. (2013), ‘Cultural diversity and sustainability metagovernance’, in L. Meuleman (ed.), *Transgovernance* (Berlin: Springer).

<sup>16</sup> In this framing, non-modern rural or ‘traditional’ people living in or close to protected areas were frequently either conceived of as candidates for modernization and a possible threat to ‘nature’, or were virtually identified with ‘nature’ as ‘primitive people’ and as such determined to vanish but possibly even worthy of conservation as long as declining development.

<sup>17</sup> For example, Wells, M. and Brandon, K. (1992), *People and parks* (Washington, DC: The World Bank) or IUCN and McNeely, J. A. (eds) (1993), *Parks for life* (Gland: IUCN).

conservation,<sup>18</sup> as well as an upswing of conceptualizations of indigenous, traditional or local people and their particular knowledge as ecologically beneficial.<sup>19</sup> However, these changes of focus and strategy, far from being adequately implemented on a broader scale,<sup>20</sup> are still ardently disputed, specifically regarding conceptualizations of indigenous or local people as ‘benign environmentalists’, problematic transformations of their environmental relations in modernization processes, and their significance for biodiversity conservation.<sup>21</sup>

Conceptualizations of interrelations between cultural diversity and biological diversity became important only in the late 1980s, not least due to two major events in the global political discourse on environment and development. While the Brundtland Report<sup>22</sup> and the concept of sustainable development—which reconciled the conflict between modernization and conservation discursively—merged the debates on conservation, development, and social justice, the Conference on Environment and Development in Rio de Janeiro 1992 and the Convention on Biological Diversity<sup>23</sup>—which explicitly linked biological and cultural diversity—resulted in the far-reaching institutionalization of issues regarding environment and development. Against this background, ‘indigenous’, ‘traditional’ or ‘local’ people widely became conceived of as promising partners for biodiversity conservation.<sup>24</sup> Moreover, as so-called ‘biodiversity hotspots’ with high biological diversity frequently coincide with areas of extraordinary linguistic or cultural diversity,<sup>25</sup> the protection of cultural diversity is even propagated as a strategy for global

<sup>18</sup> See West, P. C. and Brechin, S. R. (eds) (1991), *Resident peoples and national parks* (Tucson: University of Arizona Press) or Western, D. and Wright, R. M. (eds) (1994), *Natural connections* (Washington, DC: Island Press).

<sup>19</sup> For example, McNeely, J. A. and Pitt, D. (eds) (1985), *Culture and conservation* (London: Croom) or Oldfield, M. L. and Alcorn, J. B. (eds) (1991), *Biodiversity: Culture, conservation, and ecodevelopment* (Boulder, Colorado: Westview).

<sup>20</sup> For example, Brechin, S. R. et al. (eds) (2003), *Contested nature* (Albany, New York: State University of New York Press) or Brockington, D. and Igoe, J. (2006), ‘Eviction for conservation’, *Conservation and Society*, 4:3, pp. 424–470.

<sup>21</sup> See, for example, Kramer, R., Van Schaik, C. and Johnson, J. (eds) (1997), *Last stand* (New York: Oxford University Press) or Vermeulen, S. and Sheil, D. (2007), ‘Partnerships for tropical conservation’, *Oryx*, 41:4, pp. 434–440.

<sup>22</sup> Brundtland, G. H. (1987), *Our common future* (Oxford: Oxford University Press).

<sup>23</sup> UNCED (1992), *Agenda 21* (Washington, DC: UNCED).

<sup>24</sup> See, for instance, Stevens, S. (ed.) (1997), *Conservation through cultural survival* (Washington, DC: Island Press) or Stone, R. D. and D’Andrea, C. (2001), *Tropical forests and the human spirit* (Berkeley, California: University of California Press).

<sup>25</sup> For example, Loh, J. and Harmon, D. (2005), ‘A global index of biocultural diversity’, *Ecological Indicators*, 5:3, pp. 231–241; Gorenflo, L. J. et al. (2012),

biodiversity conservation.<sup>26</sup> Meanwhile, the decrease of linguistic and cultural diversity, alongside the loss of biodiversity, is deplored from the perspective of the social sciences and humanities.<sup>27</sup> At the same time, economic interests focus on the bioprospection of genetic resources in habitats of indigenous people based on their local knowledge<sup>28</sup> as well as on the appeal of areas of high biological and cultural diversity for eco- and ethno-tourism enterprises.<sup>29</sup> Furthermore, biodiversity conservation by means of local resource control and self-determination, with a focus on community rights and the empowerment of local communities,<sup>30</sup> increasingly conceptualized as a rights-based approach to conservation,<sup>31</sup> is propagated as a localist counter-strategy to dominant strategies of global resource management and free-market economization.<sup>32</sup>

These diverse conceptualizations of interrelations between biological and cultural diversity together indicate a biocultural turn in environment and development discourses and policies in which discourses on conservation, development, and indigenous peoples have increasingly merged. A common empirical core issue of these discourses refers to encounters between modern social groups and institutions with globally framed interests in the conservation, management, and use of natural resources, on the one hand, and

'Co-occurrence of linguistic and biological diversity in biodiversity hotspots and high biodiversity wilderness areas', *Proceedings of the National Academy of Sciences*, 109:21, pp. 8032–8037.

<sup>26</sup> See Oviedo, G. T., Maffi, L. and Larsen, P. B. (2000), *Indigenous and traditional peoples of the world and ecoregion conservation* (Gland: WWF) or Maffi, L. and Woodley, E. (eds) (2010), *Biocultural diversity conservation* (London: Earthscan).

<sup>27</sup> For example, Whaley, L. J. (2003), 'The future of native languages', *Futures*, 35:9, pp. 961–973 or Lempert, D. (2010), 'Why we need a cultural red book for endangered cultures, NOW', *International Journal on Minority and Group Rights*, 17:4, pp. 511–550.

<sup>28</sup> See, for instance, Shiva, V. (ed.) (1997), *Biopiracy* (Boston, Massachusetts: South End) or Stepp, J. R., Wyndham, F. S. and Zarger, R. K. (eds) (2002), *Ethnobiology and biocultural diversity* (Athens, Georgia: University of Georgia Press).

<sup>29</sup> See Ceballos-Lascuráin, H. (ed.) (1996), *Tourism, ecotourism, and protected areas* (Gland: IUCN) or West, P. and Carrier, J. G. (2004), 'Ecotourism and authenticity', *Current Anthropology*, 45:4, pp. 483–498.

<sup>30</sup> For instance, Colchester, M. (2008), *Beyond tenure* (Washington, DC: Rights and Resources Initiative) or Shrumm, H. and Jonas, H. (eds) (2012), *Biocultural community protocols* (Cape Town: Natural Justice).

<sup>31</sup> See, for example, Campese, J., Sunderland, T., Greiber, T. and Oviedo, G. (eds) (2009), *Rights-based approaches to conservation* (Bogor, Indonesia: Center for International Forestry Research).

<sup>32</sup> For example, Peet, R. and Watts, M. J. (eds) (1996), *Liberation ecologies* (London: Routledge) or Escobar, A. (2001), 'Culture sits in places', *Political Geography*, 20:2, pp. 139–174.

culturally different local communities claiming lands, local resources, separate identities, and rights to self-determination, on the other hand. Encounters between modern and non-modern groups have a long, predominantly ambivalent (if not embarrassing), history in the course of the expansion of modernity.<sup>33</sup> However, with the biocultural turn in environment and development discourses, the context of these conflicts has changed significantly. As ‘conflicts over biocultural diversity’ they represent a historically specific expression of ongoing conflicts at the fringes of expanding modern societies which are specifically framed in new discourses that propose, at the same time, the preservation of biological as well as cultural diversity.

In this context, non-modern local communities, and particularly indigenous peoples, have to face new challenges and threats. However, these changing discourses also provide new chances for them to defend claims on lands, local resources, different ways of living, and particular identities in highly asymmetrical power relations between local communities and external modern actors and institutions. While their natural environments and particular ways of living are still increasingly intruded upon and transformed by these external actors and institutions, their relationship to these social and political environments is changing too in the course of the biocultural turn. The transformation of these modern socio-political environments includes changing rights regimes as well as commitments and liabilities of modern actors and institutions in conflicts over biocultural diversity. The chances of local communities to demand accountability and to assert rights have most probably increased in the context of the biocultural turn. However, in every conflict these chances still crucially depend on very particular circumstances of asymmetric power relations, diverging claims and objectives, as well as diverse legislative and political environments.

From the perspective of local communities in conflicts over biocultural diversity, two major strategies seem to be promising but may be conflicting. They can try to support their claims and interests by referring to a positive public image of benign environmentalists, which is well based in international conservation policies and supported

<sup>33</sup> See, for example, Bodley, J. H. (1975), *Victims of progress* (Menlo Park: Cummings); Wolf, E. R. (1982), *Europe and the people without history* (Berkeley: University of California Press); Burger, J. (1987), *Report from the frontier: The state of the world's indigenous peoples* (London: Zed Books); Wallerstein, I. M. (2006), *European universalism: The rhetoric of power* (New York: New Press).

by many transnational environmental organizations. They may also try to enforce rights to lands, resources, participation, and self-determination in the context of diverse legal frameworks and rights regimes. While these two strategies may facilitate a complementary approach for local communities in conflicts over biocultural diversity, they can also be contradictory and counterproductive.

Based on the case of the Karen communities in the Thung Yai Naresuan Wildlife Sanctuary and World Heritage Site in Thailand,<sup>34</sup> this article is concerned with the possibilities and chances of local communities to assert their interests and rights in the context of changing national and international discourses, policies, and legal frameworks. After a short introduction to the history and self-image of the Karen in Thung Yai and an outline of changing forest policies in Thailand, the article reviews the implementation of Thung Yai as a protected area in the context of national and international conservation policies with a particular focus on impacts on the local communities. Starting from the interests and claims of the Karen communities in Thung Yai to lands, resources, and self-determination, the article then moves on to explore the chances of local communities to assert such claims in the context of the biocultural turn in environment and development discourses, and changing legal frameworks.

### **History, identity, and livelihood of Karen people in Thung Yai**

Today, at the beginning of the twenty-first century, there are some 3,500 people living in the Thung Yai Naresuan Wildlife Sanctuary. Most of them are Pwo Karen and were born in Thailand, predominantly within the sanctuary itself. They generally grow rice as subsistence farmers on swidden and paddy fields. According to Karen oral history, their ancestors came to the area after fleeing political and religious suppression in Burma after the Burmese had conquered the Mon kingdoms of Lower Burma in the eighteenth century. The first written historic references to their residence in Siam's western border

<sup>34</sup> The comprehensive data and on-site experiences on which this article is based were mainly gathered in the context of an anthropological field research in 1996/97 and are accessible in Buegin, R. (2002), 'Lokaler Wandel und kulturelle Identität im Spannungsfeld nationaler Modernisierung und globaler Umweltdiskurse', PhD thesis, University of Freiburg, and Buegin, R. (2004), *Umweltverhältnisse jenseits von Tradition und Moderne* (Stuttgart: Ibidem-Verlag).

area can be found in chronicles of the late eighteenth century. In the early nineteenth century they received formal settlement rights from the governor of Kanchanaburi, and the *Khun Suwan* rank of Siamese nobility was conferred on their leader. When the status of the border area was raised to that of a *muang* or principality—between 1827 and 1839—the Karen leader of the *muang* was awarded the title of *Phra Si Suwannakhiri* by King Rama III. Since 1873 at the latest, *Phra Si Suwannakhiri* has resided in Sanepong,<sup>35</sup> which became the centre of the *muang* and is now one of the Karen villages lying within the Wildlife Sanctuary. During the second half of the nineteenth century this *muang*—guarding as it did part of their western border with British Burma—was of considerable importance to the Siamese kings. Karen living there were consulted regarding the delineation of the border between Siam and Burma under King Rama V.<sup>36</sup> It was only at the beginning of the twentieth century, after the establishment of the modern Thai nation state, that the Karen in Thung Yai lost their former status, reappearing on the national political agenda as forest encroachers and illegal immigrants towards the end of the twentieth century.

The Thai name *Thung Yai*—‘big field’—refers to a savannah in the centre of the sanctuary. For the Karen, the savannah is a place of deep spiritual significance, referred to in Karen as *pia aethala aethae*, which can be translated as ‘place of the knowing sage’. The Karen term *aethae* refers to mythological hermits who, according to Karen lore, lived and meditated in the savannah. The story of these hermits is important for the identity of the Karen in Thung Yai and they are honoured. Until today, Karen seeking spiritual development retreat to this place for meditation. To refer to their community and homeland, the Karen in Thung Yai use the term *thong bou tai*, which refers to a specific way of life and values, focusing on the control of greed and

<sup>35</sup> The Tai chronicles and travel reports of the eighteenth and nineteenth centuries refer to the residence of the Karen governor as ‘Kyaukhaung’, ‘Chau Kaun’, or ‘Kienk Khaung’. While Renard supposes that this place was located at the place of the historical ‘Sangkha’ and contemporary ‘Sangkhlaburi’ (see Renard, R. D. (1980), ‘The role of the Karens in Thai society during the Early Bangkok Period, 1782–1873’, *Contributions to Asian Studies*, 15:1, pp. 16–17), a careful reading of the travel reports of British officers and missionaries as well as local lore indicate that the administrative centre of the Karen principality was located at the same place or close to the present-day Karen village, Sanepong. See Buergin, *Umweltverhältnisse*, pp. 85–91.

<sup>36</sup> See Buergin, *Umweltverhältnisse*, pp. 83–100. Regarding the history of the western border areas, see also Renard, ‘The role of the Karens in Thai society’ and Thongchai Winichakul (1994), *Siam mapped* (Honolulu: University of Hawai‘i Press).

spiritual development. These conceptions are related to the Telakho sect, a millenarian Buddhist sect which originated in the middle of the nineteenth century, possibly in or close to the present-day sanctuary, and are still influential in Thung Yai.<sup>37</sup> All the villages in the sanctuary, as well as some Karen villages at the edge of the sanctuary, are included in this culturally and geographically determined community.

The Karen in Thung Yai conceive of themselves as people living in and of the forest, as part of a very complex community of plants, animals, humans, and spiritual beings. Within this community the Karen do not feel superior but rather as highly dependent on the various other beings and forces. Living in this community requires adaptation as well as specific knowledge about the interdependencies and rules of the community. Fostering relations with the various caretaker spirits of this 'forest community' is an important part of Karen life in the sanctuary. The permission and support of the latter has to be sought continuously in order to live in and use the forest and land. From a modern perspective, many of these rules and traditions could be labelled 'ecological knowledge'. In these rules and norms, as well as in their daily livelihood practices passed on and transformed from generation to generation, a very rich and specific knowledge is conserved about the environment of the Karen.

The Karen's relations with the outside world, specifically the 'Thai world', have changed frequently. During the first half of the twentieth century the Karen communities were largely autonomous, even though the villages in Thung Yai were formally integrated into the Thai nation state. It was not until the 1960s, in the wake of the state's growing interest in its peripheral areas, that state institutions became increasingly relevant in Thung Yai: stations of the Border Patrol Police were established in the 1960s, followed by various state offices supporting 'development', as well as the Royal Forest Department and the military since the 1980s.

The permanent presence of Tai<sup>38</sup> people in Karen villages since the 1960s, as well as the activities of government institutions aimed at assimilating the Karen into the Thai nation state, resulted in changes of the social, political, and religious organization of

<sup>37</sup> See Buergin, *Umweltverhältnisse*, pp. 220–232, 270–274. On the origin and history of the sect, see Stern, T. (1968), 'Ariya and the golden Book', *Journal of Asian Studies*, 27:2, pp. 297–328, and Ewers Andersen, K. (1976), 'The Karens and the Dhammaraja', MA thesis, University of Copenhagen.

<sup>38</sup> The term 'Tai' is used to refer to linguistic or ethnic categories, while 'Thai' indicates aspects of formal nationality and citizenship.

Karen communities in Thung Yai. These include, among others, the decreasing importance of the traditional Karen matrifocal kinship groups and the emergence of a more household-centred and patrifocal ritual system at the village level; the clash of a rather egalitarian and consensus-oriented political organization at the village level with a more authoritarian and hierarchical external political system; and the obstruction of the transmission of Karen identity to the younger generations due to the introduction of the Thai education system in the villages.<sup>39</sup>

The economic organization of most of the households remained relatively unchanged until the late 1980s and early 1990s, when restrictions on their land-use system began to threaten the subsistence economy and material well-being of the Karen in Thung Yai. Even today most of the households in Thung Yai practise subsistence farming, predominantly growing rice in swidden fields and some paddy fields. Within a territory supervised by the village community, every year each household selects a swidden field according to household size and work capacity. The secondary vegetation of a fallow area—predominantly bamboo forest—is cut, and burned after a period of drying. After being used to grow hill rice, generally for one year, the field is once again left fallow for several years, while numerous plants growing in the fallow areas are used continuously. The traditionally long fallow periods of five to 15 years or more are currently prohibited by the Thai Royal Forest Department, which considers land uncultivated for that length of time to be reforested and therefore it cannot be cleared or used for cultivation. Small supplementary cash incomes are obtained in most households by way of selling chillies, tobacco, and various other fruits grown within the traditional land-use system. Wage labour is of little importance to most households. The mean annual per capita income in 1996 was about US\$50 and has remained almost constant since then.<sup>40</sup>

<sup>39</sup> Regarding the complex dynamics of these changes, see Buergin, *Umweltverhältnisse*, pp. 269–322, and Buergin, R. (2002), *Change and identity in Pwo Karen communities in Thung Yai Naresuan Wildlife Sanctuary, a 'global heritage' in Western Thailand* (University of Freiburg, SEFUT Working Paper 11).

<sup>40</sup> To date, the data collected in 1996/1997 (see Buergin, *Umweltverhältnisse*, pp. 203–292) is the most detailed and reliable data available. More recent demographic and economic data regarding the Western Forest Complex (WEFCOM) was collected in 2003/2004 by public authorities in rapid socio-economic surveys and were compiled in the context of the GMS Biodiversity Conservation Corridors Initiative of the Asian Development Bank. See Asian Development Bank (2005),

## Deforestation, protected areas, and 'hill tribes' in Thailand

Throughout the second half of the twentieth century, the relationship of the Karen in Thung Yai with the Thai state was predominantly defined by the state categorizing them as 'hill tribes' and declaring their living place a national forest. Profound changes to their economic organization began in the 1980s and were closely related to the follow-on effects of the declaration of Thung Yai as a Wildlife Sanctuary in 1974. The case of Thung Yai is only one example of a broader controversy regarding people and forests in Thailand (and globally), rooted in conflicting interests involving the resources of peripheral forest areas in the context of changing forest, development, and conservation policies.<sup>41</sup>

Forest and biodiversity conservation in Thailand has focused on the establishment of protected areas that are controlled by the government. This modern approach to nature conservation gained strength in Thailand in the 1950s in a period of pronounced nationalism, and was based on a prevailing international trend of presupposing an inherent incompatibility between nature conservation and resource use by local communities. Legal provisions for protected areas were created in the 1960s and the Royal Forest Department was made responsible for their creation and management.<sup>42</sup> Prior to this approach the main concern of the Royal Forest Department had been the allocation of concessions for teak

*The Tenasserim Biodiversity Conservation Corridor: Western Forest Complex—Kaeng Krachan Complex, Thailand: GMS Biodiversity Conservation Corridors Initiative: Annex 3-4* (Manila, Philippines: ADB), pp. 8–11. According to this data, the mean annual income in Subdistrict Lai Wo (which comprises most of the Karen communities in Thung Yai) was around US\$ 263 per household or US\$ 53 per person, while the figures for Lai Wo in my survey in 1996/1997 were US\$ 271 per household and US\$ 57 per person. Population data for 2004, giving a total of 3,319 Karen people living in the Thung Yai Naresuan Wildlife Sanctuary, likewise indicate that basic socio-economic data such as population size and incomes have not changed significantly.

<sup>41</sup> See, for example, Sato, J. (2002), 'Karen and the land in between', in D. Chatty and M. Colchester, *Conservation and mobile indigenous peoples* (New York: Berghahn Books), pp. 277–295; Buegin, R. (2003), 'Shifting frames for local people and forests in a global heritage', *Geoforum*, 34:3, pp. 375–393; Vandergeest, P. and Peluso, N. L. (2011), 'Political violence and scientific forestry', in M. J. Goldman, M. D. Turner and P. Nadasdy, *Knowing nature* (Chicago: University of Chicago Press), pp. 152–166; Sturgeon, J. C. et al. (2013), 'Enclosing ethnic minorities and forests in the golden economic quadrangle', *Development and Change*, 44:1, pp. 53–79. For a more comprehensive account, see Buegin, *Umweltverhältnisse*, pp. 101–200.

<sup>42</sup> On the history and policies of the Royal Forest Department, see Usher, A. D. (2009), *Thai forestry* (Chiang Mai: Silkworm).

extraction, a lucrative business. After the Second World War, however, tropical forests were increasingly seen as an important global asset and swidden cultivation was stigmatized as inefficient and detrimental to tropical forest resources. By the mid-1960s, almost 40 per cent of Thailand's total land area had been assigned to concession areas and swidden cultivation was prohibited. At the same time, the demarcation of protected areas was beginning, although this proceeded slowly at first. The global spread of modernization and the expanding world market was also influencing national agricultural policies: Thailand's rapid economic growth during the 1960s and 1970s was based on the state-propagated extension of agricultural areas for the cultivation of cash crops for the world market. Alongside a fast-growing population, this policy resulted in rapid deforestation.

Despite the emergence of protected areas legislation, the forest cover in Thailand decreased from 1950 through to the early 1980s from almost two-thirds to less than one-third of the total land area, and deforestation was increasingly perceived as a problem. The Royal Forest Department then had to explain this rapid deforestation to a conservation-sensitive urban public with growing political power. It also had to deal with some 10 million rural people—about one-fifth of the total population—who were living 'illegally' in areas declared as forest reserves. Of these 'forest areas' more than one-third was being used for agriculture, constituting at least one-third of Thailand's entire agricultural area. In this situation of contested competence and growing resistance, the Royal Forest Department concentrated on implementing a Protected Area System as a main instrument of nature conservation.<sup>43</sup>

In 2002 the former Royal Forest Department was restructured into three independent departments: the National Park, Wildlife, and Plant Conservation Department, which became responsible for all protected areas; the Marine and Coastal Resources Department; and the Royal Forest Department, which was left with the responsibility for 'forest areas' apart from protected areas demarcated as 'forest reserves'. In 2004 about 20 per cent of the land area was legally

<sup>43</sup> See Buergin, R. (2003), 'Trapped in environmental discourses and politics of exclusion', in C. O. Delang, *Living at the edge of Thai society* (London: RoutledgeCurzon), pp. 43–63. The Protected Area System was devised in detail in the 'Thai Forestry Sector Master Plan' 1993 (TFSMP), without a stated timeline. While the Thai Forestry Sector Master Plan as a whole was never approved by the Thai government, the objective to designate 27.5 per cent of Thailand's terrestrial area as 'protected areas' had already been adopted in 1992.

designated ‘protected areas’ under the supervision of the Plant Conservation Department with another 4 per cent in preparation. Furthermore, about 18 per cent of the total land area was designated as ‘Watershed Areas’ which are not categorized as ‘protected areas’ but partly overlap with them and are subject to conservation objectives too. The official forest policy targets a minimum forest cover of 33 per cent, including protected areas covering 25 per cent of the land area. Together with ‘forest reserve’ areas supervised by the Royal Forest Department, these ‘forest areas’ cover about 63 per cent of the total land area of the country.<sup>44</sup>

The issue of people living in forest areas became an important societal controversy, encompassing issues of social justice, resource control, land rights, and democratization.<sup>45</sup> On the one hand, the Royal Forest Department—together with primarily conservation-oriented NGOs and academics—concentrated on conservation issues. For them ‘people and forests cannot co-exist’ and forest protection required the removal of human settlements from the forests. On the other hand, peasant movement groups, socially concerned academics, and people-oriented NGOs focused on the interests and problems of rural communities and the rights and interests of long-standing forest communities. They presupposed a vital interest of local communities in protecting their forests as a source of livelihood as well as for ecological and cultural functions, and pointed to a history of community conservation in the remaining forested areas.<sup>46</sup> This controversy led in part to the drafting of the Community Forest Bill, which was fiercely disputed throughout the 1990s and finally approved in 2007. The final passage of the Bill did not, however, resolve the long-running conflict, and the status of communities and community forests in protected areas remains problematic and controversial.<sup>47</sup>

<sup>44</sup> See FAO Regional Office for Asia and the Pacific (2009), *Thailand forestry outlook study* (Bangkok: FAO Regional Office), pp. 18–19, and Usher, *Thai forestry*, pp. 173–175.

<sup>45</sup> See Buergin, R. and Kessler, C. (2000), ‘Intrusions and exclusions’, *GeoJournal*, 52:1, pp. 71–80.

<sup>46</sup> See, for example, Yos Santasombat (1992), ‘Community-based natural resource management in Thailand’, *Asian Review*, 6, pp. 78–124, and Anan Ganjanapan (1996), *From local custom to the formation of community rights* (Tokyo: Institute for the Study of Languages and Cultures of Asia and Africa, Tokyo University of Foreign Studies).

<sup>47</sup> See Brenner, V. et al. (1999), *Thailand’s community forest bill* (University of Freiburg, SEFUT Working Paper 3); Weatherby, M. and Somying Soonthornwong (2007), ‘The Thailand Community Forest Bill’, *RECOFTC Community Forestry E-News*, December 2007; Usher, *Thai forestry*, 2009.

The particularly problematic issue of ethnic discrimination is rarely addressed in the debate on forest legislation: most of the people living in areas designated for the Protected Area System are members of the 'hill tribes', or *chao khao* in Thai. This term came into use in the 1950s as a generic name for various non-Tai ethnic groups living predominantly in the uplands of northern and western Thailand.<sup>48</sup> The term implies a negative stereotype associated with the destruction of forests, the cultivation of opium, and dangerous non-Thai troublemakers. During the 1960s and 1970s, the move to eradicate opium cultivation and the ongoing communist insurgency dominated the government's attitude towards highland peoples. By the mid-1980s both of these issues had lost their urgency and forest conservation had risen to replace them in the public interest. Although the settlement areas of hill tribes were those areas where most of the remaining forests were to be found, the hill tribes were conceived of as being the main 'problem group' regarding deforestation and resettlement was the preferred solution.<sup>49</sup> Members of the highland groups dislike the term 'hill tribes' and prefer either Thai Mountain peoples (*chao Thai phu khao*), more commonly used within Thailand, or indigenous peoples (*chon pao puen muang*), more often used internationally. At the local level as well, conflicts between ethnic Tai and hill tribe groups arose during the 1980s. Resource conflicts over land, forests, and water occurred as ethnic Tai farmers spread into the uplands while the populations of hill tribes grew and many of them took up cash cropping. Increasingly, in the late 1990s, ethnic minority groups in the uplands were arbitrarily arrested, forcibly resettled, and terrorized.<sup>50</sup>

### Nature conservation, oppression, and eviction in Thung Yai

The idea of protecting forests and wildlife in western Thailand by establishing two wildlife sanctuaries arose in the mid-1960s among

<sup>48</sup> Officially the term covers nine distinct tribal peoples: the Karen, Hmong, Lisu, Lahu, Akha, Mien, Khamu, Lua', and H'tin, each with a distinct language and culture. It does not differentiate between those who have lived on their customary lands for generations, pre-dating the Thai state, and those who migrated into the Thai state at a later date.

<sup>49</sup> Buergin, R. (2000), *'Hill tribes' and forests* (University of Freiburg, SEFUT Working Paper 7).

<sup>50</sup> McKinnon, J. M. and Vienne, B. (1989), 'Introduction', in J. M. McKinnon and B. Vienne, *Hill tribes today* (Bangkok: Golden Lotus), pp. xix–xxvii.

conservation-oriented officials of the Royal Forest Department. At the same time, Western biologists had drawn attention to the zoological importance of the region. By then deforestation was already increasing considerably in other parts of the country, although it was generally not perceived as a problem at that time but rather as supporting national development and security. Due to strong logging and mining interests in the area, it was not until 1972 that the first of the two sanctuaries—Huai Kha Khaeng—was established. Commercial interests in Thung Yai Naresuan were even stronger. However, after a military helicopter crashed in Thung Yai in April 1973, revealing an illegal hunting party of senior military officers, businessmen, family members, and a film star, which aroused nationwide public outrage, the area was finally declared a wildlife sanctuary in 1974.<sup>51</sup>

During the 1960s, it was not only timber and ore that were of interest to commercial profit and national development but also the waters of the western forests as a hydroelectric power resource. Four major dams were planned in the upper Mae Klong River, incorporating both the major tributaries: Khwae Yai and Khwae Noi. Three of these were completed: Sri Nakharin was finished in 1980, Tha Thung Na in 1981, and Khao Laem (later renamed Vajiralongkorn) in 1984. The fourth—the Nam Choan Dam—was supposed to flood a forest area of about 223 km<sup>2</sup> within the Thung Yai Naresuan Wildlife Sanctuary, and sparked a widespread public debate. The public dispute lasted for more than six years, dominating national politics and public debate until early 1988 when the project was shelved in April of that year, with little prospect of it being revived. Pointing to the area's high value for nature conservation and biodiversity, national and international opponents to the dam raised the possibility of declaring the area a World Heritage Site. This prestigious option would have been lost if there had been a huge dam and reservoir in the middle of the two wildlife sanctuaries judged most promising for fulfilling

<sup>51</sup> In a time of great political unrest, the poaching incident became a focal point for the prevailing discontent with the military rule, triggering public protest and demonstrations that finally led to the fall of the Thanom-Prapas regime after the uprising of 14 October 1973 and the establishment of a new democratic government. After the military had taken power once again in October 1976, many of the leaders and activists of the democracy movement fled into the peripheral regions of the country that were under control of the Communist Party of Thailand. Many of them sought refuge in the western forests and among the Karen people living in the sanctuaries. For commercial hunters, logging companies, and state authorities, vast areas of the western forests became inaccessible until the beginning of the 1980s, one of the reasons why they have remained largely undisturbed until today.

the requirements for the nomination as a global heritage site.<sup>52</sup> The success of the anti-dam movement was not only a remarkable victory for conservation in Thailand, but also a milestone for the development of Thailand's civil society and the process of democratization.<sup>53</sup>

However, the Karen people living in the area to be flooded by the Nam Choan Dam never had a voice of their own in the debate. For the so-called Thienchai Committee, which was established by the government to decide on the project and predominantly included proponents of the dam, their existence was irrelevant. Their interests were partly brought to the debate by NGOs and journalists but hardly appeared as an important argument, very much in contrast to the forests and wildlife, which finally emerged as the crucial factors.

On behalf of the Royal Forest Department, the proposal for the nomination of Thailand's first natural World Heritage Site to UNESCO was written by two people who had been outspoken opponents of the dam in the Nam Choan controversy: Seub Nakhasathien, chief of the Huai Kha Khaeng Wildlife Sanctuary, and Belinda Stewart-Cox, who had done research as a biologist in Huai Kha Khaeng.<sup>54</sup> The Karen in Thung Yai were not included in the processes of elaborating the proposal. When the two wildlife sanctuaries of Huai Kha Khaeng and Thung Yai Naresuan were nominated together and subsequently inscribed as a Natural World Heritage Site in December 1991, the 'outstanding universal value' was justified by

<sup>52</sup> Most outspoken in this regard were Veeravat Thiraprasat, then chief of the Thung Yai Naresuan Wildlife Sanctuary and supporter of the Karen in Thung Yai, and Prince Bernhard of the Netherlands, founder and former president of the World Wildlife Fund. Just before the Nam Choan Controversy reached its peak, Thailand had ratified the World Heritage Convention in December 1987. During a visit to Thailand in February 1988, Prince Bernhard had raised his concerns about the dam project in the wildlife sanctuary, emphasizing particularly the interest of the World Wildlife Fund in having the area declared a World Heritage Site, which would require giving up the dam project. After the project had been shelved, student groups, NGOs and academics continued to push the idea, fearing the dam project might be revived—something that seemed to be less probable in a World Heritage Site.

<sup>53</sup> See Buergin and Kessler, 'Intrusions and exclusions'.

<sup>54</sup> Seub committed suicide on 1 September 1991. Belinda Stewart-Cox commented on his death by reproaching his superiors at the Royal Forest Department: 'Seub's death was suicide—an act of despair—but it might as well have been murder. When he needed the support of his superiors to do the job they had asked him to do—stop the hunting and logging that was rampant in Huai Kha Khaeng at that time, master-minded by police and military officials—it was withheld. A terrible betrayal.' Stewart-Cox, B. (1998), 'Forests too precious for Seub legacy to be lost', *The Nation*, 23 September 1998.

the extraordinarily high biodiversity due to its unique location at the junction of four biogeographic zones, as well as its size and ‘the undisturbed nature of its habitats’. Despite this ‘undisturbed nature’ the nomination document defined the people living in Thung Yai and Huai Kha Khaeng as a threat to the sanctuaries and announced the resettlement of the remaining villages in the near future.<sup>55</sup>

The lead-up to the nomination had already seen a considerable amount of coerced resettlement of communities from both Huai Kha Khaeng and Thung Yai Naresuan. Karen villages in Huai Kha Khaeng had already been removed in the 1970s when the Wildlife Sanctuary was established and when the Sri Nakharin Dam was built and later flooded their settlement areas.<sup>56</sup> During the 1980s, most villages of the Hmong ethnic group were removed from the Huai Kha Khaeng and Thung Yai Naresuan wildlife sanctuaries.<sup>57</sup> The resettlement of all remaining villages was stipulated in the management plans for the sanctuaries, drafted in the late 1980s<sup>58</sup> and adopted by the Royal Forest Department in 1990, following an established policy of relocation of settlements from protected areas. When the nomination to be a World Heritage Site was prepared in 1990, there remained four Hmong villages in the north-east of the proposed site, some Tai villages which had only recently moved into the proposed buffer zone along the eastern border of Huai Kha Khaeng, and around 16 Karen villages in Thung Yai. The imminent relocation of all these communities was announced in the nomination documents.<sup>59</sup> This was noted—but not criticized—in the International Union for Conservation of Nature’s

<sup>55</sup> Seub Nakhasathien and Stewart-Cox, B. (1990), *Nomination of the Thung Yai—Huai Kha Khaeng Wildlife Sanctuary to be a U.N.E.S.C.O. World Heritage Site* (Bangkok, Thailand: Royal Forest Department), pp. 44–45.

<sup>56</sup> Jørgensen, A. B. (1996), ‘Elephants or people’ (Honolulu, Hawai‘i, 48th annual meeting of the Association for Asian Studies, 11–14 April 1996).

<sup>57</sup> Eudey, A. A. (1989), ‘Eviction orders to the Hmong of Huai Yew Yee village, Huai Kha Khaeng Wildlife Sanctuary, Thailand’, in McKinnon and Vienne, *Hill tribes today*, pp. 249–59; MIDAS Agronomics Company (1993), *Conservation forest area protection, management, and development project: Pre-investment study* (Bangkok: MIDAS Agronomics Company).

<sup>58</sup> Kutintara, U. and Bhumpakkapun, N. (1988), [*Draft management plan for the Huai Kha Khaeng Wildlife Sanctuary*] (in Thai) (Bangkok: Department of Forest Biology, Kasetsart University); Kutintara, U. and Bhumpakkapun, N. (1989), [*Draft management plan for the Thung Yai Wildlife Sanctuary*] (in Thai) (Bangkok: Kasetsart University).

<sup>59</sup> Seub and Stewart-Cox, *Nomination of the Thung Yai*, p. 45; Thailand (1991), *Thungyai—Huai Kha Khaeng Wildlife Sanctuary: Nomination of natural property to the World Heritage List Submitted by Thailand* (Paris: Thailand Office of the National Environment Board).

evaluation of the nomination,<sup>60</sup> and accepted by the World Heritage Committee without comment when it decided to inscribe the property on the World Heritage List.<sup>61</sup> While the relocation of the Hmong and Tai villages was accomplished in the early 1990s, the plans to remove the Karen from Thung Yai provoked strong public criticism and forced the Royal Forest Department to reverse its resettlement scheme for the time being. Nevertheless, the objective to drive the Karen out of the sanctuary remained strong within the agency.<sup>62</sup>

The guarding of a global heritage not only brought prestige to the nation and the Royal Forest Department, but also the prospect of economic assets as well as increasing political importance for the sanctuaries. Immediately after the declaration, international organizations, in cooperation with national partners, began to plan projects in and around the sanctuaries. The most prominent and most important in terms of 'economic weight' was a joint project of the World Bank and the Ministry of Agriculture, designed to improve biodiversity conservation and protected areas management in Thailand. The pre-investment study for the project was criticized by NGOs in Thailand who disliked its narrow conservation perspective, its top-down approach, and the high costs of the project.<sup>63</sup> The negotiations between the World Bank, state agencies, and NGOs focused on the controversial issue of resettlement.<sup>64</sup> The study

<sup>60</sup> IUCN's Advisory Body Evaluation notes that, 'There is a policy to remove the remaining illegal settlements in the reserve and several have been relocated to date.' See IUCN (1991), *World Heritage Nomination—IUCN Technical Evaluation 59r: Thung Yai—Huai Kha Khaeng Wildlife Sanctuary (Thailand)* (Gland: IUCN), p. 70. The World Conservation Monitoring Centre datasheet from March 1991, which is attached to the IUCN Evaluation, states: 'Some 3,800 tribal people live within the sanctuary. There are still four Hmong villages ... Since 1987, 2–3 Hmong villages have been moved each year ... By 1991 all villages will have been closed. Sixteen Karen villages (1,826 people) are still resident [in the sanctuary complex], but there are plans to resettle them.'

<sup>61</sup> UNESCO (1991), *Nomination of natural property to the World Heritage list: Submitted by Thailand: Thung Yai—Huai Kha Khaeng Wildlife Sanctuary* (Paris: UNESCO World Heritage Committee), p. 29.

<sup>62</sup> Buerger, *Umweltverhältnisse*, pp. 175–186.

<sup>63</sup> MIDAS, *Conservation forest area protection*. The proposed project was to have a timeframe of five years, beginning in 1994. The total project cost was estimated at US\$ 96 million to be covered by a grant of US\$ 20 million from the Global Environment Facility (GEF), a US\$ 40 million loan from the World Bank, and funds from bilateral aid donors and the Royal Thai Government.

<sup>64</sup> The study had argued against resettlement in the specific case of the Karen villages in Thung Yai Naresuan Wildlife Sanctuary, albeit in a rather ambivalent way and under strict conservation reservations. The detrimental effects of the villages and

cautiously argued against resettlement in the specific case of the Karen villages in Thung Yai, although the option for resettlement was kept open and a whole chapter of the study was devoted to its implementation. The negotiations only gradually led to limited agreement, and the NGOs refused to cooperate on a project based on the pre-investment study.<sup>65</sup> Even though the affected Karen people did not have a voice of their own in this debate, their interests were considered for the first time.

As resource conflicts between Thai lowlanders and 'hill tribes' heated up in the late 1990s, the Royal Forest Department, under its new director general, took up the offensive again in Thung Yai. On 13 April 1999 the director general himself flew into the wildlife sanctuary and landed with his helicopter at the place where the Karen had just started to celebrate an important annual religious festival supposed to last for three days. He then demanded an end to the ceremonies. Soon after, soldiers burned down religious shrines of the Karen. From 18 April to 12 May, soldiers and forest rangers went to the Karen villages, demanded that they stop growing rice, demolished huts and personal belongings, and burned down a rice barn.<sup>66</sup> Throughout the following months, efforts to convince the Karen people to resettle 'voluntarily' continued. Military officials prohibited agricultural activities and prevented villagers from using their fields. They allegedly even confiscated identity cards and house registration papers while they raided villages, arresting people without warrants and holding them for days, and removing families without Thai identity cards. Even though the Senate Human Rights Panel criticized the incidents, the Royal Forest Department and the military continued their joint resettlement programme in November 2000,

risks to the sanctuary were assessed as relatively low, while their resettlement would supposedly be costly and cause considerable difficulties.

<sup>65</sup> The project was halted after grant funds from the GEF were made conditional on ratification of the Convention on Biological Diversity (CBD) in July 1994, which Thailand had not yet ratified. In the controversy about the project, the representative of the Bank had tried to exert moderate pressure, indicating that the limited funds of the GEF might be assigned to other countries if the ratification of the CBD was delayed.

<sup>66</sup> When these events became public, the director general of the Royal Forest Department downplayed his role in the incidents, at first denying any military actions at all. In contrast to the director general, the commander of the military troops involved seemed rather proud of their achievements. He declared the operation a 'pilot project' of the new alliance between the military and the Royal Forest Department agreed upon in May 1998, and exemplary in their joint efforts to prevent forest destruction.

announcing further relocations of families as well as the preparation of a resettlement area for all the villages.<sup>67</sup> The Karen oppose any relocation from their lands, a position expressed in detail during a comprehensive household survey conducted in 1996/1997 in which they almost unanimously expressed their wish to stay in Thung Yai in the face of ongoing efforts to evict them from their homeland.<sup>68</sup>

Since the Royal Forest Department had to delay its resettlement plans regarding the remaining Karen villages in Thung Yai in the early 1990s due to public pressure, it concentrated on the elimination of the traditional land-use system of the Karen by prohibiting the use of fallow areas older than three years.<sup>69</sup> In the longer term, these restrictions will lead to the breakdown of the traditional land-use system, as the soils under constant use rapidly lose their productivity. In the villages where control on the part of the Royal Forest Department and the military has been most effective, people were already reporting decreasing yields in the second half of the 1990s. In 2002, the Royal Forest Department also began planting tree seedlings on swidden fields in some villages,<sup>70</sup> at the same time announcing in Thailand's periodic report to UNESCO that: 'If Karen villages inside the WH zone exert increasing demands on natural resources in the park, relocation will be conducted.'<sup>71</sup>

The human rights implications of the resettlement programme were overlooked by both the World Heritage Committee and the International Union for Conservation of Nature during their examination of the nomination proposal in 1991, as well as during their review of Thailand's periodic report on the state of conservation of the sanctuaries in 2003. This happened even though the Thai government has never been reticent in explaining to the International Union for Conservation of Nature and the World Heritage Committee that the involuntary resettlement of long-settled communities is part of its management strategy for the sanctuaries.

<sup>67</sup> For details and references regarding evictions and oppressions in Thung Yai, see Buergin, *Umweltverhältnisse*, pp. 159–200.

<sup>68</sup> Buergin, *Umweltverhältnisse*, pp. 305–309.

<sup>69</sup> Even from an external utilitarian conservation perspective, the resettlement of the Karen and the prohibition of their subsistence-oriented swidden system is unreasonable. Assuming a mean fallow period of 10 years, the total agricultural area in the sanctuary, including fallow areas, accounts only for about 1 per cent of its area.

<sup>70</sup> Robert Steinmetz, personal communication, February 2002.

<sup>71</sup> Thailand (2003), 'Thailand: Thungyai—Huai Kha Khaeng Wildlife Sanctuaries', in UNESCO World Heritage Centre, *Summaries of Periodic Reports Submitted by States Parties* (Paris: UNESCO), p. 234.

### Local claims, resistance, and ambiguous alliances

Forced to choose between being charged with being forest destroyers ‘provoking’ relocation or facing severe subsistence problems, the only way for the Karen to adapt to the restrictions on their swidden system—apart from trying to conceal their fields—seems to be modernization. They can either try to increase the productivity of the fields, using fertilizers and pesticides (which most of them cannot afford), or turn to cash cropping in or wage labour outside of the sanctuary. Intensification of agriculture and cash cropping is already supported by some of the government institutions and NGOs working in the sanctuary. Most of the Karen in Thung Yai reject these efforts, however, and are trying to carry on with their subsistence farming. Furthermore, intensification of land use, cash cropping, and increasing market orientation jeopardizes their reputation as ‘forest people living in harmony with nature’ on which they have to base their claim to remain in the sanctuary.

A concept of ‘benign environmentalists’ has gained strength in international debates on environment, development, and human rights since the 1980s, which conceives of traditional or indigenous people as partners in biodiversity conservation rather than as culprits or foes. In Thailand, such an alternative image, in contrast to the still prevailing stereotype of the forest-destroying hill tribes, has come to be assigned to at least some of the ethnic groups in the uplands—prominent among them the Karen. Here, this image emerged in rising conflicts towards the end of the 1980s when an emerging peasant movement, concerned academics, and NGOs—resisting resettlement policies in forest reserves, eucalyptus plantations, illegal logging, and corruption—developed a community forest concept as an alternative perspective and a counter model to the conservation concept and commercial reforestation approach of the Royal Forest Department and big agribusiness companies.<sup>72</sup>

In Thailand, as well as on an international level, this alternative stereotype meets with reproaches from various sides as being partly fictional, over-generalizing, or in violation of people’s rights to development. Regarding the situation in Thailand, academic critics of this ‘counter-stereotype’ point to its incapacitating aspects as well as to socioeconomic disadvantages in the uplands of Thailand, and advocate

<sup>72</sup> See Buergin and Kessler, ‘Intrusions and exclusions’.

more equitable development opportunities for upland communities.<sup>73</sup> In Thung Yai only a very small part of the population is interested in 'modernization', in particular most of the village heads in the context of the state administrative system which already had considerable interests in cash cropping and the privatization of communal lands, while the vast majority of the people were primarily interested in securing their subsistence farming and their cultural identity as Karen in Thung Yai. However, far from being a 'comfortable' position for the Karen, this positive image of benign environmentalists, attributed to the Karen in Thung Yai in parts of national and international public discourses, is presently the only position in these disputes to which they can relate, at least to some degree.<sup>74</sup> As long as their inherent land rights to the area are not acknowledged and the legal basis for their continuing settlement is ambiguous in national Thai law, this seems to be their most important asset in the debates that will decide the future of their villages.

So far, the Karen in Thung Yai have had no chance to participate directly in the national and international discourses and decision-making regarding their homeland, including its declaration as part of a wildlife sanctuary and a World Heritage Site. In their encounters with state agencies they frequently feel powerless and without any rights. Open resistance to continuous repression and acts of violence on the part of the Royal Forest Department and military officials is difficult for the Karen, not least due to specific cultural frames of behaviour and historically grounded inter-ethnic relations between Karen and Tai. They have the impression that their rights and

<sup>73</sup> See, for example, Walker, A. and Farrelly, N. (2008), 'Northern Thailand's specter of eviction', *Critical Asian Studies*, 40:3, pp. 373–397. In their 'specter of eviction' they reasonably point to discrepancies between the extent of actual relocations of upland people in Thailand since the 1980s (which is low in their perspective) and the importance of the issue of relocation in public discourses as well as administrative regulations and policies. Unfortunately, their paper in large part reads like a bashing of socially concerned academics who have taken a position on societal disputes without dismissing their scientific ethos and reasoning. Even worse, the paper tends to 'obscure' the very real fears, hostilities, restrictions, and violations experienced by the people who are scheduled for eviction according to administrative objectives, even though the probability for 'real eviction' may be low. However, I share their reservations regarding stereotypes of 'benign environmentalists' and 'noble savages'. While I fully agree with their objective to empower communities in the uplands and to reassess disadvantages, I would feel much less comfortable if this was supposed to be imposed in the context of another stereotype, namely that of the 'underdeveloped rural poor craving modernity'.

<sup>74</sup> See Buergin, 'Trapped in environmental discourses'.

concerns are not relevant in the national and international discourses about their homeland. A strong feeling prevails among them that they cannot communicate their own view, that they have to use words, arguments, and ideas that are not really their own while trying to justify their claims, even with their Tai allies among the peasant movement, NGOs, and activists. The Karen conceive of these 'communication problems' not predominantly as language problems, even though many of the elder Karen have only limited competence in the Thai language, but attribute them to different cultural contexts.

The Karen oppose any relocation from their lands, a position expressed in detail during a comprehensive household survey conducted in 1996/1997 in which they almost unanimously expressed their wish to stay in Thung Yai.<sup>75</sup> But they do take different positions towards the external influences and the resettlement threat. There is a rather small group, including most of the Phu Yai Ban (the village heads in the context of the state administrative system) which is open to 'moderate modernization' while trying to retain a Karen identity. The vast majority is rather more reluctant to engage in 'development' and 'modernization', preferring to 'live like our grandparents did' as a common saying goes. Among them there are marked differences in their reactions to the external influences. A rather large group, who could be labelled 'extroverted traditionalists', including many influential elders as well as young people, is trying to shape the change and resist the threats. They are doing so by trying to strengthen and revitalize Karen culture and identity as well as seeking support and advocacy outside of Thung Yai. Another group of more 'introverted traditionalists' is likewise focusing on strengthening 'traditional' Karen culture but invoking millenarian and more exclusive frames of Karen culture to a higher degree, avoiding transcultural exchange and support.

Despite these differences in position and strategy, all these groups wish to remain in their villages as well as to protect their homeland and way of life. Furthermore, they all refer to the same specific cultural frame of values and objectives regarding a decent life appropriate to a Karen living in Thung Yai. Sharpened—but not created—in the clashes with external actors and influences, this conception of specific Karen values and objectives focuses on the concepts of

<sup>75</sup> Buegin, *Umweltverhältnisse*, pp. 305–309.

‘modesty’ as opposed to ‘greed’, ‘harmony’ in contrast to ‘aggression’, as well as ‘spiritual development’ versus ‘material development’.<sup>76</sup> The counterpart to these concepts is quite obvious and explicitly named by the Karen as such. It is primarily the ‘modern’ Thai society which is increasingly intruding into their traditional living places and spaces, threatening their cultural identity and physical existence in Thung Yai.

### Changing discursive and legal frameworks

With regard to the conflicts over Thung Yai, the local, national, and international players are highly interdependent as well as asymmetric in power. Transformations on the national and international level involving shifting framings of the ‘problem Karen in Thung Yai’ have significantly determined the changing circumstances of the local communities.<sup>77</sup> External discursive and legal frameworks, both on the national and international level, more generally delimit the possibilities and chances of local minority groups to assert particular claims and interests, while these groups are largely excluded from these discursive and legislative processes.

In the second half of the nineteenth century, the economic and political interests of colonial and regional powers in Southeast Asia brought about the demarcation of territorial nation states according to Western models. In the context of this national territorialization, Thung Yai and the Karen living there were enclosed in the ‘geo-body’ of the Siamese nation state, which at the same time became part of an international community of states primarily defined in terms of territory and economic relations, while heterogeneous social and physical spaces were merged in the modern nation state. In the first half of the twentieth century, the development of a specific national identity for this state focused on a common language, Buddhism, and the monarchy. The Karen in Thung Yai, who had been incorporated

<sup>76</sup> For a more comprehensive account of the religious and cognitive dynamics in the late 1990s, see Buergin, *Umweltverhältnisse*, pp. 220–232, 270–275, 297–302. For a broader historical context of this ethical and ideological attitude with regard to millenarian movements among the Karen in the Thai-Burmese borderland, see also Gravers, M. (2012), ‘Waiting for a righteous ruler’, *Journal of Southeast Asian Studies*, 43:2, pp. 340–363, and Hayami, Y. (2011), ‘Pagodas and prophets’, *Journal of Asian Studies*, 70:4, pp. 1083–1105.

<sup>77</sup> Buergin, ‘Shifting frames’.

into the state spatially, were now excluded from its 'people-body' in the context of this nationalization process and disappeared from the political agenda. Since the middle of the twentieth century, growing international and national interests in the resources and people of the peripheral areas of the state—in the context of modernization objectives and the fight against communism—have resulted in the extension of state institutions into these areas as well as their exploitation for national economic development. The people living there were now predominantly conceived of as backward problem groups or alien troublemakers in conflict with national interests, who had to be controlled and modernized. After the environmental costs of this economic development became obvious in the 1980s, the forests of these peripheral areas were declared precious wilderness and biodiversity assets of global significance, which had to be protected against encroachments from local people in the context of a global ecologization of peripheral areas of modernity. In this framework, the Karen in Thung Yai became a disruptive factor in a natural global heritage, requiring strict monitoring for as long as their removal was not feasible.

With the biocultural turn since the late 1980s, interdependencies of biological and cultural diversity and the protection of both kinds of diversity came to the fore in environment and development discourses and policies, involving an increased appreciation of cultural diversity and new chances for local communities to assert claims to local resources and particular identities. However, as conceptualizations of biocultural diversity frequently focus on mutually beneficial prospects of this interrelation, sometimes even emphasizing an inherent link between biological and cultural diversity, they tend to lose sight of basic conflicts and competing claims regarding lands, resources, and self-determination. Empirically, interrelations between biological and cultural diversity predominantly appear as conflicts between livelihood and identity claims of local communities, on the one hand, and national or global interests in nature conservation, development, and modernization, on the other hand.

Such conflicts over biocultural diversity<sup>78</sup> are widespread globally. Estimates account for some 370 million so-called indigenous peoples<sup>79</sup>

<sup>78</sup> Buegin, R. (2009), 'Konflikte um biokulturelle Diversität in Thailand', *Asien*, 112–113, pp. 9–30.

<sup>79</sup> World Bank (2004), 'UN indigenous forum: Paper trail', *World Bank Press Review*, 2004.

who are supposed to represent about two-thirds of global linguistic diversity.<sup>80</sup> Most of them are trying to protect ways of life distinct from a modern way of life in one way or another. World Bank estimates regarding people living in or close to forest areas and who depend on forest resources for subsistence are in the region of about 600 million people. Not all, but many, of these groups live in places with a specifically high biological diversity. The ideological and legal framings of these conflicts over biocultural diversity are predominantly negotiated in very heterogeneous discursive and political spheres on the national and international level. It is here that the chances of local minority groups to resist transgressions and defend their rights are determined, even though these people frequently have no access to the discourses and institutions that are framing their circumstances and opportunities. Very often, they are not even represented in any appropriate way in political processes and decisions regarding their living places. However, these discourses and legal frameworks also provide new chances for these communities to defend claims to lands, local resources, and self-determination.

Particular national politics, legal systems, and discourses determine most directly the circumstances and opportunities of local minority groups in conflicts over biocultural diversity. However, these national legislations and discourses on their part are heavily dependent on international legal frameworks and discourses which provide instruments and chances for local minority groups not only to claim and enforce rights supported in this international context, but also to improve their chances to influence or even participate in national legislative processes and discourses. International legislation after the Second World War, in this regard, at first focused on the rights of individuals in their relation to states in terms of universal human rights. Since the 1970s, efforts to conceptualize and protect minority and group rights are increasing.<sup>81</sup> In particular, the concept of 'indigenous peoples' has become a powerful idea, adopted as a legal concept or operational category by important international institutions such as the United Nations, the International Labour Organization, the World Bank, and the Asian Development Bank, and is increasingly acknowledged by many nation states. It emphasizes indigenous rights to lands, territories, resources, and

<sup>80</sup> Colchester, M. (2001), *Global policies and projects in Asia* (Washington, DC: WWF).

<sup>81</sup> See Lerner, *Group rights and discrimination*; Bisaz, 'The concept of group rights'.

self-determination<sup>82</sup> and provides an appealing reference point regarding identification, compensation, and action for many marginalized peoples at the fringes of modern societies. However, the concept often provokes considerable caveats at the national level, particularly among Asian governments where—in Southeast and East Asia—only the Philippines and Japan accept the use of the term ‘indigenous peoples’ to describe parts of their populations.<sup>83</sup>

In Asia, European colonialism only rarely took the form of territorial conquest but often resulted in radical transformations of regional societies by promoting or enforcing the formation of territorial nation states and inducing modernization processes adopted and pursued by regional elites. Even though the pre-colonial Tai states never became European colonies, the formation of the modern Thai state was deeply influenced by European colonialism, which is equally true for the situation of the diverse Karen groups in mainland Southeast Asia from the first half of the nineteenth to the middle of the twentieth centuries. In the case of the Karen in Thung Yai, evictions, repression, and marginalization cannot be directly traced back to territorial occupations by European colonial powers but were predominantly caused by regional powers in the wake of colonial hegemony in mainland Southeast Asia as well as the spreading of a ‘culture of modernity’ deeply rooted in European and colonial history.<sup>84</sup> However, the situation of the Karen and many other ethnic minority groups in Asia calls for a ‘constructivist’ conception of indigenous peoples, based on self-identification, distinct identity, marginalization, historical continuity, and territorial affinity.<sup>85</sup>

Emphasizing its ‘un-colonized’ history, the Thai state is reluctant to adopt the concept of indigenous peoples and is hardly interested in recognizing any indigenous peoples with particular rights in its own territory. This is partly due to its nationalization process which is crucially based on ethnic and cultural conceptualizations of

<sup>82</sup> For example, United Nations, *Declaration on the Rights of Indigenous Peoples*.

<sup>83</sup> See, for example, Kingsbury, ‘Indigenous peoples’; Erni, C. (ed.) (2008), *The concept of indigenous peoples in Asia* (Copenhagen: IWGIA).

<sup>84</sup> Buergin, *Umweltverhältnisse*, pp. 74–200. Such ‘cultural’ legacies of the violating expansion of modern societies and their ‘culture of modernity’ together with concomitant endeavours of people at the edge of modern societies worldwide to conceive of and identify themselves in relation and distance to ‘modernity’ may even serve as a distinguishing attribute of the concept of ‘indigenous peoples’.

<sup>85</sup> See Kingsbury, ‘Indigenous peoples’.

'Thai-ness' alongside depreciations of non-Tai ethnic groups.<sup>86</sup> It is also related to national security issues as well as resource conflicts which, until recently, induced ambiguous policies, particularly towards the so-called 'hill tribes', conceiving of them either as illegal immigrants to be expelled or proclaiming their total assimilation if eligible for naturalization.<sup>87</sup> In a reply to the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in February 2003, the government of Thailand noted that the highland peoples were not considered indigenous peoples under domestic law,<sup>88</sup> and when the World Heritage Committee considered a proposal to establish a 'World Heritage Indigenous Peoples Council of Experts' as an advisory body to the Committee in 2001, Thailand's representative disapproved of the idea, arguing that 'indigenous issues are a domestic, national question, and are best handled on that level'.<sup>89</sup>

However, United Nations human rights bodies and mechanisms, such as the UN Special Rapporteur on the Rights of Indigenous Peoples or the Committee on the Rights of the Child, clearly conceive of the so-called hill tribes or ethnic minority groups of Thailand as indigenous peoples.<sup>90</sup> Moreover, in Thailand, the Karen increasingly identify themselves as 'indigenous' and participate in international organizations and networking in support of indigenous rights. Several of the associations of ethnic minority groups in Thailand are members

<sup>86</sup> See, for example, Turton, A. (ed.) (2000), *Civility and savagery: Social identity in Tai states* (Richmond: Curzon), and Connors, M. K. (2003), *Democracy and national identity in Thailand* (London: Routledge).

<sup>87</sup> See Buergin, *Hill tribes and forests*.

<sup>88</sup> See UN Commission on Human Rights (2004), *Human rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen* (UN Doc. E/CN.4/2004/80/Add.1, 6 February 2004), p. 18.

<sup>89</sup> UNESCO (2001), 'WHIPCOE on Stage', *World Heritage Newsletter*, 31 (July–August–September 2001), p. 2.

<sup>90</sup> See, for example, UN Commission on Human Rights (2003), *Human rights and indigenous issues: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65* (UN Doc. E/CN.4/2003/90), para. 22; UN Human Rights Council (2008), *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, S. James Anaya, Addendum: Summary of cases transmitted to Governments and replies received* (UN Doc. A/HRC/9/9/Add.1), para. 464 ff; UN Committee on the Rights of the Child (2006), *Consideration of reports submitted by states parties under article 44 of the convention: Concluding observations: Thailand* (UN Doc. CRC/C/THA/CO/2). Also see UN (2008), *Resource kit on indigenous peoples' issues* (New York: Secretariat of the Permanent Forum on Indigenous Issues), pp. 8, 28.

of the Asia Indigenous Peoples Pact, including the Assembly of Indigenous and Tribal Peoples of Thailand, the Hmong Association for Development in Thailand, the Inter Mountain Peoples Education and Culture in Thailand Association, and the Karen Network for Culture and Environment. Based on distinct ethnic identities, they share common experiences of discrimination and marginalization within the nation states and try to assert their rights to self-determination as well as land, territories, and resources which, since the 1980s, are being increasingly challenged by national and global claims for nature conservation.

National conservation policies and laws worldwide have long been considerably influenced by modern ideas about nature conservation and protected area management and predominantly focused on 'fortress-conservation' approaches. The rights and interests of local people in or close to protected areas have only recently been acknowledged, and these revisions are still contested. However, in international environmental discourses and institutions, principles of free, prior, and informed consent as well as participation and cooperative resource management approaches are now approved standards regarding people in protected areas.<sup>91</sup> Protected areas for nature conservation are increasingly subject to international and transnational regulations regarding stakeholders and rights-holders, World Heritage sites being a particularly prominent example. This provides new opportunities for local people by appealing to international standards, commitments, and advocacy. International standards clearly support the right of the Karen to live in their traditional and customary lands in Thung Yai and their forced resettlement is not a legitimate option. Having adopted Thung Yai as a global heritage site, concerned international organizations (including UNESCO, the World Heritage Committee, and its advisory bodies) should disapprove of the pressures and violence towards the Karen in Thung Yai and insist on their full and effective participation in decision-making processes, in accordance with their rights under international law.

Unfortunately, these international standards are often only hesitantly adopted on the national level, frequently encounter

<sup>91</sup> See, for instance, UNCED, *Agenda 21* (CBD, Art. 8(j)); IUCN, WCPA and WWF (1999), *Principles and guidelines on indigenous and traditional peoples and protected areas* (Gland: IUCN); UN (2004), *Decision VII/16 (Akwé: Kon Guidelines): Seventh Meeting of the Conference of the Parties to the Convention on Biological Diversity, Kuala Lumpur, Malaysia, 9–20 February 2004* (Kuala Lumpur: Working Group on Article 8(j)).

considerable national reservations, and are open to interpretation and negotiation.<sup>92</sup> Furthermore, in parts, regulations regarding UNESCO natural World Heritage sites still fall short of these standards and evoke approaches to nature conservation that assume an inherent antagonism between ‘man and nature’. However, these conceptualizations and provisions are debated and there are strong arguments for a revision acknowledging and supporting the rights of local people living in and close to natural World Heritage sites in the light of UN commitments to universal human rights and the rights of indigenous peoples, as well as the significance of cultural diversity for the protection of biodiversity.<sup>93</sup> The establishment of the so-called Cultural Landscapes category by the World Heritage Committee reflects an awareness of some of these problems as well as a new attentiveness to interrelations between ‘nature’ and ‘culture’.<sup>94</sup> The history of the Karen in Thung Yai and their relationship with their homeland suggest the need for a reconsideration of the status of Thung Yai, which may be better conceived of as a Cultural Landscape World Heritage Site.

In Thailand, pressure to exclude or assimilate highland peoples, including their removal from protected areas, is still strong. Even though the term ‘hill tribes’ has now almost vanished from the official political agenda since the turn of the millennium,<sup>95</sup> the problems on the local level persist for the most part and the *chao khao* remain

<sup>92</sup> For example, when the World Heritage Committee voted to support customary law and customary management by ‘traditional’ or indigenous peoples as a sufficient basis to guarantee the protection of natural World Heritage sites, Thailand disassociated itself from the decision. See UNESCO World Heritage Committee (1999), *World Heritage Committee: Twenty-second session Kyoto, Japan, 30 November–5 December 1998: Report*, World Heritage Report (WHC-98/CONF.203/18, Paris, World Heritage Committee), pp. 26, 56.

<sup>93</sup> See, for example, Disko, S. (2010), ‘World Heritage sites in indigenous peoples’ territories’, in D. Offenhäuser, W. C. Zimmerli and M.-T. Albert, *World heritage and cultural diversity* (Bonn: German Commission for UNESCO), pp. 167–77; Hay-Edie, T. et al. (2011), ‘The roles of local, national and international designations in conserving biocultural diversity on a landscape scale’, *International Journal of Heritage Studies*, 17:6, pp. 527–536.

<sup>94</sup> For example, UNESCO World Heritage Centre (2003), *Cultural landscapes* (Paris: UNESCO); Taylor, K. and Lennon, J. (2011), ‘Cultural landscapes’, *International Journal of Heritage Studies*, 17:6, pp. 537–554.

<sup>95</sup> The closure of the Tribal Research Institute in 2002 may be seen as a significant marker of this shift. See Kwanchewan Buadaeng (2006), ‘The rise and fall of the Tribal Research Institute’, *Southeast Asian Studies*, 44:3, pp. 359–384. Since then it has become increasingly difficult to find any official statistical data regarding ‘hill tribe’ ethnic minority groups in Thailand.

a highly controversial issue in public discourses, not least regarding their status in Thai society and their citizenship.<sup>96</sup> In 2012 about one million people were supposed to belong to ‘hill tribe’ groups living in Thailand, accounting for about 1.5 per cent of the total population. Despite increasing efforts by the government to integrate these people into the Thai nation state, a very high percentage of them are denied full citizenship and have to face severe problems as stateless persons.<sup>97</sup>

However, the biocultural turn in international environment and development discourses and policies is partly reflected on the national level in the disputes about community forests and local communities in protected areas,<sup>98</sup> as well as in the emergence of a so-called ‘community culture’ (*watthanatham chumchon*) approach to development and conservation.<sup>99</sup> Not least in this context, Thailand has undergone a remarkable process of democratization and enacted a constitution in 1997 that explicitly recognized the rights of local communities to cultural self-determination as well as to the use of local resources. Even though the 1997 constitution was revoked during the military coup in 2006, the sections on community rights were incorporated in the new constitution of 2007 almost as they stood.<sup>100</sup> This may

<sup>96</sup> See, for example, Toyota, M. (2005), ‘Subjects of the nation without citizenship’, in W. Kymlicka and B. He, *Multiculturalism in Asia* (Oxford: Oxford University Press), pp. 110–135, and Keyes, C. F. (2008), ‘Ethnicity and the nation-states of Thailand and Vietnam’, in Prasit Leepreecha, D. McCaskill and Kwanchewan Buadaeng, *Challenging the limits* (Chiang Mai: Mekong Press), pp. 13–54.

<sup>97</sup> In 2002, about 370,000 ‘hill tribe’ people in Thailand were denied citizenship. This is the number according to official statistics but human rights groups estimated the figure to be more than 600,000. See Toyota, M. (2008), ‘Ambivalent categories: Hill tribes and illegal migrants in Thailand’, in P. K. Rajaram and C. Grundy-Warr, *Borderscapes* (Minneapolis: University of Minnesota Press), pp. 91–116. UNHCR statistics for 2013 account for 506,197 stateless persons in Thailand in 2013 (besides some 85,000 refugees and another 15,000 asylum seekers), who are supposed to predominantly belong to hill tribe groups. See UNHCR (2013), *2013 UNHCR country operations profile—Thailand*: <http://www.unhcr.org/pages/49e489646.html>, [accessed 27 January 2014], and Van Waas, L. (2013), *Reflections on Thailand (1): A protracted and neglected situation of statelessness*: <http://statelessprog.blogspot.de/2013/02/reflections-on-thailand-1-protracted.html>, [accessed 27 January 2014].

<sup>98</sup> Buegin, ‘Trapped in environmental discourses’.

<sup>99</sup> See, for example, Chusak Wittayapak, *The community culture revisited*, Amsterdam, 7th International Conference on Thai Studies, 4–8 July 1999; McKinnon, J. M. (2003), ‘Community culture’, in C. O. Delang, *Living at the edge of Thai society* (London: RoutledgeCurzon), pp. 64–84.

<sup>100</sup> Thailand, Secretariat of the House of Representatives (2007), *Constitution of the Kingdom of Thailand, B.E. 2550 (2007)* (Bangkok: Bureau of Printing Services). Section 66 states: ‘Persons so assembling as to be a traditional community shall have

provide political space for the Karen and other ethnic minority groups in Thailand to seek a greater level of control over their future.

Unfortunately, these commitments are not always easily realizable. Furthermore, their interpretation is often contested and subject to social bargaining, whereby weaker social groups may be at a disadvantage. The Community Forest Bill and conservation policies are a case in point where these problematic asymmetries urgently need to be reconsidered and amended, specifically regarding the vulnerable position of ethnic minority groups. Presently, the possibilities for local communities to use and control forest resources as well as to participate in forest conservation crucially depends on whether these forests are classified as reserve forests under the administration of the Royal Forest Department, or whether they are located within the Protected Area System supervised by the Department of National Parks, Wildlife and Plant Conservation, which was separated from the Royal Forest Department in 2002. While in reserve forests the Community Forest Bill provides a legal framework for communities to establish and use community forests in a somehow participatory partnership with the Royal Forest Department administration, such community forests are ruled out in protected areas, where it is much more difficult for communities to claim rights to local forests and their resources and to participate in conservation. This is particularly problematic with regard to the ethnic bias involved in this division of administrative bureaucracies and legal frameworks.

Official estimates for 2004 suppose that 20 per cent of all villages in Thailand are located within forest reserves, with some 20 to 25 million people depending on forest products for household consumption and cash income. Another 1.2 to two million people who also rely on forests for their livelihoods are reported to live in or close to protected areas.<sup>101</sup> While the vast majority of the people living in forest reserves, where community forests are undisputed, are ethnic Tai, most of the people living in forest areas designated for the Protected Area System, where community forests are not permitted, are members of the 'hill tribes' or *chao khao*. The reasons for this bias are rather obvious.

the right to conserve or restore their customs, local knowledge, good arts and culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources, the environment and the biological diversity in a balanced and sustainable fashion.' Regarding community rights, see also Section 67 of the constitution.

<sup>101</sup> See FAO Regional Office, *Thailand forestry outlook study*, pp. 19, 27.

Historically many of these groups migrated over the mountain ridges and adapted their economies to these living places. Some of them were forced to retreat into mountain areas by dominant valley populations. These mountain areas are in large part the ‘watersheds’ to be included into the Protected Area System. Most of the remaining ‘natural forests’ are to be found in mountain areas as well, as the deforestation process in Thailand started in the plains and valleys, and is most advanced there.<sup>102</sup> After conservation forestry received priority, these remaining ‘natural forests’ were increasingly designated national parks and wildlife sanctuaries, in many instances enclosing settlement and land use areas of ‘hill tribes’.

Against this background, and in the face of the problematic history of forest and conservation policies concerning these ethnic minorities, more recent attempts by state institutions to respect cultural differences and even promote them for conservation objectives could be a positive step towards acknowledging and implementing the human, group, and community rights of these minorities. In August 2010 the Royal Thai Government approved the ‘Recovering the Karen Livelihood in Thailand’ project, proposed by the Ministry of Culture and adopted via a cabinet resolution. The resolution recognizes the particular ethnic identity and culture of the Karen people and seeks to actively support them in perpetuating this culture, including their rotational farming system and traditional land management, while deploring ‘the arrest and detention of the Karen people who are part of local traditional communities settled on disputed land which is traditional land used for making a living’.<sup>103</sup>

<sup>102</sup> According to government statistics, more than half of the area of northern Thailand—where most of the ‘hill tribes’ have their settlement areas—is covered with forests. Today this proportion is basically the same as it was in 1982, despite 30 years of stigmatizing ‘hill tribes’ as forest destroyers. The share of these northern forests with regard to the country’s total forest area has even increased. While the forests of northern Thailand comprised 49 per cent of the total forest area of the country in 1961, this share had risen to 56 per cent in 2006. See FAO Regional Office, *Thailand forestry outlook study*, p. 100, and Buergin, *Umweltverhältnisse*, pp. 131–133.

<sup>103</sup> The cabinet resolution further made the following recommendations: ‘Repeal the declarations concerning protected areas, reserve forests and settlements of Karen people which already have the capability to prove that their settlement, living on and use of these lands has continued for a long time or since before the declaration of laws or policies that now cover these areas’; ‘Support and recognize the rotational farming systems which belong to the Karen ways of life and livelihood, and which support the sustainable use of natural resources and self-sufficiency’; ‘Support self-sufficiency or alternative agriculture instead of cash crop production or industrial agriculture’; and ‘Support and recognize the ways of using the land and the management of

As one of four pilot areas intended to support the transmission of cultural heritage, the Lai Wo Subdistrict has been designated as a 'special cultural zone'. Most of the villages which constitute this Subdistrict are located within the Thung Yai Wildlife Sanctuary where they comprise about 64 per cent of the Karen population in Thung Yai. Considering the close relationship of these villages to the other Karen villages in the eastern part of the sanctuary it seems desirable to include all the Karen villages in Thung Yai into this 'cultural zone'. Furthermore, the villages in the eastern part of Thung Yai are closely related to the Karen village Le Taung Hkoo in the Umphang Wildlife Sanctuary, which is also recommended as a 'special cultural zone'. Together, these villages constitute what the Karen in Thung Yai identify as *thoung bou tai*—their homeland and cultural community.

The resolution also recommends the 'promotion of the Karen rotational farming system to become a world cultural heritage', presumably under UNESCO's 2003 Convention for the Safeguarding of Intangible Cultural Heritage. This Convention explicitly recognizes the 'deep-seated interdependence between the intangible cultural heritage and the tangible cultural and natural heritage' and was adopted 'Considering that existing international agreements, recommendations and resolutions concerning the cultural and natural heritage [such as the 1972 World Heritage Convention] need to be effectively enriched and supplemented by means of new provisions relating to the intangible cultural heritage' (Preamble). If the Karen rotational farming system is indeed recognized under the 2003 Convention, Thung Yai could potentially become a 'model' World Heritage Site, illustrating the interaction between the two conventions (1972 and 2003).

With specific regard to the situation in Thung Yai, the Karen should be integrated into the management and decision-making processes concerning the sanctuary as well as the reporting to UNESCO. It is important to enable the Karen to participate in these processes and tasks through their own political institutions and in accordance with their own customs, which are adapted to their way of life in Thung Yai but which are not currently acknowledged in their interactions with the administrative agencies. As part of this, already existing

local traditional communities, for example through issuing communal land titles'. See Thailand (3 August 2010), *Recovering the Karen livelihood in Thailand* (Bangkok: Ministry of Culture, Cabinet Resolution of the Royal Thai Government).

interests and activities in participatory research, monitoring, and environmental education in the sanctuary should be supported and expanded.<sup>104</sup>

The recommendations of the cabinet resolution reveal a new sensitivity to the problems and rights of the Karen communities in Thung Yai and indicate a sincere intention to approach them; however, it remains to be seen how the project will be realized.<sup>105</sup> The case of the Karen in Thung Yai, as well as the more general problem of integrating the 'hill tribes' into Thai society, remain controversial challenges for democratic forces in Thailand.<sup>106</sup>

## Conclusions

With a focus on Thailand and the case of the Karen ethnic minority groups in Thung Yai, this article has explored the chances of local communities to assert claims and rights to lands, resources, participation, cultural identities, and self-determination in the context of changing discursive and legal frameworks. The transformations and developments which were reviewed on the international, national, and local level are highly interdependent. Changing discourses and policies on the international level regarding forests and nature conservation, development and modernization, indigenous rights and cultural diversity, as well as Cold War politics, dynamics of world markets, and

<sup>104</sup> Steinmetz, R., Wanlop Chutipong and Naret Seaturien (2006), 'Collaborating to conserve large mammals in Southeast Asia', *Conservation Biology*, 20:5, pp. 1391–1401.

<sup>105</sup> Recent violations by the National Park staff and the Thai military against Karen people living in the Kaeng Krachan National Park in 2011 indicate that at least some state authorities are ignoring the resolution and still follow more familiar repression and resettlement policies. See Asia Indigenous Peoples' Pact (2011), *Statement from the Karen Network for Culture and Environment, AIPP and NGOs, government networks and academic institutions—Case of Human Rights Violations by the Head of the Kaeng Krachan National Park Against Ethnic Karen Villagers*: [http://www.aippnet.org/index.php?option=com\\_content&view=article&id=594](http://www.aippnet.org/index.php?option=com_content&view=article&id=594) [accessed February 2015].

<sup>106</sup> Evident, supposed or assigned differences between social groups are frequently highlighted and exploited in these struggles over resources, redistribution, identity, social status, and power. Not least, these struggles are significantly framed and negotiated in discourses about national identities and cultural diversity. See, for example, Keyes, C. F. (2002), 'Presidential address: 'The peoples of Asia'—Science and politics in the classification of ethnic groups in Thailand, China, and Vietnam', *Journal of Asian Studies*, 61:4, pp. 1163–1203, and Connors, M. K. (2005), 'Ministering culture', *Critical Asian Studies*, 37:4, pp. 523–551, which unavoidably invoke disputed self-images of modern societies.

disputes between political ideologies in the context of globalization processes have crucially influenced national discourses and policies, alongside significant societal transformations, particularly regarding economic development, civil society movements, and democratization, as well as cultural identities and community rights. On the local level, these transformations on the national and international level have induced considerable changes in the socio-cultural and political organization of the communities, while the growing importance and influence of external actors and institutions is predominantly conceived of as a threat to local livelihoods and self-determination.

The problems and conflicts in Thung Yai reflect a more general pattern related to the spreading of modern societies and institutions and their changing relations to peripheral, culturally diverse, 'non-modern' groups, frequently involving unequal power relations and conflicting claims. Since the 1980s such conflicts are increasingly framed in discourses which propose, at the same time, the preservation of biological as well as cultural diversity. These conflicts between local communities claiming rights to lands, resources, and particular identities predominantly for subsistence and cultural survival, on the one hand, and modern actors and institutions with nationally or globally framed interests in the conservation, management, and use of the same resources, on the other hand, concern extensive populations globally. In these asymmetric conflicts over biocultural diversity the chances of local communities to assert claims on lands, local resources, particular identities, and self-determination crucially depend on diverse discursive and legal frameworks which have generally been developed without their participation, are most often not easily accessible for them, and are rarely amenable to cooperative adaptations involving these communities on an equal footing with other stakeholders.

The concept of human rights, even though based on particular occidental and modern conceptualizations of the individual and the state, is an important instrument regarding conflicts over biocultural diversity because the inalienable rights it confers on human beings are widely accepted as more or less binding moral standards by most states and international institutions. Violations of these rights generally arouse broad disapproval and assistance, and human rights considerations have significantly informed the biocultural turn in environment and development discourses and policies, although their enforceability in conflicts over biocultural diversity may be often weak. Furthermore, 'equality' and 'universality' as basic principles of the

concept of human rights are not always easily compatible with claims to perpetuate cultural differences and to support cultural diversity.

Due to the original focus on the dignity of human beings and inalienable rights of individuals, group rights have been peripheral to the concept of human rights and received increasing attention only after the 1970s, although they are still disputed. Particularly, indigenous rights are by now firmly established in the context of international law and institutions; however, the specification of rights-holders is often highly controversial and the enforcement of 'indigenous rights' generally difficult. Furthermore, group rights conceptualized on a very general level are probably not easily applicable to complex and specific circumstances and problems of local communities in conflicts over biocultural diversity. With regard to this type of conflict, moreover, indigenous rights will apply only to particular communities and may be ambiguous regarding multi-ethnic communities as well as different interest groups in communities.

The discourses around indigenous peoples and their claims, emphasizing cultural diversity and environmental conservation, have significantly impacted on environment and development discourses. International conservation standards and commitments now widely acknowledge the rights of local and indigenous people to information, participation, and co-management, and predominantly disapprove of evictions, or even support biocultural conservation approaches. However, these commitments are frequently missed in reality and are generally dependent on conservation objectives that are often in conflict with the claims of local communities to lands, resources, and self-determination, which are rarely conceived of as the independent rights of local communities. Regulations concerning the implementation and monitoring of protected areas have to be reviewed to take account of international commitments, principles, and declarations regarding human, minority, and indigenous rights. These standards should be obligatory for all international institutions concerned with environmental and developmental issues to support the protection of cultural diversity and local communities in conflicts over biocultural diversity.

The discourses on the rights and claims of local communities and indigenous peoples, emphasizing cultural diversity and environmental conservation, have significantly impacted on environment and development discourses. The changes in these diverse discourses, which have increasingly merged since the 1980s, together constitute a biocultural turn in environment and development discourses and

policies. However, while legal provisions as well as the commitments of national and international actors and institutions regarding the rights and interests of local communities in conflict over biocultural diversity have been advanced considerably in the context of the biocultural turn in environment and development discourses, the possibilities of communities and indigenous peoples to make these actors and institutions accountable and to hold them liable in case of breaches of laws or obligations are still highly insufficient. Against this background, positively connoted images of benign environmentalists still provide an important instrument for local communities and indigenous peoples to influence public discourses and national policies to support their claims in highly asymmetrical conflicts over biocultural diversity, even though this instrument is controversial and may be counterproductive regarding the rights and interests of local people and communities.

The Karen in Thung Yai have consistently asserted their desire to remain in Thung Yai and to pursue a particular way of life there as Karen people, but their legitimate interests and rights were largely disregarded and they have never been given the possibility of defending these rights on their own terms. The moral and legal obligations of modern societies and international organizations already provide standards by which to assess infringements in the case of the Karen in Thung Yai and reason to call for changes in the approach of the government to the management of this area. Due to both their history in Thung Yai as well as national and international commitments to human rights and conservation ethics, the right of the Karen to remain in Thung Yai has to be acknowledged without reservation. They should be integrated into the management and decision-making processes concerning the sanctuary as well as the reporting to UNESCO. It is important to enable the Karen to participate in these processes and tasks through their own political institutions and in accordance with their own customs, which are adapted to their way of life in Thung Yai but which are not currently acknowledged in their interactions with the administrative agencies.

Even though Thailand is reluctant to acknowledge indigenous peoples on its territory, the country has taken some steps to grant particular rights to local communities. In its constitution, local communities are entitled to conserve or restore their 'traditional culture' and to participate in the management and use of natural resources and their environment, while the Community Forest Bill provides a legal framework for communities to establish and manage

community forests. These still-disputed provisions partly reflect the importance of the community culture approach in Thailand, but are also related to the biocultural turn in international conservation discourses. However, 'cultural diversity' in terms of different ethnic identities is not in the focus of these community rights and remains problematic regarding conflicts over biocultural diversity in Thailand. The cabinet resolution '*Recovering the Karen Livelihood in Thailand*' may facilitate a promising project to link concerns to strengthen rights of local communities with a new awareness for the relevance of cultural diversity and efforts to support this diversity. It should be implemented in cooperation with the Karen people as soon as possible and its objectives should be extended to all indigenous groups in Thailand. With regard to conflicts over biocultural diversity on a global scale, the concept of community rights as a means to empower local communities and secure their livelihoods requires more attention and research as a legal framework and a specific field of rights alongside already established universal human rights and particular group rights pertaining to indigenous peoples.