



Communal land titling dilemmas in northern Thailand: From community forestry to beneficial yet risky and uncertain options

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ABSTRACT

Communal land titling has become a popular tool for land-use management and governance in Southeast Asia in recent years, including in Thailand. In this paper, we describe how the community forestry movement in northern Thailand emerged and dissipated, and then transformed into a communal land titling movement. We then explain how the government of Thailand has recently chosen to abandon a stronger rights-based communal land titling process in favor of a less rights-based approach, albeit one that potentially provides considerable access to lands and natural resources as well as other associated benefits, but not without potential short-term problems and risks, and also risks and uncertainty for the future. We do not claim to know what decisions are most optimal, but the five case studies that we examine from Northern Thailand do provide insights into some of the potential dilemmas associated with entering into beneficial yet imperfect communal land titling arrangements. Ultimately, we advocate taking a hopeful but critical perspective to considering communal land titling options, whether in Thailand or elsewhere, and basing such decisions on detailed consideration of historical and present-day circumstances, and with the full participation of those who will be affected by crucial decisions, so that the best and most timely choices can be made, even if options are unlikely to be without some risks and uncertainties.

1. Introduction

In the 1980s and 1990s the community forestry movement in northern Thailand was strong (Wittayapak, 1994, 2008; Hirsch, 1997; Jamarik and Santasombat, 1993; Ganjanapan, 1992, 1998, 2000; Forsyth and Walker, 2008; Vandergeest, 2003; Onprom, 2012), but over the last decade or two there has been a notable shift in emphasis from focusing on forests to gaining rights over land. In particular, in recent years there has been an increase in interest in Communal Land Titling (CLT) in northern Thailand, a trend that mirrors other parts of mainland Southeast Asia (Anderson, 2011; Baird, 2013; Bounmixay, 2015). This shift is one of the focuses of this paper. The other is the shift from promoting rights empowering CLT a few years ago, to the Royal Thai Government (RTG) providing much less empowering communal land titles over the last few years. We argue that these two shifts—from forests to land and from empowering CLT to less empowering CLT—have had important implications for rural natural resource management. In particular, we strive to demonstrate how these changes

have occurred, and how debates have shifted in relation to these changes.

We start by briefly reviewing the recent history of community forestry access in northern Thailand. We then shift to thinking about how the shift from focusing on community forestry to being more concerned about CLT occurred. We briefly outline the details of Thailand's National Committee on Land Policy (*Khana Kammakarn Natyobai Thidin Haeng Chat*), abbreviated in Thai as *Kor Tor Chor* (KTC), and explain how aspirations for obtaining communal land titles that would provide villagers with strong rights have recently been dashed by the present-day military-run RTG, and how villagers have been instead offered another form of communal land title, the KTC one, that gives villagers much less rights to spaces classified as classes 3, 4 and 5 areas, and excludes Watershed classification 1 and 2 areas,¹ thus significantly reducing the rights local people receive in relation to CLT as compared to what they previously expected. We then present our findings from discussions with five groups of community leaders and government officials regarding the advantages and disadvantages of accepting this

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¹ A 1979 Cabinet Resolution classified watershed area in Thailand in to five zones with the first (WSC1) and the second (WSC2) to be preserved as protection and commercial forests respectively, and the rest (WSC3, WSC4 and WSC5) being allocated to agricultural and other purposes, with appropriate conservation and mitigation measures being considered (Tuankrua, 1996).

much less empowering form of land title as compared to what was originally expected. We finally discuss the broader implications of the present circumstances in Thailand, including for the future.

2. Brief history of the community forestry movement in northern Thailand

During the late 1980s, the community forest movement in northern Thailand emerged as a result of some highly publicized cases, such as that of Ban Huay Kaew, in San Kamphaeng District, Chiang Mai Province, which involved a politician related to the Shinawatra family colluding with corrupt forestry officials in order to gain permission to clear forest land for commercial crop production, through claiming the forest was degraded.² Villagers protested that the forest was vital for collecting food and non-timber forest products (NTFPs) essential for their daily lives. Thus, they demanded that the forest be protected as a community forest. Not long after, a local teacher who was one of the leaders of the protest was assassinated. The conflict escalated and gained national attention, with local non-government organizations (NGOs), academics and student activists calling for a thorough investigation, so as to bring to justice those responsible for the murder. The government bowed to pressure and the Director-General of the Royal Forestry Department (RFD) declared the Ban Huay Kaew community forest to be the first officially recognized, although the area was still under the jurisdiction of the national forest reserve law. Another important case emerged in 1989 in nearby Lamphun Province, where Ban Tung Yao, Sribuaban Sub-district, Muang District, had been resisting the RFD's plan to take over its long-established community forest, after the community had successfully protected it from being commercially logged. Ban Tung Yao villagers were adamant about keeping their community forest managed locally for the benefit of villagers. These two high profiles cases gave rise to the idea of community forests in northern Thailand.

Elsewhere, local communities independently organized community forest with specific local contexts. For example, in 1973 in Nan Province the people of Ban Luang set up road blocks to prevent the owner of a sawmill from transporting logs out of a forest that farmers in the valley considered to be the headwaters of the watershed crucial for their traditional irrigation system (Wittayapak, 1994). They confiscated all the logs and left them in a stream, not allowing anyone to make use of them, so as to serve as a reminder of their determination to protect the forest. A stand-off between the farmers, the sawmill owner and provincial authorities lasted for two weeks until the authorities finally relented to the villagers' demands. Since then local people have known this case of resistance as *Ban Luang Huang Pa* (literally meaning Ban Luang protects the forest). It occurred in the context of the Ban Luang area being classified as a "pink area", meaning that the RTG considered the community to have been infiltrated by the Communist Party of Thailand (CPT). It was feared that the use of force might push villagers into the arms of the CPT. It was revealed later that the villagers had sought the support of the student leaders at Chiang Mai University led by Mr. Chaturon Chaisaeng, a medical student who, after the October 6, 1976 brutal student suppression at Thammasart University in Bangkok, fled to the forest to join the CPT.³

In the north of Nan Province, the farmers in Silalaeng Sub-district, Pua District, had for decades declared the watershed forest that serves as the sources of water for their traditional irrigation system as a community forest. They, too, were successful in negotiating with authorities to allow them to institute operational rules to govern their forests, based on the principles of community-based natural resource

management (CBNRM). This case was also incubated in the same circumstances as Ban Luang, as Pua District was classified as a "red area"—an area of direct armed conflict between government forces and the CPT. Later when peace returned to this area, the RFD wanted to annex Silalaeng's community forest into the would-be Doi PhuKa National Park. The community resisted the plan, fearing that they would lose rights to manage the forest.

Cases from Nan Province have come to the forefront of the community forest movement in Thailand. A coalition of villagers, local NGOs, civic groups, Buddhist monks and local scholars turned Nan into the spotlight for CBNRM, including establishing a series of Fish Conservation Zones (FCZs) along the Nan River and developing an innovative tree ordination ritual. The unprecedented situation grew into a civil society movement. A number of research projects and civil society forums were undertaken in Nan or used Nan as a case study. On the intellectual front, in the 1990s big "action research" projects funded by the Ford Foundation were conducted in order to examine and advocate for community forest recognition all over the country. These research activities brought together leading scholar activists, local communities, NGOs and government actors to lay out policy strategies with the goal of institutionalizing community forestry in Thailand (Jamarik and Santasombat, 1993). Issues of property rights, especially those related to common property resources, became an important part of the discourse linked to the community forest movement, bringing together practices associated with CBNRM, community forests and traditional irrigation systems into debates over property relations and the Thai legal system.

Institutionalization of community forestry in Thailand was also evident in the establishment of the Regional Community Forestry Training Center for Asia and the Pacific (RECOFTC) in 1987. RECOFTC, located at Kasetsart University in Bangkok, and renamed the Center for People and Forest in 2009, played a significant role in training and policy advocacy with regards to community forestry. Draft community forestry legislation was conceived out of critiques of state failure in forest management, which has often been plagued with corruption and the abuse of power. The community forestry movement was initially seen as a struggle for people to gain access rights to use resources that they depended on for their livelihoods. The movement later evolved into advocating for various kinds of local rights. It also represented struggles to get rid of the legacy of a colonial mentality associated with centralized Thai state forest management. Moreover, it claimed to challenge scientific forestry (Ganjanapan, 1996). The community forest movement eventually expanded to become a peoples' movement for the decentralization of resource control and political power (Ayuthaya and Narintarangkul, 1996). When the movement was joined by ethnic minorities living in protected forest areas (National Parks, Wildlife Sanctuaries and Watershed Classification 1A areas), the community forest movement transformed into a multi-cultural alliance of people pursuing resource rights, citizenship rights and human rights (Wittayapak, 2002; Wittayapak and Vandergeest, 2010).

The 1997 Constitution, often dubbed "the People's Constitution" and considered to be the most inclusive and progressive constitution Thailand has ever had, recognized, for the first time, the rights of rural communities to locally manage natural resources. Although the content was relatively vague in terms of what practices were to be permitted, the community forest movement often cited this Constitution to support its claims. The 1997 Constitution also, for the first time, made it possible for the community forestry movement network to come together, to collect 50,000 Thai citizen signatures, which were submitted to the government, and which forced the Community Forestry bill to be sent to the parliament for possible approval. The community forest bill gained endorsements from various political parties during the election campaign. When the Thai Rak Thai Party was elected to government in 2001, it kept its promise by pushing the Community Forestry bill drafted by the people's movement to the legislature. As expected, however, the RFD counter-submitted another version of the bill. After

² There are many examples in Southeast Asia of people defining forests as 'degraded' in order to justify clearing them in order to develop industrial tree plantations (see Baird, 2014; Barney, 2011).

³ Pun Inlee, pers. comm., 2001.

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