

**Contesting for Community Rights:  
Lessons from Villagers' Protests against  
Pak Mun Dam in Northeast Thailand**

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**Abstract**

In this paper, The author examines notions and practices of “community rights” in contemporary Thailand based on lessons and experiences of villagers’ groups in their struggles against a controversial state-funded dam project in Northeast Thailand in 1990s. What do customary or community rights pertaining to natural resources mean for local villagers, especially those who were effected by the state’s development project? When their rights were violated by the state, how did they respond? Did they stand up and fight? Did somebody come in and provide some helping hands? What are implications of state-villagers contests over the communal rights to the resources? These questions will be addressed in this paper. The author argues that community rights over local resources are at the central stage of state-villagers clashes in the Pak Mun case. The community rights were constructed as academic and development discourses and formed cultural-sentimental arguments as well as political tactics against modern laws and technologies of power of the state. Further implications of villagers-state contests will be discussed in the context of key economic and political transitions in Thailand in the post 1997 economic crisis.

**Keywords:** customary/communal/community right, villagers-state contest, natural resources, Pak Mun Dam projects, Northeast Thailand

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## Introduction

In their article, entitled "*Exit, Voice, and the Depletion of Open Access Resources: The Political Bases of Property Rights in Thailand*," Christensen and Akin Rabibhadana (1994:639) argue that "[t]he gap between formal law and prevailing customs reflects a much wider inconsistency between the national institutions of the central state and local, informal power relations..." Reflecting on what I call "the crisis of natural resource management in Thailand in the 1990s" (Pattana Kitiarsa 2000), Christensen and Akin Rabibhadana apparently agree that the discrepancy between the formal and customary laws as well as the inconsistency of formal law enforcement were among the central issues in dealing with "often-bitter conflicts" over scarce natural resources in contemporary Thailand. In their attempts to reduce tensions and conflicts over property rights of natural resources, especially land, they argue for "an institutionalized system of legal pluralism" and "adjustments in the formal law." In doing so, the Thai government has to "... recognize prevailing socioeconomic conditions in the countryside and the institutional diversity of an industrializing society with a large and populous agricultural sector" (Christensen and Akin Rabibhadana 1994:655).

A recommendation given by Christensen and Akin Rabibhadana (1994) sounds very optimistic. According to them, fulfilling in the gap between "formal law and prevailing customs" is possible, if "the administrative elite of the state apparatus" recognize the alternative forms of customary laws concerning natural resource management. Sooner or later, the prevailing customs would prevail and the state officials should come to term with rural villagers' folk traditions and interests. However, I believe that any optimistic arguments along this line rather simplify the whole complex issues of the crisis and politics of natural resource management, especially

judging from the Thai state's standpoints as well as the ongoing struggles for the local/communal rights over public resources in contemporary Thailand.

In contrast to legal pluralism and institutionalized adjustments initiated by the Thai state, as recommended by Christensen and Akin Rabibhadana (1994), Vandergeest and Peluso (1995:255) convincingly argue that, for more than a century now, the modern Thai state has invented and implemented what they called "...the internal territorialization in establishing control over natural resources and the people who use them." It is widely common that modern states including Thailand have increasingly turned to "territorial strategies" to control what people can or cannot do inside national boundaries. These territorial strategies, or what Foucault (1977:23) calls "the technologies of power," include a wide range of controlled mechanisms such as legislation, policies, using forces, mapping, zoning, census, GIS, and etc. These territorial strategies allow the state agencies to monitor, control, police, or manage scarce resources based on their own scientifically specialized criteria and measurements. Vandergeest and Peluso (1995:417) also point out that the Thai state were able to do so only recently and they have yet been totally in control because they have run into "disabling resistance to policies that contradict local rights" from time to time.

Drawing on issues of the discrepancy between formal law and prevailing customs (Christensen and Akin Rabibhadana 1994) and the disabling resistance [from the rural cultivators] to the state laws and policies that contradict local rights (Vandergeest and Peluso 1995), I would like to point out that understanding these issues require further exploration on the notion of legal and political rights in the Thai contexts. What are real causes of the aforementioned discrepancy? How and why have rural cultivators or villagers come to protest against the state laws and policies, which run against their local rights? I would like to propose in

this paper that the centrality of these questions might deal with one of the most important issues of Thailand's difficulties and struggles in managing its rapidly depleted natural resources, namely, the state's ignorance to or reluctant acknowledgement of the local community rights.

In this paper, I will examine the issues of how complex notions and customary practices concerning the "community right" (*sitthi chumchon*) over local resources and identities have emerged and been transformed into a formal law. Viewing it as an example of unwritten, folk legal system in Thailand, I will discuss its forms, contents, and the political processes involving multiple parties promoting the community rights as heart and soul of the rising civic movements in contemporary Thailand. I will use an ethnographic account of a controversial case of villagers protesting against a state-funded dam project in Northeast Thailand to demonstrate how the community rights have been put into practice.

I argue that the "community right" or *sitthi chumchon* represents a prime example of modern legal pluralism, transforming customary legal practices into formal or modern legislation, in contemporary Thailand. It has emerged through "enormously struggling efforts" by multi-parties of its advocates, especially rural villagers and members of urban middle class, e.g., NGOs, academics, students, and the media. The community right is part and parcel of the rising civic consciousness and movements, which call for a more transparent society and politics. After decades of struggles, the community rights' place and voice in Thailand's political landscape are finally guaranteed by the country's recently promulgated 1997 Constitution. However, judging from experiences of villagers' movements against the Pak Mun Dam in Northeast Thailand, it is apparent that the quest for legal pluralism and "community rights" in Thailand requires further struggles and efforts as far as the Thai politics of natural resource management and civil politics are concerned.

## **A Brief Historical Note on the Communal Rights and Formal Laws Concerning Land and Other Natural Resource Tenures in Thailand**

What are the community and its rights in Thailand's historical and cultural contexts? How are these two concepts relevant to the historical complexities of the Thai legal and overall sociocultural systems? Community and its rights are among problematic concepts in the anthropological literature. They are often vaguely defined or misrepresented. In this paper, I treat the term "community" as the complex webs of interests shared by a group of people and their social institutions. The Section 56 in the 1997 Constitution of the Kingdom of Thailand provides a legal definition of the community from a Thai perspective as "...a group of persons, which share common ways of living or activities based on traditions within a locality. Kin group or traditional family is an example of the most conventional community" (cited in Kittisak Prakati and Mali Prukpongswali 2001:7)<sup>2</sup>. Other examples of the communities in Thailand may be referred to an ethnic group, an ecologically defined social group, a social group with common religious or ideological bonds, or a professional association. Despite these examples, it should be noted that the term "community" in the Thai context tends to signify its conventional meaning, where primordial ties as well as distinctive cultural identities such as kinship, ethnicity, religious belief, or common local settlement, are widely counted as basic components of a community.

Defining "community right" in the Thai context seems to encounter even a greater difficulty comparing to "community." Why? Simply because the whole genealogy and the linguistic signification of the term "right" (*sitthi*) in the popular sense have appeared and gained its political and cultural grounds in Thailand only after the democratic revolution in 1932. Prior to this time, the right, especially in its legal and political senses, seemed to be exclusively

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<sup>2</sup>Translation from the Thai source is mine.

reserved for the reference to sacred subjects like supreme deities, spirits, monarchs, and other divine forces. Only divine forces and god-like rulers were entitled to the notions and practices of rights in the premodern states during Sukhothai, Ayutthaya, and early Bangkok periods, which spanned from the 12<sup>th</sup> to 18<sup>th</sup> centuries. For an individual subject, speaking of or exercising legal or political rights was unthinkable or strongly prohibited, since the monarch owed those rights. Almost all aspects of individual or communal life were subjected to the divine power of the monarch and his power apparatus. The question of rights in the Thai premodern states will be illustrated in the formal land laws since the Ayutthaya period in the following section.

Kittisak Prakati and Mali Prukongsawali (2001:5) argue that the overall practices of legal and political rights in Thailand, including human rights and communal rights, had been also hindered in the country's modern history. They indicate three major political processes, which tended to obstruct the growth of legal and political rights in modern Thailand.

First, the formation of modern nation state in the 18<sup>th</sup> century emphasized on the nation-building process, which subsumed ethnically and culturally diversified population and localities into a unique national community. The birth of a modern nation required the one-ness of the nationhood. Individual subjects or communities were forced to surrender their relative sovereign rights.

Second, the threat of Western colonial power in the second half of the 19<sup>th</sup> century and early 20<sup>th</sup> century favored Siamese rulers in Bangkok to build national identities and "imagined communities" (Anderson 1991) based on selective modernization process, in which individual and local rights were often ignored (see also Thongchai Winichakul 1994; Reynolds 1991).

Finally, in the post 1932 democratic revolution, the Thai-style democracy as well as the nationalist politics strongly denied the individual and local rights to political autonomy and legal

ownership to their natural resources. Many researches in the fields of economic history and political economy have uncovered that the modern Thai state, influenced by the Western modern juridical system, apparently recognized legal rights of ownership and exploitation of local resources to the private entities, rather than rural cultivators or their communities.

Arguably, the concepts of community (*chumchon*) and communal rights (*sitthi chumchon*) among the Tai/Thai people have been existing and put into practice long before the foundation of the Kingdom of Sukhothai in the 12th century. However, the crucial problem is that they have hardly been acknowledged by the powerful and highly centralized Thai state. In effect, the voices from the people at the grass-root level had not been visible or heard of, until the past few decades. I would suggest that the 1932 democratic revolution and the 1973 student-led political protests are the prominent “watersheds,” which gave birth to the civic awareness and the culture of legal and political rights of among the Thai public.

### **Land Laws and Community Rights in Thailand**

Nowhere are the Thai state’s domination and influence over the communities or the communal rights so apparent as in the history of formal land legislation in Thailand. The history of Thai land laws displays how land and other resource tenures have been perceived by the Thai state and how the communal rights have been formulated far from its contemporary significant conception until the recent decades.

The premodern land tenure system in Siam (before the promulgation of modern land legislation in 1901) rested on the traditional premise that the king was the sole proprietor of all the land in the kingdom (Charnvit Kasetsiri 1988; Jit Phoumisak 1987[1974]; Lingat 1983 [1940]; Yano 1968). Like the people, land and other natural resources within the boundaries of

premodern Siamese states (e.g., Sukhothai, Ayudhaya) was subject to the total authority of the king. Rights to till the land for subsistence purposes were granted to the people. The king held the rightful ownership of land and the right to collect taxes from his subjects.

The premodern land laws and land tenure practices in Siam can be found in written legal records by King Borommatrailokanat (Charnvit Kasetsiri 1988) and the *komai tra sam duang* (Laws of Three Seals) (Lingat 1983). Apparently, there were no records on landlord-tenant conflict, population pressure of land, or natural resource scarcity in premodern Siam. The population was very small when compared to the vast boundaries of the kingdom. Natural vegetation and resources were abundant. Siamese rulers of the Ayudhaya and Bangkok Kingdoms encouraged their subjects to expand the amount of arable land, especially paddy fields, and to increase their agricultural productivity in order to collect enough surplus and food reserves for the kingdom during wartime. Land expansion and occupation usually followed a pattern of forced settlement by war captives from neighboring states (i.e., Burma, Khmer, Laos, and Mon).

Land was the most important means of subsistence and the most important socioeconomic resource in premodern Siam. It was used as a measure of social rank and status in the social stratification system, known as *sakdina* (Akin Rabibhadana 1969; Keyes 1989; Lysa 1984; Wyatt 1984). An individual's social status during the Ayudhaya period was determined by amounts of land granted by the king, which ranged from 100,000 *rai*<sup>3</sup> for the *upparat*<sup>4</sup> to 5 *rai* for commoners. As indicated by the *sakdina* system, the king's sole ownership of and access to land was only in principle. In practice, the king had to share his land with his noble officials, family members, and common subjects (Prince Rabi cited in Lingat 1983).

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<sup>3</sup>*Rai* is the Thai unit of area measurement. One *rai* is equivalent to 0.4 acre or 1,600 square meters.



In his influential book, *Chomna Sakdina Thai* [Real Face of Thai Feudalism], Jit Phoumisak (1974) criticizes the *sakdina* system as a Thai feudal practice in which royal landlords oppressed poor slaves and commoners. Although the *sakdina* system was no longer practiced in the Bangkok period, he contends that modern land legislation were still in hands of those oppressive rulers. Land ownership was still controlled by influential landlords and a rising affluent bourgeois class.

Siam underwent modernization in the second half of the nineteenth century, and the pace of the race to modernity was accelerated at the turn of twentieth century, in the reign of King Chulalongkorn (r. 1868-1910). Siam's modernization depended on the importation and articulation of Western technologies, cultures, and ideas.

The kingdom's legal system was part of the state machinery to be overhauled in the reign of King Chulalongkorn. Prince Rabi (1874-1920), King Chulalongkorn's son, was in charge of modernizing the Siamese law codes, which were once labeled by the French as "uncivilized." As European educated bureaucrat and the head of the Ministry of Justice, "Rabi set about energetically to revise Siam's law codes into conformity with Western law, in concert with French and Belgian jurists who followed their own Napoleonic model..." (Wyatt 1984:210). This was the historical backdrop before which the kingdom's first land law was introduced in 1901.

The main purpose of the 1901 land legislation was to set up the legal base for land registration, especially in Bangkok and other urban areas. This first-ever-modernized land law was influenced by Western colonial ideas of legal ownership and rights rather than traditional claim and occupation. With his absolute authority, King Chulalongkorn created a law that rarely

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<sup>4</sup>An *Upparat* was the highest ranking of Siamese officials during Ayudhaya period.

acknowledged the rights of tenure in and access to land for those who did not own written documents, or whose title deeds were not legally registered with the appropriate government office. The 1901 land law also aimed to increase land taxes for the government's budget and to encourage private companies and farmers to cultivate arable land (Kemp 1981; Yano 1968).

Suntharee Asawai (1978) demonstrates how the 1901 land legislation was put into practice in the Rungsit project, an irrigation and canal expansion project in the upper north central plain area. She also discusses how the government during that time favored influential companies, bureaucrats, and landlords over poor, powerless farmers. The government's policy on irrigated land development and modern land legislation benefited private companies and bureaucrats. This modern land law led to the growing number of tenant farmers in Central and Northern regions of the kingdom, where the penetration of world capitalism was intensified through the rice and timber trades (Chatthip Nartsupha 1984; Plai-o Chananond 1987; Suntharee Asawai 1978; Suvit Phaithayawat 1978).

Although the 1901 land law exacerbated land conflicts between investors or landlords and local farmers, it had a limited impact on pre-existing land tenure systems in upcountry or remote areas where forest land was still abundant and population was still minimal when compared to the vast boundaries of the kingdom.

In 1936, the modern land legislation was upgraded and promulgated as *Pramuan kotmai thidin pho so 2497*. Although it was built upon similar philosophy of the 1901 version, this land law was backed by the strong political will to use this legal means to reduce social inequality and injustice. Proposed by the Phibul administration, this land law contained key articles designed to limit the amount of land, which an individual can legally own. However, a 1959 executive order by the Sarit administration countered this law by stating that limitation of land ownership

obstructs the country's socioeconomic development. Serious efforts to redistribute or limit land ownership in Thailand have not been put into practice ever since (Kemp 1981; Yano 1968).

Studies on the topic of land tenure system in Thailand literally did not exist in the 1950s. Land was simply not a serious socioeconomic issue in Thailand during that time, and social scientific research was only in its beginning stage. In the early 1960s, Wilson (1962:38) stated that "[S]evere pressure of population on the land and the related problems of peasant indebtedness, landlord-tenant conflict, and impoverishment of the rural population have occurred rarely in Thailand." Yano (1968:853) confirms this situation when he notes that, "Because of the preconception that Thailand's rural society is predominated by owner-cultivators and has no serious land problem, investigation has seldom been done on Thailand's land system."

Early studies of land tenure systems can be found in efforts by anthropologists working in Bang Chan and elsewhere as part of the Cornell-Thailand project in the 1950s and 1960s. Most of these anthropologists' publications came out in the 1970s. Land expansion and occupation, community formation processes, land inheritance, kin relationships and agricultural techniques were topics widely studied as part of the social organization and social structure of the communities under investigation (Hanks 1972; Potter 1976; Potter, S.H. 1977; Sharp and Hanks 1978).

The pioneering studies on land tenure systems and agricultural economics in Thailand in the 1950s and 1960s are those of Ingram (1971), Johnston (1975; 1976), Moerman (1968); Yano (1968), and Feeney (1982). All of these aforementioned studies cover the nineteenth and the early twentieth centuries. Yano (1968) provides a comprehensive analysis of overall land tenure practices and land legislation, especially after promulgation of the 1936 land law and the 1959 executive order. He also presented a brief report on land ownership and utilization based on his

survey in a village in Southern Thailand. In addition, Mizuno (1968) discusses the household compounds, land inheritance systems, and kin relationships in a village near Khon Kaen provincial center. This village had also been studied by a group of Japanese scholars three times in 1978, 1985, and 1988 (see Ishii 1978; Fukui et al. 1985, 1988).

Yano (1968:853) suggested that further studies of land tenure systems in Thailand in the 1970s and following decades should focus on "...the relationship of land tenure to social mobility and the modernization of the customary laws." Part of his recommendation appears to be based on the fact that land tenure became a hot political issue in the 1970s. Scholars, and the Thai government, wanted to understand why Thai farmers staged protests and demonstrations, especially in 1974 and 1975. What were the main causes of farmers' dissatisfaction and bitterness? The Thai government seemed to be concerned with the growing numbers of insurrections and the political connection between farmers and the Communist Party of Thailand during that time.

The late 1960s and 1970s saw Thai politics evolve around issues of land tenure and farmers' poverty. The first wave of "green revolution" technologies (irrigation networks; high-yield, hybrid seeds; chemical fertilizers; and insecticides) reached the central plain and other lowland rice cultivating areas during this time. However, the outcomes of the green revolution seemed to be very negative with respect to Thai farmers. The country's growth in agricultural productivity (i.e., rice) was the result of arable land expansion rather than technological inputs (Ingram 1971; Feeney 1982). Thai farmers, especially in the Central and Upper Northern regions, were heavily in debt, and land tenancy had drastically increased (Witayakorn Chiengkal 1983; Turton 1978, 1987). Many studies carried out by Thai government agencies also indicate

Thai farmers' tenancy and harsh living conditions (Chaiyong Chuchart et al. 1969; Center for Agricultural Statistics 1974, 1979).

Soon after the student-led protest that toppled the military-led Thanom administration in October 1973, the Kukrit administration passed the first ever land reform law in January 1975. Despite the optimism and political will that accompanied this legislation, the land reform program did not live up to expectations. The Kukrit administration lasted less than two years. Critics pointed out that the land reform law did not intend to launch a fundamental change in land ownership redistribution and limits of land occupation. It had no proper reinforcement to control the farm rentals, which farmers were forced to pay to landlords higher than those of specified in this law code (Kirkkiat Phiphatseritham 1974; Ramsay 1982a). However, the 1975 land reform law silenced the farmers for a while until the country returned to right wing, conservative politics following the bloodshed of the military coup in October 1976.

The 1970s and 1980s saw scholarship on Thai land tenure and agricultural economics developed from different perspectives. Marxist scholars concentrated on the growing farmers' movement and its political activities in the countryside (Kanosak Kaewthep 1987; Turton 1978, 1987). Agricultural economists formulated hypotheses that farmers' protests and political involvement were caused by high population density, growing land tenancy, socioeconomic vulnerability, and poverty (Feeney 1982; Ramsay 1982a, 1982b; O'Reilly and MacDonald 1983; Feder et al. 1988). A group of anthropologists and students of Thai economic history (Hanks 1976; Johnston 1976; Keyes 1976; Piker 1976) contributed to the discussion of the man-land ratio, agricultural land expansion, land tenancy; and community formation processes in Thailand. Land tenure is also included in micro-level studies of Thailand's economic history by Chatthip

Nartsupa and other Thai scholars in the mid-1980s (Chatthip Nartsupha 1984; Pranut Sapphasan 1986; Suvit Phaithayawat 1978).

Issues concerning land tenure have been integrated into the larger politics of natural resource management in Thailand in the late 1980s and 1990s. Questions of rights in and access to land are no longer isolated from questions concerning other limited, natural resources (i.e., forest, water, or marine resources). In other words, resource tenure has replaced land tenure in the 1990s. The politics of natural resource management has dominated both the Thai political agenda and scholarship on Thailand in the last decade of the twentieth century.

### **Struggles for the Community Rights in Contemporary Thailand<sup>5</sup>**

Land and other resources in Thailand have entered the critical stage since late 1980s. Conflicts among stakeholders, especially rural villagers, state agencies, and private investors have been increasingly apparent. Lying in the heart of conflicts is the question of resource tenureship and, thus, characterizes the crisis of natural resource management in Thailand. The crisis of land and other resource tenure refers to the situation in which issues of ownership of and access to land and other limited resources are very problematic and intensely contested. This crisis is concerned with questions of who owns what and why, who gains access to what and why, and who is excluded from the use of particular resources and why. The crisis of land and resource tenure is a crisis of legitimate authority and the rising demand for popular participation in deciding which resources should belong to who and why.

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<sup>5</sup>In this paper, I do not include the efforts to propose the draft of the Community Forest Act by local villagers, NGOs, and groups of scholars, which has been an on-going process in the Thai legislation and politics from the late 1990s up to the present. This should make a very important case study concerning the struggle for community rights over local resources in contemporary Thailand. It demands an in-depth analysis of its own.

In contemporary Thailand, the existing legal framework of land and resource tenure appears to be less and less sufficient and effective in accommodating the country's ongoing land and resource shortage, population pressure, and poor resource management system. I argue that the land and resource tenure crisis in Thailand have generated multiple impacts on Thai society as a whole. Many controversial cases of resource tenure are political, socioeconomic, ecological, and cultural in nature. The multiplicity of the resource tenure system is complicated by certain of the country's long standing predicaments, i.e., (1) modern legislation that allows no room for the people's rights in and access to resources; (2) the highly centralized and bureaucratized administration of the state; (3) the rise of civil society, especially the strong alliances between villagers, scholars, NGOs, and the mass media; (4) population pressure; and (5) resource scarcity.

Social accountability, popular participation, and ecological awareness have become the major issues in the study of land and resource tenure in the 1990s. The successful protest against the government-proposed Nam Choan Dam in 1988 (Stott 1991), the resistance against government-supported eucalyptus plantation projects by villagers in Northeast Thailand in 1989 (Tegbaru 1997), and the nationwide logging ban in 1989 (Pinkaw Leungaramsri and Noel Rajesh 1992) reflect the growing coalition between the urban middle class, non-governmental organizations, and rural villagers in shaping public policy on resource tenure and management. Protests by rural villagers affected by government-funded development projects were intensified and became violent in the cases of (1) salt mining in the Northeast and golf courts in the North (ADSP 1990); (2) the Pak Moon Dam (Keyes 1992); and the nationwide program to relocate villagers out of the national reserve forest areas (a.k.a, *kho cho ko*) (LDI 1992; Tjelland 1995; Wisut Khomwatcharaphong 1991).

Beginning in the late 1980s, the concept of social forestry was introduced as an alternative in the national forest management scheme (Sukaesinee Subhadhira et al. 1987; Yaowaluk Aphichatwanlop 1992, Thongthip Sunthornchai 1992; Stam 1993). The nationwide project led by the Bangkok-based NGO Local Development Institute examines issues of deforestation and resettlement in national reserve forest areas (Sanae Chamarik and Yos Santasombat 1993; Prayong Nattayarak and Bantorn Ondam 1993; Anan Ganjanapan and Mingsan Khaosa-ard 1995). These studies reveal that the government declared the reserve forest areas long after villagers' settlements had been established in those areas. These studies also reveal that nationwide rapid deforestation has been a consequence of logging concession, population pressure, and the government's development policies (i.e., the cash crops for export program, dam and highway construction, and anti-Communist settlement in forest areas).

Land and resource tenure became legal as well as political issues when villagers' organizations, with support from scholars and NGOs, put pressure on the government to acknowledge community-owned and managed forests, land, and other natural resources. Villagers and urban middle class alliances pushed the government and the legislature to enact the Community Forest Act (Anan Ganjanapan 1994). Many critiques also point out that the government's fundamental concepts and practices of land and resource tenure are very problematic. The government's land tenure scheme is corrupt and highly centralized. It favors private corporations rather than rural villagers (Christensen and Akin Rabibhadana 1994, Hirsch 1989, 1995a, 1995b; Vandergeest and Peluso 1995).

Public policies regarding land and natural resources in late-1990s Thailand can no longer be centrally planned or exclusively initiated. They are highly politicized and have become the subjects of contestation. The Thai public has made more demand for participation in policy



formulation regarding land and resource tenure and for open resource regimes in the 1990s than in any previous time. The phenomena of the country's land speculation in the early 1990s, and the economic crisis since July 1997, have further shaped the issues of land and resource politics toward popular participation and civil concerns.

In sum, there is a notable shift in notions and practices of community rights in Thailand in late 1990s and early 2000s, especially judging from the popular perception. That shift reveals the growing perception, extending from local or community rights to evolve round the concept and practice of human rights. Villagers and local groups around the country have expressed their undaunted desires and argued that conserving and sustainable exploiting natural resources in their localities are part of their basic rights to livelihood. This type of fundamental rights must not be monopolized and controlled by the state agencies as illustrated in the case of Pak Mun Dam.

### **The Pak Mun Dam Protests and the Quest for Community Rights**

No cases of understanding the community rights in practice in Thailand are more controversial than the rural villagers' protests against the Pak Mun Dam Project in the Northeast region of the country.

The Pak Mun Dam is built on the Mun River, 5.5 km upstream from its confluence with the Mekong in the province of Ubon Ratchathani, in Northeast Thailand. The dam is classified as roller compacted concrete with a maximum height of 17 meters and total length of 300 meters. The reservoir has a surface area of 60 square km at normal high water level of 108 meters above the mean sea level (MSL) and a capacity of 225 million cubic meters. The Electricity Generating

Authority of Thailand (EGAT) built and operates the dam as a run-of-the-river hydropower plant. The final cost tally by EGAT in 1999 was 6.507 billion baht (US\$ 260 million) (see The World Commission on Dams 2000:1).

When the Pak Mun Dam project was conceived in late 1980s, there was no place of sustainability in the energy-hungry minds of EGAT and the Thai government. Planners and decision-makers predicted huge energy demand in next few decades as the country was undergoing rapid industrialization and urbanization in the 1980s and 1990s. Building more hydropower dams and power plants was their top priority to fulfill the country's energy demand. It is apparent that EGAT's Pak Mun proposal was highly supported by their key donor and long-time ally, namely, the World Bank. When the cabinet approved the Pak Mun project in 1989, it marked not only the beginning of oppositions from local villagers dwelling along the river banks, but also raised questions concerning EGAT and Thai Government's vision toward this energy development program both in domestic and international development communities.

In a report prepared by the International Rivers Network (IRN), an US-based NGO, the Pak Mun project was formulated as early as in late 1970s under the World Bank-guided strategy. EGAT and SOGREAH, a French engineering firm in early 1980s conducted a number of feasibility studies. In 1981, EGAT hired Thai company, TEAM Consulting Engineer, to conduct a feasibility on the project based on a 112 m Full Supply Level (FSL) with the dam located 4 kilometers from the Mekong at the Kaeng Tana Rapids. Findings from this study revealed that more than 4,000 households would have to be resettled and compensated and the project was temporarily put on hold. However, results from another feasibility study and a social and ecological impact study by SOGREAH and TEAM completed in mid 1980s had convinced EGAT and the Thai government that the Pak Mun project was still viable. This time the project

site was shifted from Kaeng Tana 1.5 kilometers upstream to Ban Hua Hew and the 108-m FSL was recommended. The Thai cabinet approved the revised project in May 1990 and the construction commenced in early 1991 (Sharma and Imhof 1999).

According to the IRN report, the first round of the protests began in March 1989, when villagers demanded information concerning the project. Villagers, teachers, academics, NGOs and students formed the "Opposition to the Pak Mun Dam Committee," which began to campaign against the project on social and environmental grounds. Protest escalated in 1990, when 2,000 villagers from five districts demonstrated against the project at the Ubon Ratchathani Province city hall for 3 days. In early 1991, 12,000 residents signed a petition to the World Bank and the Thai Prime Minister asking that the project to be canceled, and numerous letters were sent from villagers and NGOs to the World Bank expressing concerns about the lack of baseline studies, the potential impacts on fisheries, lack of consultation, inadequate compensation, and possible health impacts. The World Bank Board decision was postponed in September 1991 due to this opposition. In October 1991, the Board visited Thailand and met with representatives of the Thai government, EGAT and villagers, who told the Board that they did not want the dam. On December 11, 1991, the World Bank approved a \$23 million loan for the Pak Mun Hydropower Development Project (see Sharma and Imhof 1999).

Villagers continued to demonstrate against the on-going construction during 1991 and 1992. In February 1993, realizing that they would not be able to stop construction, villagers started demanding compensation for project-related losses. They faced harassment and intimidation by security forces, yet their protests have continued until today. Construction was completed in mid-1994 and the World Bank closed the project on March 31, 1995.

Villagers staged protest after protest since the project completion. In 1994, after months of protest, EGAT agreed to compensate villagers for their occupation loss as the dam severely destroyed their fishing grounds. This was the first time ever that EGAT has accounted for the social compensation, besides land and related damage costs. They decided under pressure to pay 90,000 baht each to all 3,955 protesting families. However, the process to pay money to the villagers was not simple and smooth as promised by EGAT and the Thai government. In 1996, the Assembly of the Poor, a villagers' organization and its allies of those affected by dams and other government-funded development projects in Northeast Thailand, was formed. This organization was very instrumental in expressing villagers' voices and struggles until the present (October 2001). They established *Mu Ban Mae Mun Mun Yuen* (literally, the long-lasting Mun River village), a permanent resident or protesting camp on the Pak Mun Dam site. There are more than 2,000 residents of this village. Their latest protesting series was staged in front of the government house in Bangkok, demanding solutions to their losses of land, occupation, and proper compensations (see Wandee Suntivutimete 2000:82-107).

The Pak Mun Dam generates hydropower energy in the eyes of EGAT. Is its hydropower energy sustainable? The Pak Mun Dam's full generating capacity was estimated at 136 megawatts. This amount of energy should be sufficient for the rapid energy demand in the Northeast region. However, many critics countered that EGAT overestimated overall energy demand in order to justify its Pak Mun Dam proposal. They made illogical calculation in their investment in hydropower dam projects, including the Pak Mun Dam. Following are reasons why I argue that the Pak Mun Dam project is hardly considered a sustainable energy source. It rather symbolizes the state's intrusion into the domain of community rights.

First, costs exceed benefits. The Pak Mun Dam is one of the prime examples. The project was “a drain on the authority’s finances, with a cost overrun of over 70%. And outstanding claims for compensation” (Sharma and Imhof 1999:1). In addition, Kasian Techapira (2000:6) points out that, based on the 1996 World Bank report, the Pak Mun Dam should generate electricity at least \$28 million per annual (or 12% of its \$233 total investment cost) for 8 consecutive years, in order to make profit out of this enterprise. In contrast, a recent study by Thailand Development and Research Institute (TRDI) states that currently Pak Mun Dam has generated only \$7 million per annual. This huge difference simply reads: the Pak Mun Dam is loosing daily in economic terms. Kasian roughly estimates the loss at 2.3 million baht per day or 69 million baht per month, or 840 million baht per year (see also Ryder and White 2000:A5). On the first count, the hydropower project in this case is far from economically sustainable.

Second, the Pak Mun Dam almost completely destroyed the Mekong-Mae Mun river ecosystem and fish culture of the villagers. A number of studies by EGAT and the Department of Fisheries was much controversial and criticized by both domestic and international academic community, because they ignored the possible extinction of species of local flora and fauna. Some even questions research techniques and integrity of EGAT-funded ecological studies, especially those concerned with fisheries and effects on local fishing communities (Sharma and Imhof 1999). More than 2,000 people have been affected by the drastic reductions in fish populations upstream of the dam site. The dam has blocked the migration of fish and a \$1 million fish ladder, promoted by the World Bank’s fisheries experts as mitigation measure has proved useless (IRN 2000). In short, hydropower dams, as demonstrated in the case of Pak Mun Dam, are not environment-friendly. They are indeed destructive threats to the river environment and human ecological system.

Third, series of protests and tales from struggling villagers affected by the Pak Mun Dam in the 1990s can be seen as consequences of an unsustainable hydropower dam project. Fishing grounds were taken away, so did their permanent livelihoods. History, culture, and memory connecting to the river were disrupted. Many local communities were disintegrated as villagers were to be resettled. Most of them witnessed their families and communities disintegrated. Individual senses of identity suddenly became problematic. I would argue that the Pak Mun Dam has never sustained or created peaceful families and communities, which were affected by its presence. Villagers certainly see it as a devilish embodiment of the country's mal-development project.

What EGAT and the Thai government have been trying to do in running the Pak Mun affairs from the beginning is to monopolize vision and definition concerning a sustainable energy development project. They had employed tactics and techniques of power to manipulate public opinion. They used forces against villagers. They ran series of expensive public relation campaigns. They hired highly respected research firms, think tanks, and scholars. They even paid local leaders and officials to work for them. Although the Pak Mun Dam project was completed, EGAT and the Thai government failed to assert their hegemonic view that the Pak Mun Dam generates sustainable energy in economic, ecological, and sociocultural terms. Reality shall speak for itself. Everything has turned against them, especially the persisting voices of the Assembly of the Poor.

The Pak Mun Dam project and its decade-long drama signify perhaps an end of the era of generating energy through the hydropower dams in Thailand. Experts, especially those from foreign funding agencies, NGOs, and even the Thai government, tend to realize the facts that hydropower dam is not the right solution to the overall energy demand. The Pak Mun Dam

project has demonstrated over years the ugly side of hydropower dams. Costs exceed benefits in the hydropower energy development project. Ecological damages on the river systems are too disastrous. Oppositions to the project are not only from affected people and communities, but also from strong allies of domestic and international organizations. Political tactics employed by authorities do not seem to work against the rise of civil society demanding for transparency and good governance.

### **Conclusion**

In his comment on the dialectical relationship between laws and cultures in Southeast Asia, Lev (1994:414) contends that “cultural treatments of law have a long history filled with provocative, sophisticated, and enlightening analysis—but also with the stuff of myth, often prejudicial myth at that.” This comment highlights and is related the long struggles of villagers against the Thai state and the EGAT in the case of Pak Mun Dam. In this case, the Thai state has ignored not only villagers’ community rights to their livelihood and resources, but also rooted its development policy in the myth of economic growth and industrialization. Their treatments of law and public policy are apparently against those of villagers and their allies, who have built up their arguments along the local cultural foundation of community rights

Learning the lessons from the case of Pak Mun Dam saga, I argue in this paper that community rights to resource tenures in Thailand have been shaped and reshaped by recent economic and sociopolitical development scheme at the regional and national level. Natural resource scarcity, demographic pressure, and economic development scheme have led to changes in form and content of land and other resource tenures. However, land and resource tenure shift alone did not produce conflicts and struggles among related parties by itself. Rather, political

power and means to exercise it, which was primarily occupied and controlled by the government agencies and their private sector alliances, constitute underling forces behind most of controversial cases involved land and other resource tenures in contemporary Thailand.

The underlining principle of community rights to resource tenure everywhere is issues concerning who owns what, how, and why. Why do limited natural resources, especially land, water, and forest, belong to particular people or groups of people? By what rights, traditional, legal, or illegal, are people or groups of people allowed using certain portions of resources?

I contend that the work of “tactics of power” is among the key factors influencing the practices of community rights in contemporary Thailand. I have illustrated an example of poor villagers’ highly controversial struggles over community rights and fair compensation from the government. Villagers affected by the Pak Mun Dam project refused to surrender to state dominance and authority. Even though their situation was far complicated, some of them have learned how to deal with power structures by allying themselves with NGOs, scholars and media.

Community rights to land and resource tenure in Thailand were resulted from the traditional practices and modernized legal system in the 19<sup>th</sup> century. In the 1990s, Thailand has experienced the emergence of civil society nationwide, especially after the events of Black May 1992 and the declaration of 1997 Constitution. People from all walks of life and various interest groups seem to assert their existence. They have come out and claimed their basic, Constitution-guaranteed rights in numbers of areas. Street protests against the government and some private companies have been common scenes in Thailand’s everyday politics. The 1997 Constitution is, and will remain, the political watershed for local communities and individuals to claim their rights.



The rise of civil society in Thailand is very noticeable. More and more people have been organized to participate in the public-funded development projects. As I argue elsewhere (Pattana Kitiarsa 1999), the country owes the non-governmental organizations and their intensive works at the grass-root level in the previous decade for the growing popular movements. Rural and urban poor have come to learn their rights and willing to have the government acknowledge their existence.

It seems not too optimistic to argue that Thailand is gearing herself toward the civil politics, where popular sectors are actively involved in national development. Political regime tends to nurture civil politics in mid of global and national economic forces. However, rural villagers appeared to struggle in this radical shift in this transitional period. In many cases concerning community rights to local resources and livelihood in contemporary Thailand, it appears that villagers and the civil sector might have a longer path in order to achieve an accountable as well as transparent process of legal-political policy making and implementing in the Thai society.

In sum, the controversial case of Pak Mun Dam in Northeast Thailand as well as a brief review of Thai land laws have demonstrated some important premises. First, the concept of community rights has its root in the existence of communities or villages, where collective efforts of villagers are bounded in certain natural resources (i.e., land, forest, river) and physical settings. Second, despite its long existence, community rights have been perceived with mostly reluctant and inconsistent fashions from the modern state of Thailand. Third, with highly centralized legal and political apparatus of the Thailand, community rights to natural resources have rapidly become the central venues of contesting between state agencies and local communities with their allies in the past few decades. Finally, as shown in the case of Pak Mun

Darn, there are some positive signs of power balancing concerning community rights. Voices from villagers and local communities have been heard through various channels, especially in the public demonstrations. At least, it is possible for open dialogues among parties or stakeholders involved. Community rights have become a more regular topic in the public discourses concerning natural or local resource management.

## **Appendix A**

### **A Brief Chronology of the Pak Mun Dam Saga**

- |      |  |
|------|--|
| 1968 | EGAT was founded under the World Bank's recommendation to the Thai government to form a national, state-owned power utility.   |
| 1978 | A World Bank report set a strategy for developing Thailand's rural areas. This report was mentioned by EGAT as a catalyst for the first Pak Mun Dam feasibility study in 1980.   |
| 1980 | EGAT and SOGREAH, the French engineering firm, completed an updated feasibility study of the Pak Mun project.  |
| 1981 | EGAT hired Thai company, Team Consulting Engineers to conduct another feasibility study based on a 112 m Full Supply Level (FSL).  |
| 1982 | SOGREAH, funded by the French government, conducted a more detailed study of the Pak Mun project.  |
| 1984 | TEAM Consulting Engineers finished their feasibility study.  |
| 1985 | SOGREAH concluded their study.   |
| 1989 | First round of protests against the Pak Mun Dam began in Ubon Ratchathani province.  |
| 1990 | EGAT relied on both studies by TEAM and SOGREAH to revise their proposal. The Chatichai administration approved the project on May 15, 1990. The estimated budget was 3,880 million baht, including a 1,940 million baht loan from foreign sources. The cabinet decision was made without public hearing, thorough environmental impact assessment |

(EIA) and social impact assessment (SIA). Protests against the dam project spread and heated up.

- 1991 Construction began in early 1991 prior to the final approval of the World Bank loan. The World Bank board held their meeting in Thailand and met EGAT and villagers' representatives. The Bank approved a \$23 million loan on December 11, 1991.
- 1992 Villagers continued to protest against the on-going construction of the dam.
- 1993 Villagers started to demand compensation for project-related losses, including land, resettlement, and fisheries.
- 1994 Construction of the Pak Mun Dam was completed in mid 1994, while series of demonstrations have persisted.
- 1995 The World Bank closed the project on March 31, 1995, but the Bank refused to publicly release the project completion report.
- 1996- The Assembly of the Poor was formed after successive demonstrations. Banhan and Chavalit administrations agreed to compensate villagers, but their promises were canceled when Chuan Leekpai came to power in late 1997.
- 1999 More than 5,000 protesting villagers, organized under an umbrella of the Assembly of the Poor, established the protesting came at the Pak Mun Dam. Villagers from various parts of Northeast Thailand joined the Assembly of the Poor, expressing their problems caused by the different government development programs.
- 2000 Series of demonstrations continued both at the dam site and in front of the government house in Bangkok. One of latest demands from villagers included opened water gates, especially during the monsoon season, allowing fishes from the Mekong to migrate upstream. The drama of villagers' recent protests has still evolved as part of day-to-day political scene in Thailand, as they have vowed to fight for justice and proper solutions from the Thai government.

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