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In the eyes of the state: negotiating a "rights-based approach" to forest conservation in Thailand

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IN THE EYES OF THE STATE:

NEGOTIATING A 'RIGHTS-BASED APPROACH' TO FOREST CONSERVATION IN THAILAND

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ABSTRACT

Recent debates about governance, poverty and environmental sustainability have emphasized a 'rights-based' approach to development, in which individual rights and freedoms are strongly associated with fair and equitable development. Such approaches are defended both in terms of the 'intrinsic' benefits of basic human rights and the 'instrumental' benefits these may provide. However, the process of implementing a rights-based approach entails a number of political costs. Principal among these are the costs of ensuring that social rights are effectively enforced and the related cost of encouraging the state to intervene on behalf of poor and vulnerable groups in society. Reflecting upon these themes, this paper explores the case of Thailand's 'Community Forestry Bill', legislation that was introduced to support rights of access and environmental conservation for communities living in forest reserve areas. Examining watershed forests in the north and mangrove conservation in the south, it argues that efforts to support rural livelihoods through the establishment of community rights have been undermined by powerful private actors and by a state that has generally ruled in favour of commercial interests. The article then documents the creative ways in which civil society organizations have been able to negotiate and secure informal rights of access in rural areas. Such findings, it concludes, illustrate the need to situate rights-based approaches within the wider public spheres in which rules, rights, and 'community' are established, and defended.

Keywords: rights, institutions and the environment, governance, forests, Thailand

I. INTRODUCTION

Scholars and practitioners of development have become increasingly interested in a 'rights-based approach' to sustainable development (Moser and Norton, 2001; ODI, 1999; DFID, 2000; 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, colour, 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: 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). Sen (1999), for instance, argues that rights of freedom are **intrinsic** to the individual 'capabilities' that freedom from poverty entails. More controversially (see below), he argues that rights of freedom are also **instrumental** to policies and programs that favour poor and vulnerable groups in society, and **constructive** to the development of values and norms that foster open dialogues, which, in turn, promote positive development outcomes (Sen, 1999: 148-54).

Framed in this way, rights are understood as a claim to a benefit (e.g. education, healthcare, security) that states or other forms of authority have agreed to uphold (Moser and Norton, 2001: 13). They also confer to the individual what Sugden (1994) has called a 'protected sphere,'

within which she is free to make her own plans and decisions; this sphere, it is argued, ought to be publicly recognized and defended against the intrusions of other agents, including the government,' (Sugden, 1994: 31).

Notable distinctions are made between economic, social and cultural rights (ESC) on one hand and civil and political rights on the other (Moser and Norton, 2001; ODI, 1999; DFID, 2000). In this sense, economic rights (such as property) and cultural rights (such as freedom of religion) are differentiated from 'political' rights, such as citizenship and freedom of speech.

Ideas about rights-based approaches to development 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; DFID, 2000; Moser and Norton, 2001; Sen, 1999; UNDP, 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 counter-balancing the historical constraints that typically privilege particular groups in society (see DiJohn and Putzel, 2000; WDR, 1990; 1997).[1] 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 and Norton, 2001; Sen, 1999; UNDP, 2000; World Bank, 2000).

However, the idea of weighting social rights in favour of poor and vulnerable groups 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. Three 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.

In this article, we are particularly interested in the ways in which rights-based approaches have been used to address problems of environmental degradation and natural resource distribution in rural areas. Towards these ends, we develop a case study of Thailand's Community Forestry Bill, legislation that was introduced in the early 1990s to (1) strengthen rights of forest access for Thailand's landless poor; and (2) 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 to development 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 II reviews the ideas and debates that have inspired rights-based thinking about natural resource conservation and distribution. Section III 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 IV and V. Section IV explores the ways in which the Bill has affected hill tribes in Northern Thailand. Section V examines sectoral and class conflicts over mangrove areas in Southwest Thailand, analysing the ways in which village communities have used the Bill to legitimate competing claims over forest areas. Section VI concludes the article, interpreting the implications of these findings and raising questions for policy.

II. THE THEORETICAL TERRAIN

(a) Rights-based approaches

In the context of environmental management, ideas about rights are important insofar as they are thought to explain the conditions under which individuals will co-operate to manage and conserve natural resources. Scholarly thinking about institutions and natural resource management has tended to emphasize the ways in which rights, rules and common property regimes affect collective action, community formation and natural resource management. 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 (Bromley et al., 1992: 4–12; Ostrom, 1990: 30; Wade, 1988: 183–4, 200). A critical distinction here relates to the ways in which different

types of regime affect incentives to manage and conserve natural resources (Bromley, 1992: 4-11; Moser and Norton, 2001: 14-16). Studies of common property, for instance, 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 and Platteau, 1996; Bromley *et al.*, 1992; Ostrom, 1990; Wade, 1988). 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 and Platteau, 1996; Bromley *et al.*, 1992; Ostrom, 1990; Wade, 1988). Within the structure of village society, rural communities are believed to offer strong incentives for creating and enforcing regimes of this kind (Baland and Platteau, 1996; Ostrom, 1990; Wade, 1988).

Rights and regimes also set important parameters for economic life. In a market economy, state-enforced rights of ownership and property are typically structured in a way that enables individuals to use a particular 'commodity bundle,' (Sen, 1981), obtain benefits from using it, and (significantly) exclude others from using or benefiting from it, or from reducing its value (Gore, 1993; Devereux, 1996; Sen, 1981). However, states are not the only actors that affect one's command over a particular commodity or resource. Equally important are the informal authority structures that determine whether and to what extent one can acquire and use a particular resource (Gore, 1993; Devereux, 1996; Harriss-White, 1996; Ribot, 1998). Included here are customs, taboos and other informal institutions that determine issues of access and distribution (Swift, 1994). For example, Leach, Mearns and Scoones (1999), in discussing environmental entitlements, use the example of *Marantaceae* plants (the leaves of which are used for wrapping food) in Southern Ghana to illustrate the ways in which the *type* of property regime can affect one's entitlement to a resource. If leaves are collected from

forest reserve areas, women (who dominate the activity) must first obtain an official permit from the Forest Department, which entitles them to collect the leaves. Off the reserve, collection rights can either depend upon the common property membership rules of the village (and its figures of authority) or individual arrangements with landholding families.

Among donors, NGOs and other practitioners of development, current thinking about livelihoods and development has tended to emphasize the notion that individuals possess 'a portfolio' of assets, which are subject to the logic of investment. Some researchers have applied these ideas to develop a 'livelihoods approach' in which poverty and well-being are strongly associated with **five types of capital asset**:[2]

- *Natural capital*: the physical inputs, which generate value and productivity in people's lives. Examples here would include rainfall, soil, sunlight and climate;

- *Human capital*: the skills, knowledge and labour that people use to make a living;

- *Financial capital*: the sum total of one's material possessions and investments;

- *Physical capital*: the basic infrastructure and means by which people engage in economic activity; and finally,

- *Social capital*: the networks of trust, reciprocity and loyalty that enable people to thrive and survive in economic life.

Capital assets are thus productive in the sense that they facilitate ends that would not be attainable in their absence (Coleman, 1990: 302).[3] Financial capital, for instance, can be used to acquire other forms of capital, including human capital (labour and knowledge), social capital (loyalty, networks) and natural capital (water, land). Likewise, the theory goes, one can

use human capital to acquire economic, social and natural capital, and so on. An important point here is that one form of capital can be used to acquire other forms of capital.

Framed in this way, poverty represents a condition in which one's effective legitimate command (Sen, 1981) over different types of capital asset is relatively weak (Carney, 1998). As Ellis (1998: 59) has argued, 'poverty is strongly associated with a lack of assets, or an inability to put assets to productive use.' The ability to cope with and ideally 'escape' from poverty thus entails an ability to invest one's assets in a way that is productive and sustainable.

(b) Rights, freedom and development

The value of conceptualizing livelihoods in this way is it provides a means of understanding the opportunities and constraints that affect the ways in which individuals and households cope and adapt during periods of uncertainty and stress (Bebbington, 1999; Moser and Norton, 2001; Scoones, 1998). *For practitioners of development*, its utility rests in the model it provides for promoting sustainable development, and the case it makes for local environmental governance. Here the ability to support, create and maintain a 'sustainable' livelihood is strongly linked to the social (and therefore political) assets poor people have at their disposal. Framed in this way, rights–based approaches represent a fundamental means of supporting poor people's assets, which 'communities' can adopt and implement on their own, ideally with the support of a benign and non-predatory state (Mearns, 1996; Ostrom, 1990; Swift, 1994).

In policy terms, therefore, the related challenge is to strengthen rights (defined broadly) in favour of poor and vulnerable groups in society. However, whether the protection of individual rights and freedoms would necessarily lead to improvements in material well being is a matter of debate. Although few would question the 'intrinsic' utility of promoting rights of freedom and equality, questions have been raised about the 'instrumental' and 'constructive' benefits of promoting basic rights and liberties. The collection of studies that preceded the World Bank's *World Development Report 2000/1* (summarized in Moore and Putzel, 1999), for instance, concluded there was 'no consistent connection' (Moore and Putzel, 1999: 8-9) between poverty reduction and democracy (cf. Wade, 1990).[4] Others (such as Luckham et al., 2000) have argued that increasingly participatory *and populist* forms of democracy may actually be at odds with effective forms of social redistribution.[5]

Such debates highlight wider questions about the relationship between public participation and sustainable development. They also raise important questions about the role that governments can *and should* play in the determination and enforcement of social rights. Two are worth emphasizing. First, states are believed (and often encouraged) to provide a legal framework for social interaction. Framed in this way, legislatures, judiciaries, militaries and other agents of social control are assumed to possess a monopoly on the use of force, which enables them to define what constitutes formal institutional arrangements. Second, and because of this, the notion that they adjudicate and enforce social rights is often perceived as a *legitimate* use of power.

On this basis, rights are often designed to constrain 'the flow' (Wilson, cited in Moser and Norton, 2001: 21) of power, and to structure relations in favour of particular groups within

society. As Wilson (cited in Moser and Norton, 2001: 21) has pointed out, however, power 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 in the eyes of the state or another source of authority (Harriss-White, 1996; Mearns, 1996; Ribot, 1998).

It is against this backdrop of resource scarcity and competing forms of authority that rights and regimes become decidedly political. Indeed, it could be argued that one of the defining features of national politics is the process by which groups in society use the state and other forms of authority to recognize and enforce their claim over scarce resources (Knight, 1992).

What makes the current focus on rights-based approaches so important is not just the challenge it represents to 'traditional' state sovereignty (Moser and Norton, 2001), but also the dynamic ways in which rights (or even *promises of rights*) are interpreted and acted upon by states and social actors. To consider these dynamics, we now turn to a case study of Thailand's Community Forestry Bill, legislation that was introduced (but as yet not passed) to protect the rights of communities living on Thailand's forest reserve areas.

III. THAILAND'S COMMUNITY FORESTRY BILL

Discussions concerning communities and forest rights in Thailand have existed for centuries. Most recent attention, however, has focused 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 that 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 1998, increased access to forests has been essential for economic recovery. Meanwhile, the Royal Forestry Department (RFD), for more than one hundred 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 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 was held back during the early 1990s largely because of the re-emergence of a military government (1991–1992), 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), an advisory 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 ministers within the RFD, notably the new RFD leader, 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).

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 non-titled forest areas, the RFD has failed to keep pace with migration, settlement and economic speculation in Thailand, exacerbating conflicts over land and natural resources (Hirsch and Lohmann, 1989; Hirsch, 1993; Christensen and Akin, 1994: 646; Vandergeest and Peluso, 1995: 402-7; 411-13; Sato, 2000). Introduced in 1988, *STK* land certificates were designed to protect landless households occupying forest reserves (Vandergeest and Peluso, 1995: 402-7; 411-13; Christensen and Akin, 1994: 646; Hirsch, 1993; Hirsch and Lohmann, 1989). However, the certificates have been poorly enforced and their use has been notoriously prone to corruption (Hirsch and Lohmann, 1989; Christensen and Akin, 1994; Vandergeest and Peluso, 1995; Sato, 2000).

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.

IV. 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 (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 towards 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 (Ganjanapan, 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 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 practise 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 only some 30 percent of Thailand's one million 'hill tribe' people have official Thai citizenship, and further applications are resisted in case it makes a precedent for further in-migration from neighbouring countries,[6] and because such acts would generate opposition from conservationist NGOs and middle classes 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' (*khăay châat*) when they spoke in favour of increased citizenship at an international Thai Studies conference in Amsterdam in 1999.[7]

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. 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 and Santita, 1993; Somsak and 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.

V. 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 (Vandergeest and Flaherty, 1997; Johnson, 2000). 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 onwards (Goss *et al.*, 2000; Flaherty *et al.*, 1999). Studies by Vandergeest and Flaherty (1997), Midas (1995) and Johnson (2000) have shown that the industry has tended towards smallholder production and wage labour, which is employed primarily during harvest periods. Corporate interests, such as CP and Aquastar, have played an important role in this process, providing stock, feedmeal and diagnostic services to establish exclusive rights over harvested shrimp (Vandergeest and Flaherty, 1997; Goss *et al.*, 2000; Flaherty *et al.*, 1999).

The role that prawn aquaculture has played in the destruction of mangrove forests is a matter of some debate. Domestic and international 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 and 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).

On the western coast of the Malay peninsula, environmental pollution and mangrove encroachment have resulted in protracted conflicts between shrimp farmers and Muslim communities, whose livelihoods are disproportionately dependent upon artisanal fishing, small-holder agriculture and mangrove wood extraction (Johnson, 2001; Worah *et al.*, 1998; *Yadfon*, 1998). In this conflict, the Community Forestry Bill has served as an important instrument by which villagers and NGOs have legitimated competing claims to manage and defend mangrove areas.

In print, the government has endorsed the notion of using community-based management as a means of addressing the problems that persist in Thailand's coastal areas (Chong *et al.*, 1998). Public action, however, suggests that the state is still highly resistant to any devolution that would challenge its authority in rural areas. Instead of rights, the government has

emphasized the idea that local communities assume *responsibilities* for the management of coastal resources. As one senior official told me, local communities 'cannot possibly' manage coastal resources 'because they do not have the right.' Instead of rights (*sitthi naa bâan*), the government emphasized the idea that local communities assume *responsibilities* (*nathee naa bâan*) for the management of coastal areas. Embracing the discourse of participation and community, the Thai government has thus employed the very same instruments of surveillance and control it has used to monitor and control the rural frontier (Hirsch, 1990; Johnson, forthcoming; Vandergeest, 1991).

Facing these constraints, NGOs have pushed for a far more decentralized interpretation of the Community Forestry Bill. At the heart of this agenda is an orientation that emphasizes local knowledge, community action and self-sufficiency. Wildlife Fund Thailand (WFT), the *Yadfon* Foundation and *DANCED*, for instance, have all been actively involved in encouraging sustainable rural development through the formation of community forest groups. Underlying this stance is a philosophical orientation that is decidedly hostile towards the forces of market capitalism and globalization. Many of the principal NGOs working on coastal issues in Southern Thailand endorse a strong normative assertion that rural 'traditions' are worth preserving and that economic self-sufficiency (defined variously) is an objective worth pursuing (see, for instance, Pisit, 1998; ACRCP, 1996; *Siang Prachachon,* 1997; and *Yadfon*, 1998).[8]

The political aspirations of these organizations are reflective of a more enduring and adversarial relationship between Thailand's NGOs and the bureaucratic state. Benefiting from a relaxation of authoritarian rule and a surge in NGO-directed foreign aide, Thailand's

non-governmental sector ballooned in the 1980s (Pasuk and Baker, 1996: 384-89). Many of these were informed and staffed by former insurgents, who retained a strong aversion to the top-down, urban-centric style of state-sponsored development (Pasuk and Baker, 1996: 384-89). More recently, and particularly since the currency crisis of 1997, a number of Thai NGOs have initiated calls for a more disengaged relationship with the world economy, advocating (*inter alia*) a return to 'traditional' livelihoods, decentralization and the establishment of community rights.

Among rural communities themselves, evidence of overt political action is somewhat mixed. Studies in Songkhla province (Vandergeest and Flaherty, 1997) found that local action against shrimp farming was constrained by the fact that villagers were working on local shrimp farms and that local elites had powerful interests in the industry. In Phuket, villagers have resisted the impact of shrimp farm development, but the impact of this has been relatively small. Citing the Community Forestry Bill and the 1997 Constitution (which supports the right of 'communities' to manage natural resources), villagers have petitioned the right to protect mangrove areas from shrimp farm encroachment in the Thai courts. In 1998, judges ruled against a series of shrimp farm developments on Phuket, although enforcement of these decisions was largely non-existent. In 2001, the new Prime Minister, Taksin Shinawatra, spoke in favour of inland shrimp farming, in a move seen to be a *de facto* cancellation of previous attempts to restrict it.

VI. CONCLUSIONS

A central aim of this paper 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 non-state actors, such as academics, NGOs and the poor, can influence the ways in which states interpret and enforce social rights. It also illustrates the extent to which governments can go in promoting (if not enforcing) decentralized systems of rights.

However, the Thai case also raises a number of concerns, which may be of interest to a wider policy audience. First, it illustrates the powerful ways in which private capital can shape the *de facto* enforcement of egalitarian rights. Although the Thai government was able to challenge the power of commercial logging interests, its resolve to actually enforce sustainable forestry in conservation areas has been relatively weak. Its record on enforcing land reform and restricting shrimp farm development in mangrove areas provides a compelling case in point. Developments of this nature underline a number of points about the Thai state's ability to promote a rights-based approach to development and conservation in forest areas. Primarily, its system of land titling is structured in a way that creates strong incentives to bend the rules of ownership and utilization on and around forest reserves. Related to this, the interests of private capital (in shrimp farming, as well as rubber, coconut and tourism) have dominated the ways in which rights of management and access are enforced at the local level. In this process, local officials have a disproportionately large hand in determining rights of forest management and access. Village activities generally require the tacit (and ideally the active) approval of local officials (Rigg, 1991; Hirsch, 1990; Turton, 1989a; 1989b). Included here are the village chiefs, the sub-district councillors and, for larger projects, district and provincial officials.

Second, the case of the Community Forestry Bill illustrates the ways in which weak or non-existent rights providing for citizenship or land title can undermine the ability to claim other rights (such as rights of forest management and access) in the eyes of the state. This is true for a substantial percentage of Thailand's hill tribe population, whose lack of citizenship has quite visibly undermined their ability to negotiate with government.

Third, the preceding analysis implies a political split between actors promoting rights of resource management and others promoting rights of access. On one hand, the Thai government has supported a rather limited series of rights and responsibilities governing forest **management**. On the other, NGOs, academics, people's organizations and village communities have organized to promote and legitimate the right to obtain **access** to formally managed forest areas. Indeed, many NGOs are divided on this very issue, and particularly concerning differences between NGOs campaigning for restricted forest access, on the grounds of conservation, and those seeking increased access, for greater security of rural livelihoods.

Fourth, the evidence provided here suggests a measure of incompatibility between the environmental credentials of Thailand's rural communities and the incentives of an increasingly market-based society. Thailand's rural economy is part of a wider political economy that has embraced one of the world's most ambitious export development strategies (Pasuk and Baker, 1996; Unger, 1998). To propose that rural communities would unproblematically implement and submit to rules of resource conservation would understate the substantial benefits they could obtain by engaging in this new and dynamic economic

regime. This was particularly shown in relation to local adoption of shrimp farms, and the willingness of some 'hill tribe' farmers to adopt high-value cash crops or sell logs illegally.

Fifth, the case of Thailand's Community Forestry Bill demonstrates the extent to which changes in formal constitutional rules and the mobilization of civil society organizations can influence political action at the local level. More optimistically, in northern and southern Thailand, the Bill and the 1997 Constitution provided important political instruments through which poor and marginalized people could legitimate their right to use and live in conservation areas, and also to negotiate political rights in the eyes of the state. However, as the conflicts over upland forest protection illustrate, state intervention was also dependent on the political support of external actors, such as NGOs and urban middle-class activists. What this implies is that 'pro-poor' rights (in this case a national constitution) may not necessarily lead to pro-poor outcomes. Rather, the Thai experience suggests, the ability to claim constitutional rights was highly dependent upon a series of political movements and strategic alliances within civil society. The implication here is that the rights and freedoms conferred by the Thai constitution and 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. This was reflected in the legislation itself and in the informal ways in which social actors interpreted and claimed their social rights.

Arguments in favour of decentralized natural resource management have rightly emphasized the need to develop or maintain local (and locally enforced) rights of access and utilization (see Ostrom, 1990; Carney, 1998). 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 distribution and politics (cf. Cleaver, 2000; Johnson, 2001; Leach, Mearns and Scoones, 1999; 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 wisdom and viability of devolving the costs of monitoring and enforcing rights of resource management to local communities. Lacking the backing of an effective state apparatus, institutions of this nature appear somewhat ill equipped to deal with the powerful interests that thrive on the open-access situation, as they do in Thailand's forest areas. A more critical approach will need to embrace these processes (cf. Moore and Putzel, 1999), and encourage systems of enforcement that can overcome powerful interests, both within and beyond the state.

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[1] 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).

[2] See, for instance, the collection of chapters in Carney, 1998; also see Scoones, 1998

[3] Defined in this way, 'capital' implies a substantial deviation from traditional definitions in which capital entails *a relationship* between various classes of capitalist development (in particular owners of the means of production and wage labour). For this reason, ideas of social capital and similar conceptualizations have been criticized for an apolitical and ahistorical interpretation of economic life (Fine, 1999).

[4] The key references here are Varshney (1999), Niles (1999), Moore *et al.* (1999), and Crook and Sverrisson, (2001).

[5] Responding to criticisms of this nature, Sen (1999) has argued that arguments against the causal link between democracy and poverty reduction can be criticized for placing too much emphasis on high-performance authoritarian regimes, such as Singapore and South Korea, and for under-emphasizing the causal linkages between democracy and social opportunity.

6 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

7 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.

[8] A number of southern NGOs have taken a more antagonistic stand towards government-NGO cooperation and the question of community rights. Members of WFT and *Danced*, for instance, were somewhat critical of *Yadfon's* more conciliatory style. This was reflected in the strategies they used to pursue 'group formation.' Beyond the organizational activities they encouraged within their project communities, these NGOs were

actively involved in coordinating large and at times violent demonstrations and rallies (Johnson, 2000). *Yadfon*, it is worth noting, was largely uninvolved in these activities.