



# In the Eyes of the State: Negotiating a “Rights-Based Approach” to Forest Conservation in Thailand

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**Summary.** — Recent debates about governance, poverty and environmental sustainability have emphasized a “rights-based” approach, in which equitable development is strongly associated with individual and communal rights. This paper reviews this approach and explores its practical application to Thailand’s “Community Forestry Bill,” which seeks to establish communal rights of access and conservation in forest reserve areas. The paper examines conflicts concerning watershed forests and mangroves in Thailand, and argues that efforts to support rural livelihoods through community rights have been undermined by a state that has frequently supported commercial interests or opposed decentralization to minority groups. The paper documents how civil society organizations may negotiate rights within the wider public spheres in which rules, rights, and “community” are established, and defended.

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## 1. INTRODUCTION

Scholars and practitioners of development have become increasingly interested in a “rights-based approach” to development (DFID, 2000; Moser & Norton, 2001; ODI, 1999; Sen, 1999; UNDP, 2000; World Bank, 2000). At the heart of this approach is the notion that governments, donors and societies in general have a responsibility to promote and maintain a minimum standard of well-being to which all people (irrespective of race, class, color, gender and other social groupings) would ideally possess a right. Morally, it is argued that states, donors and societies should recognize and enforce rights that are necessary for “survival and dignified living,” (ODI, 1999, p. 1). Instrumentally, it is argued, there are rights that promote other types of benefits, such as security, productivity and sustainable development (DFID, 2000; ODI, 1999; Sen, 1999; UNDP, 2000).<sup>1</sup>

Rights-based approaches are reflective of a wider trend in development studies, in which poverty reduction and livelihood security are now strongly associated with systems of governance that protect and promote the interests of poor and vulnerable groups in society (Bebbington, 1999; Carney, 1998; DFID, 2000; Moser & Norton, 2001; Sen, 1999; UNDP,

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2000; World Bank, 2000). Reformulating the idea that good governance is essentially a matter of "getting the prices right," scholars and practitioners of development have embraced the idea that institutions, such as laws, contracts, and customs, are also essential for counterbalancing the historical constraints that typically privilege particular groups in society (see DiJohn & Putzel, 2000; World Bank, WDR, 1990, 1997).<sup>2</sup> In its influential *World Development Report*, for instance, the World Bank (2000) asserts that poverty reduction requires policies and programs that promote economic opportunity, empowerment and enhanced security. Along similar lines, the UK Department for International Development (DFID, 2000) has argued that "poor people have a right to expect their governments to address poverty and exclusion." In this context, the institutionalization of a rights-based approach is thought to represent a fundamental means of strengthening the political, social and economic "assets" poor people have at their disposal (Bebbington, 1999; DFID, 2000; Moser & Norton, 2001; Sen, 1999; UNDP, 2000; World Bank, 2000).

The idea of implementing a universal system of rights raises a number of questions about the ways in which states and other forms of organizational authority influence norms of equality and security within society. Four are worth noting. First, the ability to guarantee a minimum standard of well-being entails an ability to ensure that such norms are effectively enforced. Second, and related to this, states are but one source of authority within society, whose ability to define and enforce rights depends on the resources and power they can bring to bear on other societal interests. Third, conflicts frequently arise between one type of right and another as, for instance, between the rights of society and the rights of the individual. Fourth, rights are commonly enshrined at the national level, but interpreted and enforced at the local level creating a geographical and institutional gulf that can cause difficulties and discontent.

In this article, we are particularly interested in the ways in which rights-based approaches have been used to address problems of environmental degradation in rural areas. Toward these ends, we develop a case study of Thailand's Community Forestry Bill, legislation that was introduced in the early 1990s to (a) strengthen rights of forest access for Thailand's landless poor; and (b) encourage rural communities to assume the costs of managing and

conserving forest areas. Drawing upon evidence from North and Southwest Thailand, we illustrate both the difficulty that a rights-based approach can entail and the creative ways in which poor people can negotiate and secure informal rights of access in rural areas. In so doing, we argue for a more pragmatic appreciation of the ways in which politics and power affect one's ability to claim and maintain rights in the eyes of the state.

The article proceeds as follows. Section 2 reviews the ideas and debates that have inspired rights-based thinking about community based resource management and conservation. Section 3 then provides a political history of Thailand's Community Forestry Bill, outlining its principal provisions and the rights these create. The political implications of these are addressed in Sections 4 and 5. Section 4 explores the ways in which the Bill has affected hill tribes in Northern Thailand. Section 5 examines sectoral and class conflicts over mangrove areas in Southwest Thailand, analyzing the ways in which village communities have used community forestry to legitimate competing claims over forest areas. Section 6 concludes the article, interpreting the implications of these findings and raising questions for policy.

## 2. RIGHTS-BASED APPROACHES

### (a) *Rights, communities and resource conservation*

Rights can be usefully understood as a claim to a benefit (e.g., education, healthcare, freedom) that states or other forms of authority have agreed to uphold (Moser & Norton, 2001, p. 13; Sen, 1999; Sugden, 1994). Rights may be *group specific*, in the sense that they are extended to a specific class of individuals, or *universal*, in that they apply to all individuals who can legitimately claim citizenship (or membership) under a single political authority. As noted in Section 1, rights-based approaches are generally associated with a universal system of rights, in which minimum standards of well-being are extended to the widest possible constituency. The rights we are dealing with in this article are particularly aimed at creating rights of access and management for designated rural communities. We argue, that the ability to negotiate community rights is also highly depen-

dent on the ability to claim other universal rights, such as citizenship.

In the context of environmental management, rights are thought to have important bearing on the ways in which people manage and conserve natural resources (see, for instance, Bromley, 1992, pp. 4–12; Ostrom, 1990, p. 30; Wade, 1988a, pp. 183–184, 200). Scholarly thinking about institutions and natural resource management has tended to emphasize the ways in which rights, rules and different forms of property regimes affect collective action and natural resource management. Framed in this way, environmental problems are understood as a dilemma of collective action, in which individuals deplete resources because they lack (i) information about the resource system;<sup>3</sup> (ii) information about those with whom they share the resource; and (iii) rules that would regulate the ways in which they use the resource (Baland & Platteau, 1996; Hardin, 1968; Ostrom, 1990; Wade, 1988a).<sup>4</sup> The challenge of achieving better forms of environmental governance therefore entails a system in which institutions (defined as rules) constrain individual actions and improve information about the resource and resource users (Baland & Platteau, 1996; Ostrom, 1990).

Although scholars are largely in agreement that property rights can improve resource conservation, questions remain about whether and to what extent property rights should rest with the individual (private property) as opposed to the state or some form of devolved authority. Hardin (1968), for instance, felt that private property rights would provide the most effective means of preventing individuals from depleting the commons. Failing this, he argued for a relatively autocratic (yet essential) role for the central state. In critical response, common property theorists (such as Baland & Platteau, 1996; Ostrom, 1990; Wade, 1988a) have argued that Hardin underplayed the possibility that what he was calling open-access regimes could in fact be governed by common property. This, they argued, limited the range of possible political solutions (Ostrom, 1990; Wade, 1988a).

Underlying the case for community-based management is an assertion that neither extreme centralization (in the form of government regulation) nor extreme decentralization (in the form of private property) will provide an effective means of conserving resources whose management entails significant costs. Central governments, it is argued, lack the time and resources to regulate what Wade (1988b, p.

490) has called the “myriad micro situations,” of social life (also see Ostrom, 1990, pp. 157–182). Privatization, on the other hand, fails to address sufficiently the costs of creating and allocating private rights over open-access resources, such as forests and fisheries (Ostrom, 1990, p. 13).

Instead of allocating exclusive responsibility to public officials or decentralizing extensive authority to the individual, common property theorists advocate an institutional arrangement in which *communities of individuals* are granted the right to manage natural resources (e.g., Baland & Platteau, 1996; Mearns, 1996; Ostrom, 1990; Wade, 1988a). Implicit here is both a devolution from central state authority and a limitation on individual freedom. Studies of common property have shown that individuals are more likely to conserve a resource when they believe they will reap the long-term benefits of conservation and restraint (Baland & Platteau, 1996; Bromley *et al.*, 1992; Ostrom, 1990; Wade, 1988a).<sup>5</sup> Common property regimes, it is argued, provide this assurance by restricting otherwise open-access resources to a group that agrees to abide by rules regulating membership and resource utilization (Baland & Platteau, 1996; Bromley *et al.*, 1992; Ostrom, 1990; Wade, 1988a).

A critical distinction here relates to the ways in which different types of regime (i.e., state, private or common property) affect incentives to manage and conserve natural resources (Bromley, 1992, pp. 4–11; Moser & Norton, 2001, pp. 14–16). Mainstream approaches to development have now strongly embraced the notion that local communities (i.e., groups whose solidarity and membership is based on face to face interaction) can play a central role in the management of natural resources.<sup>6</sup> Underlying this belief is an assertion that local (and primarily rural) communities possess the knowledge, information and incentive to manage and conserve the resources on which they and their families depend (Agrawal & Gibson, 1999, p. 633; Baland & Platteau, 1996, Chapter 10). Knowledge and information, it is argued, arise from an extended and intimate relationship between members of the community and the local (physical and social) environment (Baland & Platteau, 1996; Ostrom, 1990). Incentive, in turn, stems from the fact that individuals who engage in resource-intensive industries depend on these resources for their survival, and therefore have an interest in their well-being (Ostrom, 1990).

A problem that is well recognized in the common property literature (see, for instance, Baland & Platteau, 1996; Brown, 1999; Mearns, 1996; Ostrom, 1990; Swift, 1994; Wade, 1988a) is that CPRs often co-exist with competing systems of (state and private) property, which can undermine the ability of communities to manage and conserve local resources. This can happen in at least two ways. First, members of the group may ignore the rules of the CPR, and extract private resources from the common good. This is essentially an internal problem.<sup>7</sup> Second, and more relevant to this article, the CPR may be overwhelmed by actors who have no affiliation with the group that manages the CPR.

On this second question, common property theorists argue that communities can successfully manage CPRs when: the resource has clear physical boundaries; communities share a strong historical presence and a clear sense of identity; and states grant them “minimal recognition” (Ostrom, 1990, p. 101) to organize and to manage local resources, without interfering in the day-to-day activities of the institution (Mearns, 1996; Ostrom, 1990; Swift, 1994). But, achieving this autonomy can be costly and political, particularly when the resource is scarce and in high demand. Moreover, states are not necessarily disinterested parties to this process (Brown, 1999; Gauld, 2000; Klooster, 2000; Li, 2002; Ribot, 1995).

(b) *Public rights, private power and political action*

Arguments in favor of community-based management have been criticized for overstating the assets that rural communities are believed to possess, and underplaying the ways in which power and conflict decide fundamental issues governing access and distribution, both within and beyond communities (e.g., Agrawal & Gibson, 1999; Baland & Platteau, 1996; Brown, 1999; Cleaver, 2000; Gauld, 2000; Johnson, 2001a; Klooster, 2000; Leach *et al.*, 1999; Li, 1996, 2002; Mosse, 1997). Central to this critique is a concern that community-based initiatives understate the interests that individuals, firms and governments have in using or depleting natural resource systems. Framed in this way, the challenge of encouraging sustainable resource management entails a more ambitious agenda in which states and other powerful agents are called upon to regulate the actors that poor resource-dependent communities cannot (or would not) reach.

The role that governments play in the determination and enforcement of community rights can be central. Two are worth emphasizing. First, legislatures, judiciaries, militaries and other agents of social control often possess a “monopoly” on the use of force, which enables them to define what constitutes acceptable social behavior. Second, and because of this, the notion that they adjudicate and enforce social rights is often portrayed as a legitimate use of power—even if such uses of power may be resented when it is seen to be extractive or undemocratic. Any intervention by the state, then, can be seen as an attempt to align the informal institutions of society with the formal institutions of a particular government goal or policy.

States are not however, the only actors that create, interpret and enforce rights in society. Equally important are the informal authority structures that determine whether and to what extent one can acquire and use a particular resource (Devereux, 1996; Gore, 1993; Harriss-White, 1996; Ribot, 1995, 1998). Included here are customs, taboos and other informal institutions that determine issues of access and distribution (Swift, 1994; Leach *et al.*, 1999). Moreover, states are also subject to political bias, both within and beyond government, which may not necessarily support the rights of local communities (Brown, 1999; Ribot, 1995; Li, 2002).

As Wilson (cited in Moser & Norton, 2001, p. 21) has argued, rights provide a means of constraining “flows” of power, and structuring relations in favor of particular groups within society. Power also has a tendency to “leak,” and to “flow around rights.” For this reason, “legitimate command” is rarely absolute or uncontested (Gore, 1993; Harriss-White, 1996; Mearns, 1996; Ribot, 1998). Rather, one’s command over property and other forms of entitlement often varies with one’s ability to claim and maintain a right, either in the eyes of the state or another source of authority (Harriss-White, 1996; Mearns, 1996; Ribot, 1998). Moreover, eligibility to claim one’s rights can depend on the existence of other fundamental rights, such as citizenship (Sen, 1999). It is against this backdrop of power and competing forms of authority that the struggle to establish and defend rights of entitlement becomes particularly important.

This article considers these issues by exploring the case of Thailand’s Community Forestry Bill, legislation that was introduced to strengthen rights of forest access of communities

living in Thailand's forest reserve areas; and encourage communities to assume the costs of managing and conserving forest resources. In so doing, it makes a number of assertions about the ways in which rights-based approaches can play out in national political arenas and in local settings. First, it argues that although it was intended to be universal (i.e., open to all communities living in forest reserve areas), community forest rights were in practice effectively limited to groups that were able to take advantage of formal and informal rights of access. Evidence from Northern Thailand shows that the ability of hill tribes to claim community rights was dependent upon the possession of Thai citizenship. Similarly, evidence from Southwest Thailand suggests that although local communities were able to defend community forest rights in courts of law, private actors (particularly ones engaged in shrimp aquaculture) were able to thwart these formal rulings through informal channels.

Second, and related to this, we argue that the Thai government was by no means a neutral player in this process, but was in practice strongly biased against particular forms of community. In Northern Thailand, concerns about national security and longstanding conflicts between highland and lowland farmers produced a policy that was effectively biased against the interests of hill tribe communities, whose members have been historically associated with environmental degradation in highland areas. In the South, bias was more generally directed toward a nonstate constituency, whose involvement in natural resource management was perceived by government officials as an inappropriate and dangerous devolution of state power.

Finally, and perhaps most importantly, the article documents the ways in which communities with full rights of citizenship *and* information about the entitlements that such rights provide were able to use the Community Forest Bill to strengthen their claim to control and manage resources in forest areas. On this basis, we develop more general lessons for policy in the concluding section.

### 3. THAILAND'S COMMUNITY FORESTRY BILL

Discussions concerning communities and forest rights in Thailand have existed for centuries. Most recent attention, however, has fo-

cused on the Community Forestry Bill, which was proposed in 1990 as a formal framework to define rights of communities to forest areas. The Bill was proposed in the aftermath of the 1989 ban on all logging imposed by the Thai government in response to growing public concern at Thailand's dwindling forest resources. The ban aimed to protect Thailand's biodiversity and also guarantee continued access to forest areas for villagers who had used forests for sustainable uses for centuries. Yet although banning logging provided valuable respite from uncontrolled deforestation, there were important unresolved differences between political actors arguing for different types of access to forests. Some environmental conservationist groups, for example, sought an end to deforestation in all forms, and also forms of reforestation such as eucalyptus or pine plantations that they considered inappropriate because of their impacts on local biodiversity, water supply, and land rights. Social developmental groups and rural communities required greater protection for existing forest areas so as to allow continued access by rural groups, occasionally involving limited deforestation or cyclical shifting cultivation.

Conservationists, however, have been concerned that increasing forest access for limited agriculture may also imply allowing more damaging economic activities such as mining and logging concessions. Strong business lobbies have claimed that since the collapse of the Thai Baht in 1997, increased access to forests has been essential for economic recovery. Meanwhile, the Royal Forestry Department (RFD), for more than 100 years the official overseer of forests in Thailand, found its traditional role of logging reduced, and instead became increasingly involved in enforcing the ban. Repeated scandals and allegations of corruption in locations such as the Salween National Park in the northwest of Thailand led both to critics suggesting that the RFD was incapable of fully protecting forests, and that a more sensitive, locally determined form of governance was required, and the RFD calling for even greater power for law enforcement. All sides of these debates have prompted the demand for an official community forest (or forestry) framework in which the benefits of local governance and necessary conservation are combined.

The first official draft of community forest legislation was produced by the RFD in 1990, shortly after the passing of the ban on logging

in 1989. Yet this first draft was criticized by nongovernmental organization (NGOs), academics, and grassroots organizations for effectively maintaining the discussion of forest management as purely state led. In response, a coalition of activists and NGOs such as the Project for Ecological Recovery developed a new "people's" draft bill that asserted the rights of local villages to enter and use forests. This bill was referred to in the Thai Forestry Sector Master Plan of 1993, but in general, official action on developing "community" forests (or officially recognizing those that were already *de facto* in existence) was held back during the early 1990s largely because of the re-emergence of a military government (1991–92), and the attempts of this government and its immediate successor to reforest large areas of northern and northeastern Thailand, often including forcible resettlement of villages. Eventually, in 1996, the government requested the National Economic and Social Development Board (NESDB), a policymaking body composed of both government and public figures, to organize and draft a new version of the Community Forestry Bill, with participation of representatives from government, NGOs, academics, and grassroots communities. This NESDB version was approved subsequently by the cabinet, but it still caused controversies among NGOs concerning whether to allow community forests within protected forest areas such as National Parks or specifically identified watershed protection areas. Some environmental groups argued that the then Prime Minister, Chawalit Yonchaiyudh, had proposed to allow community forests in official sanctioned protected areas as a covert way to allow limited business interests in forests. This led to a public hearing concluding that community forests in the protected areas were allowed on conditions that communities proved that they settled before 1993 and that they used forests sustainably. Yet following this, and further changes in government, some more conservationist environmental groups and government officials within the RFD, notably the new Director General of the RFD, Plodprasob Suraswadi, argued in emotional terms that people and forests cannot co-exist, leading to yet more redrafting of the Bill, and more opposition from social development NGOs and activists (see also Pinkaew, 1997).

In 1999, a revised version of the NESDB draft was submitted to parliament along with 50,000 supportive signatures from across Thailand. In

July 2000, this draft, along with the more conservationist environmental version, and four further drafts from other parliamentary parties passed the first reading in parliament. The aim was to reduce discussion to these existing proposals. Currently, debate focuses on choosing which of these opposing versions to accept. One key debate, for example, refers to the definition of "community." The "people's" version proposes, in accordance with the 1997 Constitution, that a local community is defined as a "social group" living in the same locality and having the same cultural heritage, and who can apply for that status after a minimum of five years experience in safeguarding forest land. By contrast, the alternative government version proposes that a "community" may comprise at least 50 individuals living in proximity to forest, regardless of how long they have been there or how forest is managed. Critics fear this latter scheme may allow commercial projects and plantations rather than the empowerment of villagers. Similarly, the two main proposals also differ in terms of the power of the RFD in vetoing or proposing land-management plans (see also Achara, 2000; Anan, 2000; Rigg & Saku-nee, 2001).

The political and symbolic importance of the Community Forestry Bill stems in part from the government's failure to follow through on past promises of agrarian reform. Despite repeated attempts to register nontitled forest areas, the RFD has failed to keep pace with migration, settlement and economic speculation in Thailand, exacerbating conflicts over land and natural resources (Christensen & Akin, 1994, p. 646; Hirsch, 1993; Hirsch & Lohmann, 1989; Sato, 2000; Vandergeest & Peluso, 1995, pp. 402–407, 411–413). Introduced in 1988, *STK* land certificates were designed to protect landless households occupying forest reserves (Christensen & Akin, 1994, p. 646; Hirsch, 1993; Hirsch & Lohmann, 1989; Vandergeest & Peluso, 1995, pp. 402–407, 411–413). The certificates have been poorly enforced, however, and their use has been notoriously prone to corruption (Christensen & Akin, 1994; Hirsch & Lohmann, 1989; Sato, 2000; Vandergeest & Peluso, 1995).

The following discussions of specific aspects of forest policy indicate how far the wider debate about community forests in Thailand may illustrate important questions of local participation and the definition of access rights.

#### 4. HILL TRIBE POLITICS IN NORTHERN THAILAND

The role of so-called hill tribes in deforestation in Northern Thailand is highly controversial, yet is commonly identified as one of the key areas of concern relating to the Community Forestry Bill. The so-called tribes are ethnic minorities who generally live in mountainous areas in the north of Thailand. They are commonly divided into two groups: the generally lowland-dwelling peoples such as the Karen, Htin and Khamu, who have lived in Thailand for centuries; and the generally highland-dwelling migratory groups such as the Hmong, Akha and Mien, who generally moved to Thailand within the last 100 years from China, Laos and Burma. Typically, each group performs a different type of agriculture. The lowland dwellers, such as the Karen, classically conducted "rotational" shifting cultivation, implying a desire to protect forest and soil fertility by keeping some land in reserve each year. The highland farmers, however, such as the Hmong, typically employed "pioneer" shifting cultivation, by using land exhaustively for 10–20 years before seeking a new site for settlement and agriculture (Grandstaff, 1980). Such categories are increasingly blurred, however, and it is now rare to find "pioneer" cultivation because of land shortage. Indeed, some upland shifting cultivation is performed by lowland Thais, who have moved to mountain areas in search of agricultural land, and many historic shifting cultivators have embraced high input forms of settled agriculture (Forsyth, 1999).

Political opinion is highly divided concerning policies directed to these hill farmers. On one hand, the Thai government historically viewed the hill tribes as potential security threats, and as damaging to watershed forests and water supplies. Government policy toward the hill tribes has varied over the years, but has included forcible resettlement, intervention to replace opium cultivation with alternative cash crops, and reforestation of large areas of land with pine or teak plantations. On the other hand, community development groups have sought to assist hill groups by providing education and agricultural development as ways to reduce poverty and increase integration with the lowlands (Hirsch, 1993). Ecological studies have also questioned the extent to which upland agriculture actually impacts on alleged problems such as soil erosion, water shortages

and biodiversity loss (Alford, 1992; Schmidt-Vogt, 1998). Indeed, some campaigners and media sources increasingly hold traditional Karen practices up as successful examples of sustainable forest and soil management, and of a group living in accordance with its ecosystem (Anan, 2000; Walker, 2001).

The Karen are perhaps the most well-recorded example of a hill tribe successfully negotiating access rights to forest areas within community-based negotiation (Sato, 2000). Part of this success is due to the fact that most Karen in Thailand have lived in settlements that are decades, and occasionally centuries, old; and within social settings that make space for negotiated access to land. Newer, more migratory arrivals, such as the Hmong, however, do not have this background, and consequently concepts such as long-term land tenure are less frequently adopted. Research, however, has indicated that communities have re-organized quickly in order to adopt new institutional bases of access to resources. In Chiang Rai province, for example, a Mien village that used to practice old "pioneer" shifting cultivation quickly learnt to negotiate access to resources within itself once it appreciated that there was no further land to move onto. The village, dating from 1947, adopted rules of household land tenure and the protection of a communal woodlot during the early 1970s, with the result that forest area has actually increased since this time (Forsyth, 1996).

Negotiations with the state, however, are hampered because of historic concerns about security and environmental degradation. It is estimated that some 50–60% of Thailand's one million "hill tribe" people have official Thai citizenship (Kanok & Benjavan, 1994; Ritchie & Bai, 1999), and further applications are resisted in case it makes a precedent for further in-migration from neighboring countries,<sup>8</sup> and because such acts would generate opposition from conservationist NGOs and the middle class who still see highlanders as damaging to environment. The difficulties of such negotiation were shown in May 1999 when some 5,000 hill tribespeople attended a demonstration outside the provincial hall of Chiang Mai, the capital of Northern Thailand. The demonstrators called for greater access to Thai citizenship, greater access to development, and an end to plantations on agricultural land. The police and RFD, however, forcibly broke up the demonstration. Furthermore, the governor of Chiang Mai later called some local

academics “traitors” (*khay châat*) when they spoke in favor of increased formal citizenship to upland minorities at an international Thai Studies conference in Amsterdam in 1999.<sup>9</sup>

Under circumstances when hill tribes do not have Thai citizenship, and public demonstrations are not allowed, it is very difficult for hill tribe villages to negotiate access to forest areas with the state by claiming community basis, even if such villages operate successfully as communities within their own village area. Indeed, even where citizenship has been granted, many upland minorities do not have access to the same rights available to lowland Thais because they live on land zoned as forest or protected areas. Yet, in certain cases, such as the Royal Project on Doi Inthanon, Chiang Mai province, Hmong and Karen villages have received direct aid to assist in agricultural development and are considered *de facto* communities regardless of citizenship. Critics suggest, however, that such examples are showcases, and do not reflect the reality of poor upland farmers in the majority of locations in Northern Thailand. Yet, regardless of state recognition, more and more community forests are being identified in Northern Thailand. Two studies, for example listed 153 community forests in 1993, and then 733 in 2000 (Shalardchai, Anan, & Santita, 1993; Somsak & Permsak, 2000). Furthermore, there is now a region-based community forest network of some 90 grassroot affiliations in Northern Thailand (Achara, 2000). This growth in community forestry probably reflects both the growing negotiation within villages concerning the access to forests, and the appreciation that claiming community status increases negotiation power with the state.

##### 5. MANGROVE POLITICS IN SOUTHWEST THAILAND

Similar themes have emerged among the coastal regions of Southwest Thailand. As in the North, control over mangrove areas is reflective of more enduring patterns of state formation and ethnic differentiation. In this case, resource conflicts have reflected increasing capital investment in plantation (primarily rubber and coconut) cropping, tourism and, more recently, shrimp farm aquaculture.

Since the late 1980s, the rapid development of shrimp farm aquaculture has led to a series

of protracted land disputes in coastal and predominantly mangrove forest areas (Johnson, 2000; Vandergeest, Flaherty, & Miller, 1999). Reflecting the lucrative market for tiger prawn and the incentives the Thai government has put in place to move into shrimp farming, Thai capital invested heavily in the industry from the 1980s onward (Flaherty, Vandergeest, & Miller, 1999; Goss, Burch, & Rickson, 2000). Studies by Midas (1995), Vandergeest *et al.* (1999), and Johnson (2000) have shown that the industry has tended towards smallholder production and wage labor, which is employed primarily during harvest periods. Corporate interests, such as Charoen Pokphand and Aquastar, have played an important role in this process, providing stock, feedmeal and diagnostic services to establish exclusive rights over harvested shrimp (Flaherty *et al.*, 1999; Goss *et al.*, 2000; Vandergeest *et al.*, 1999).

The role that prawn aquaculture has played in the destruction of mangrove forests is a matter of some debate. NGOs, such as Thailand's *Yadfon* Association and the international Mangrove Action Project, have argued that shrimp farming constitutes the most serious threat to mangrove areas in Southwest Thailand (Quarto, 1999; Yadfon, 1998). Others (such as Hambrey, 1996 and Tavarutmaneekul & Tookwinas, 1995) have argued that widespread deforestation in South and Southwest Thailand occurred largely before the boom in shrimp aquaculture, which happened in the late 1980s. Moreover, it is argued, the industry has been using more intensive methods since the late 1980s, thereby reducing pressure on sensitive mangrove areas (Hambrey, 1996; Menasveta, 1997).

The more optimistic claims of these authors (whose links to regional industry associations, such as the Network of Aquaculture Centres in Asia-Pacific (NACA) and to Thailand's Department of Fisheries, should be noted) are not entirely consistent with the documented social, economic and environmental costs of shrimp farming. Principal among these are the environmental costs of land and water degradation, the economic costs of land encroachment and a wide array of social costs arising from the loss or degradation of neighbouring livelihood systems (see, for instance, Goss *et al.*, 2000; Flaherty *et al.*, 1999; Johnson, 2000). On the western coast of the Malay peninsula, environmental pollution and mangrove encroachment have resulted in protracted disputes between shrimp farmers and coastal Muslim

communities (Johnson, 2000, 2001b; Worah, Tupacz, Suvimol, & Tanu, 1998; Yadfon, 1998).

Muslim populations have been living in coastal areas of the Malay peninsula for centuries. Linking Arab trade with China, Indian and Arab Muslims had established commercial centers in what is now Southern Thailand by the end of the 12th century (Che Man, 1990, pp. 32–34). But, in southwestern provinces such as Phuket and Phangnga, the historical development of tin, rubber and, more recently, tourism and shrimp aquaculture, has created and reinforced divisions between a predominantly Muslim peasantry and a predominantly Thai, Sino-Thai and Western capitalist class (Johnson, 2000, 2001a). Reflecting these divisions, Muslims in the southwest tend to be highly dependent upon marginal rural livelihoods, such as artisanal fishing, rubber tapping and mangrove wood extraction (Johnson, 2000, 2001b; Worah *et al.*, 1998; Yadfon, 1998).<sup>10</sup> Exclusionary policies towards Thailand's Muslim population have reinforced this division (Che Man, 1990; Johnson, 2000), producing a situation in which the livelihoods of Muslim communities have become strongly associated with the ability to demand and defend rights of access in marginal coastal areas (Johnson, 2001a).

In this conflict, the Community Forestry Bill has served as an important means by which villagers and NGOs have legitimated competing claims to manage and defend mangrove areas. Citing the Community Forestry Bill and Thailand's 1997 Constitution (which supports the right of "communities" to manage natural resources), villagers in the southern province of Phuket have petitioned the right to protect mangrove areas from shrimp farm encroachment in the Thai courts. In 1998, judges recognized these demands, ruling against a series of shrimp farm developments on the eastern coast of the island. Although enforcement was slow to follow (Johnson, 2001b), the decision was noteworthy for two reasons. First, the courts were willing to rule against shrimp farmers in the first place. Second, they recognized the community's right to use and benefit from protected forest areas. Critical to this recognition was the exchange of information regarding villagers' rights *vis-à-vis* the bureaucratic state. Here NGOs, such as Wildlife Fund Thailand (WFT) and the *Yadfon* Association, were particularly active in transmitting information about community rights, and encouraging vil-

lagers to demand and articulate these rights in front of the courts, as well as the district chief (*nai amphoe*) and provincial governor (*phu wa*).

In print, government officials have endorsed the notion of using community forestry as a means of addressing the problems that persist in Thailand's coastal areas (Chong, Somsak, Jate, & Suchat, 1998). Public action, however, suggests that the state is still highly resistant to any devolution that would challenge its authority in rural areas. Officials from the RFD and the Department of Fisheries (which grants licenses for shrimp farming) expressed concerns that community-based management would lead to an inappropriate and dangerous devolution of state power. As one senior official confided, local communities "cannot possibly" manage coastal resources "because they do not have the right" (Johnson, 2000). Similar views were shared by frontline officials in Phangnga Bay, who felt that local communities lacked the resources, expertise and power to defend forest areas from the encroachment of local elites (Johnson, 2000).

Underlying this process are two important points about the Thai state's approach to village-based development and its interest in shrimp farming. First, community forestry, and the participatory ethic it entails, constitutes a significant departure from the ways in which the RFD and other line agencies have traditionally organized village activities in Thailand. As Rigg (1991) has argued, state intervention at the village level is generally a top-down process, whereby ministry officials and village leaders initiate projects *on behalf* of the village community (Arghiros, 2001; Hirsch, 1990; Turton, 1989a,b). Linking the village to the bureaucratic state, village and subdistrict headmen (*phuyaaybaan* and *kammaan*) and, more recently, subdistrict councilors (*obatah*) are centrally involved in this process (Arghiros, 2001; Hirsch, 1990; Johnson, 2000; Rigg, 1991). Evidence of community forestry initiatives on Phuket suggests that the RFD has taken much the same top-down approach to village administration and development (Johnson, 2000).

Second, shrimp farming is an extremely profitable industry in Thailand, in which state intervention (at multiple levels) has played a pivotal role. The RFD, for instance, is responsible for enforcing access and exploitation in mangrove forest reserve areas. The Department of Fisheries reserves the right to grant shrimp farming licenses. Finally, the Land Department issues and recognizes all forms of

private land title, which are often located within forest reserve areas (Sato, 2000). Historically, village and subdistrict headmen (*phuyaaybaan* and *kammaan*) have assumed authority for issuing and documenting important state provided entitlements, such as household registration, citizenship cards and land title (Hirsch, 1990; Rigg, 1991; Turton, 1989a,b). Although line ministry officials (from fisheries, forestry and land departments) have powers to regulate shrimp farming, the *phuyaaybaan* and *kammaan* continue to play a crucial role in the designation of land rights in and around mangrove areas. As shrimp farming has become increasingly profitable, the act of recognizing and authorizing land title has become an important source of wealth and power for these local state officials (Johnson, 2001b).<sup>11</sup>

## 6. CONCLUSIONS

Arguments in favor of decentralized natural resource management have emphasized the need to develop or maintain local (and locally enforced) rights of access and utilization (see Carney, 1998; Ostrom, 1990). More critical assessments have emphasized the ways in which market-based imperatives, and historically-determined transformations and constraints can shape state policies, social forces and local patterns of resource access and distribution (Cleaver, 2000; Johnson, 2001a; Leach *et al.*, 1999; Li, 1996, 2002; Mosse, 1997). The Thai experience informs these perspectives both by illustrating the political challenge of enforcing rights of equity and empowerment in conditions of social inequality, and by questioning the viability of devolving the costs of monitoring and enforcing rights of resource management to local communities.

A central aim of this article was to consider the ways in which the pursuit of a rights-based approach to development can play out in national political arenas, and how this is interpreted and exploited on the ground. The case of Thailand's Community Forestry Bill exemplifies the extent to which nonstate actors, such as academics, NGOs and the poor, can influence the formal legislation of community rights. The Thai case also raises a number of concerns, which may be of interest to a wider policy audience.

First, it suggests that the ability to claim and benefit from community rights was highly dependent on the influence that communities

could bring to bear on the political system, and on other actors who would challenge or undermine this influence. Evidence from Northern Thailand shows that established groups (like the Karen) were far better able to claim and negotiate community status than were traditionally migratory groups, such as the Hmong and Akha, whose lack of citizenship has quite visibly undermined their ability to negotiate with government. Likewise, the experience in the South demonstrates the powerful ways in which private capital can shape the *de facto* enforcement of community rights. Although the courts were willing to challenge the power of shrimp farmers, their ability to enforce sustainable forestry in conservation areas has been weak. This was largely due to the fact that the principal enforcers (the RFD, the Department of Fisheries, the Land Department and members of the local administration) had strong ties to the industry.

Second, and related to this, the preceding analysis reveals a state that has been strongly biased against certain forms of community, and the rights these would provide. In the north, historical concerns about national security and conflicts between upland and lowland farmers have produced a political orientation that is decidedly hostile towards the interests of upland tribal communities, whose farming practices have been associated with soil erosion, water shortages and the loss of biodiversity. (Here it is worth noting that these views are shared by state and some NGO representatives alike.) In southwestern provinces, such as Phuket and Phangnga, state biases were more reflective of the enduring and paternalistic relationship between government officials and village communities. In this context, the prospects for community forestry were limited by a perception among government officials (at various levels) that autonomous community-based resource management would represent a dangerous devolution of state power.

These experiences raise fundamental questions about the ways in which community rights can empower marginal social groups to challenge powerful interests within society (including the state). Lacking the support of line ministries and local officials, village communities possess few assets that would enable them to challenge the powerful interests that thrive on the open-access situation that exists in many of Thailand's forest reserve areas. These disparities have not however, necessarily undermined their ability to negotiate rights of access

on the basis of community. The case of Thailand's Community Forestry Bill demonstrates the extent to which changes in formal constitutional rules can influence political action at the local level. In northern and southern Thailand, the Bill and the 1997 Constitution provided important political instruments through which poor and marginalized people can legitimate their right to use and live in conservation areas, and to negotiate political rights in the eyes of the state. As the conflicts over upland forest protection illustrate, the establishment of rights was also dependent on the political support of external actors, such as NGOs and urban middle-class activists. This experience implies that the rights and freedoms conferred by the Thai constitution and by the Community Forestry Bill were very much the product of a political struggle, in which civil society organizations were able to push the Thai state into action. These factors were reflected in the legislation itself and in the informal ways in which social actors interpreted and claimed their social rights.

In this respect, the findings from Thailand are very consistent with the assertion made by common property theorists (such as Mearns, 1996; Ostrom, 1990; Swift, 1994) that successful decentralization of natural resource management requires a state that is willing to create and respect basic rights of social organization. But, given that all groups are "not created equal," the dilemma that confronts us in this instance is whether and how rights-based approaches can be structured in a way that counterbalances rights and other assets (such as information) in favor of marginal or unpopular groups. Such a strategy, it is worth emphasizing, may be highly political in the sense that it aims to re-orient the ways in which governments treat people within their jurisdictions.

Recognizing the (substantial) limitations of forcing states into radical change, we argue here for a more pragmatic means by which donors, states and nonstate actors can foster a more level playing field. Thailand's experience in community forestry suggests that collective action to claim and negotiate rights in the name of community was dependent on four central factors: (a) basic recognition of citizenship from the Thai state; (b) a relatively long period of historical settlement (e.g., the Karen in the North and Muslims in the South); (c) information about the Community Forestry Bill, the national constitution and other rights supporting community mobilization; and (d) external

allies, such as NGOs and urban middle-class activists.

Of these four, we argue that the latter two are easier to foster in the short to medium term. Government concerns about hill tribes and about autonomous village initiatives in general have resulted largely from a prolonged period of state centralization (Vandergeest & Peluso, 1995), followed by a brief (albeit limited) process of decentralization (Arghiros, 2001). Reflecting this legacy, perceptions of territorial sovereignty and rural administration are still strongly associated (among government officials) with a central bureaucratic state (Vandergeest & Peluso, 1995), and would therefore constitute a substantial barrier to change. Likewise, the challenge of encouraging particular forms of community identity (i.e., ones based on confined territoriality) for the purposes of sustainable development is well recognized, both in Thailand (Vandergeest, 1991) and elsewhere in the region (Li, 2002).

Information and civil society alliances, however, are possibly less difficult to address. On the latter, Thailand's record of respecting civil liberties and allowing wide ranging forms of social organization has greatly improved since the authoritarian regimes of the mid- to late-1970s (albeit with substantial—yet hopefully temporary—setbacks in 1991 and 1992). Encouraging and maintaining vibrant non-governmental associations—through universal rights of democratic association, as well as through national and international forms of assistance—are essential for any type of social mobilization to take root. Closely related to this is the distribution of information. As the "Right to Information movement" in India has shown, the ability to demand and obtain information about government performance, and the rights to which one is entitled, can have far-reaching impacts on local empowerment and government accountability (see, especially, Jenkins & Goetz, 1999). In Thailand, where levels of literacy far exceed those in rural India, the transfer of information should be a far less daunting task. The crucial issue, of course, is whether and to what extent marginal groups can obtain *access* to information about their rights and about what these entail. On this matter, Thailand's NGOs have played a critical role. Moreover, Thailand's 1997 Constitution contains provisions stipulating government transparency, public consultation and rights of information. But, the likelihood that government officials will in fact comply with these

stipulations is somewhat constrained by the unequal power relations described in this article. Once again, the ability to ensure that gov-

ernment officials comply with these universal norms requires a strong and vibrant civil society, which can push the state into action.

## NOTES

1. Sen (1999), for instance, argues that rights of freedom are *intrinsic* to the individual "capabilities" that freedom from poverty entails. More controversially, he argues that rights of freedom are also *instrumental* to policies and programs that favor poor and vulnerable groups in society, and *constructive* to the development of values and norms that foster open dialogues, which, in turn, promote further rights and positive development outcomes (Sen, 1999, pp. 148–154).

2. Perhaps the most compelling illustration of this is the World Bank's changing views about economic growth and inequality (World Bank, 1990, 1997, 2000; summarized critically in Wade, 2001).

3. Tragedies of this nature stem from three fundamental "gaps" between the utility that individuals are assumed to derive from natural resources and the broader interests of the collectivity. One relates to the distribution of social cost. As Hardin (1968) argued, open-access resources become depleted when individuals extract resources from the system without bearing social costs. A second gap relates to the information individuals have about the state of the resource. A third form of uncertainty stems from the quality of information individuals have about those with whom they share resources.

4. On this, Hardin (1968) and his critics (such as Ostrom, 1990; Wade, 1988a) are generally in agreement. Where Hardin (1968, who advocated privatization as a means of "saving" the commons) differs from critics such as Ostrom (1990) and Wade (1988a) is on the question of whether and how individuals will communicate their preferences, institutionalize rules of resource management and extricate themselves from the tragedy of the commons.

5. Framed in this way, common property regimes (CPRs) are distinguished from open-access regimes (OARs) in the sense that they have rules regulating the ways in which individuals obtain access to a "natural" flow of benefits.

6. For a review of the extent to which this idea has influenced mainstream thinking about development (see Agrawal & Gibson, 1999; Baland & Platteau, 1996; Leach, Mearns, & Scoones, 1999). International examples of national legislation to support community-based forestry would include the Philippines Indigenous People's Rights Act (1997), Uganda's Land Act (1998), Cameroon's New Forest Law (1994) and Joint Forest Management (JFM) in India (1990).

7. Space limitations preclude an extended treatment of the internal dynamics that influence community-based management of common property regimes. On the political dimensions of community, group identity and CPR management (see Agrawal & Gibson, 1999; Baland & Platteau, 1996; Johnson, 2001a; Leach *et al.*, 1999; Li, 1996; Mosse, 1997).

8. See, for example, the *Bangkok Post* article entitled: "Granting citizenship to hilltribes sounds like a great idea, until you start trying to decide which ones," September 2, 2001.

9. The 7th International Thai Studies Conference, University of Amsterdam, July 1999. In particular the criticisms were addressed to Chayan Vaddhanaputhi and Anan Ganjanapan of Chiang Mai University.

10. Note that these features apply principally to Southwestern provinces, such as Phuket, Phangnga and Krabi. Along the Eastern side of the Malay peninsula, Muslim populations have been far less marginalized and are often centrally involved in shrimp farming. Many thanks to Peter Vandergeest for raising this important point.

11. Indeed, the interests that support Thailand's shrimp industry have been able to operate at very high levels (see, for instance, Goss *et al.*, 2000). In 2001, the new Prime Minister, Thaksin Shinawatra, spoke in favor of inland shrimp farming, in a move seen to be a *de facto* cancellation of previous attempts to restrict it.

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