

## Human Rights, Land Tenure and Agricultural Development in Thailand

By Amara Pongsapich

### *Land Policies: The issue of public and private land*

#### *Public Land*

The concept of public land is a new concept which is alien to the customary livelihoods and tenurial systems of most villagers in Thailand. Traditionally, land which was not privately owned could be used by anyone. It could be located within the village or forested area where everyone was free to gather wood, or it could be a body of water where fish was caught for food. In the old days, generally speaking, no one claimed land as a means of accumulating wealth; instead, individuals claimed land for crop cultivation. Private ownership is a capitalistic concept which became meaningful only in the last century. In the old days, people lived in settlements and cultivated the land surrounding them, with a common understanding of who cultivated which plot, without having a real sense of land ownership.

Later, when population size increased and land became scarce, the sense of land ownership gradually developed. People started to claim ownership to land, but only enough to cultivate. No large plantation or feudal type systems developed. Land which was not claimed was forest land, bodies of water and some village public land.

During the nineteenth century Ayutthaya and early Bangkok periods, under the *sakdina* system, the kings gave land to bureaucrats as rewards. People working for the kings and royal families were ranked approximately based on the amount of land granted. And, since the two capitals, Ayutthaya and Bangkok were located in the Central Plain areas where land was fertile and suitable for paddy cultivation (the only commercial crop known at the time), most land grants were in these areas. The sense of land ownership was formally introduced at the turn of the twentieth century during the reign of King Rama V, when an Australian consultant introduced cartography to the kingdom. Announcements

were made inviting people who owned land to register. However, only people in the Central Plain areas, mostly elites living near the capital, received the information and were able to register their land rights. People in remote areas did not have access to this information and most villagers did not register their rights to land even if they were cultivating it.

In 1924, lands which had not been registered by individuals were declared by the government as public or government land without there being any real legal document issued to identify boundaries. Land classification started in 1941 when the first Forestry Act was promulgated in an attempt to look into public land. In addition to the Forestry Act, other forestry-related laws were gradually introduced. These are the Wildlife Preserves Act (1960), the National Parks Act (1961), the National Reserve Act (1964) to be followed by the Land Reform Act (1974) and the Forest Plantation Act (1992). It should be noted here that the Land Reform Act came about after the so-called student coup of 14th October 1973 when the military dictatorship was overturned. This date has been marked as the beginning of modern democracy of Thailand.

From 1974 onwards, the Department of Lands started to identify public land and planned to complete all identification of both private and public lands within ten years. However, this had proven a very difficult task because old land markers were made of wood and had rotted, so boundaries could not easily be drawn. The task was made doubly difficult as farmers had occupied the so-called 'public land' for many years. These farmers paid land tax annually and were given receipts (*pho bo tho*) acknowledging that they were occupying and utilising these plots of land. The villagers believed that these receipts were equivalent to land ownership papers.

#### *Private Land*

The land holding pattern in Thailand varies from region to region. In the North, the size of land holdings is very small and there is some degree of tenancy. In the Central Plain, the size of land holdings is large with a high rate of tenancy. In the Northeast, most villagers cultivate their own land and there is little landlessness or large-scale land ownership.

The traditional understanding of 'right of ownership' has been very

loose. It consisted in the implicit recognition and acceptance of the rights of first settlers and squatters in the absence of any formal legal basis. In 1955, settlers and squatters were asked to request legal documents called *so kho nung* which are deeds for initial occupation of an approximate plot which needs to be later confirmed by proper measurement to qualify for a more definitive document. After having announced in 1955 that land claims could be made through petitions, the government more or less took the stand that all unclaimed land was government land. However, it was found that this position could not be acted upon since it did not have substantive validation. Having moved into an area which they thought was unclaimed and having started to cultivate the land, settlers and squatters also went to the land office to pay land tax and were given a receipt (*pho bo tho*). This piece of paper was given to anyone who declared his occupation and utilisation of a piece of land without actually specifying the legal status of ownership. The district office accepted the tax payment without examining the actual plot, which may well have been on public land or in a national reserve area. The settlers and squatters cannot be blamed for the mistake of assuming that they had legal rights to land for which they had been paying land tax for many years. In the eyes of the villagers, the difference between public land and private land remained very unclear.

The process of declaring government land is a cause of conflict between government officers and the people. Government officers include both land officers and foresters. Land officers have to deal with earlier squatters on so-called government land while foresters have to deal with settlers/squatters who settled in forest lands.

#### *The Agricultural Land Reform Office (ALRO)*

The Agricultural Land Reform Office (ALRO) was set up according to the 4th National Development Plan (1977-81) as a means to help solve developmental problems of the country through land consolidation programmes. Once an area was declared as a land reform area, no transaction was supposed to be made for a period of three years. During this period, land reform officers had to collect information on the present land ownership status and make plans for land consolidation programmes. When this was completed, people could move into their al-

lotted plots and were given documents of occupation. Land at this point could be transferred to sons or daughters but not sold.

One problem which land reform officers encountered was that when a land reform area was declared, all land transactions were supposed to be frozen for three years. Farmers owning more than the allotted size of land were asked to sell the excess to the ALRO. But since most of the farmers had no legal papers, their land was taken without compensation. In the eyes of the villagers, the ALRO was set up to take land away from them and not to provide them land. This is a misconception. Land documents are seen as desirable in the eyes of villagers because the documents may be used for mortgages or as collateral when borrowing money.

#### *Forest land*

Forestry Policy has been included in the First National Development Plan (1961-64) and indicates that 50 % of the nation's total land area should be forested. As the population increases, forest encroachment has been observed and forest areas have been gradually reduced to 40% and now 25%. Land use for agriculture gives highly attractive returns to individuals including local villagers as well as urban investors. The cultivation of cash crops such as cassava and sugar cane, have become very popular. Roughly speaking, forest areas may be classified as protected forest and commercial forest.

Protected forests are forest areas having a slope greater than thirty five degrees and a high potential for erosion if not covered with forests and preserved for environmental conservation, including upper-watershed and erosion-prone areas, in addition to stable forests. Declared national parks, reserved forests and wildlife preserves are included in this category.

The management policy of protected forests consists of three main conservation activities, namely, the prevention of encroachment, forestry management, and reforestation to restore forest cover in areas where natural forest has been disturbed.

Confrontation between State conservation forest policies and individuals' rights to livelihood transformed into a human rights issue, as

observed during the 1970s and 1980s. During the 1980s, there was a strong debate over the conservation of forest areas 'without people' and the right of people living in the forest areas to their subsistence. Advocacy groups started to promote the concept of 'community forest' at this time. Unfortunately, advocacy groups have not yet succeeded in promulgating the Community Forest Act, which has failed to pass the scrutiny of Parliament.

Commercial forests are areas which contain valuable timber and should remain forested for the production of timber and related items. In general, these areas have low agricultural suitability and require a high investment for agricultural use. The management of commercial forests has as its objective the realisation of potential economic benefits derived from the utilisation of forest resources. Activities include logging, wood products industry, and reforestation for commercial purposes. The Forest Plantation Act (1992) is an outcome of the government's support for commercial forests.

#### *Agricultural development policies*

The First Five Year National Development Plan (1962-66) came about with the assistance of a team of experts from the World Bank. Adopting the concept of growth-centred development, the first and second plans focused very heavily on infra-structural developments with the construction of physical infrastructures such as roads, railroads, airports, dams and irrigation systems. Social infrastructures were also created including the construction of schools and health care centres. These infrastructural constructions were viewed positively by government officers as well as villagers hoping that these constructions would bring about development. The first two multipurpose dams, Bhumibhol Dam and Sirikit Dam, were established during this period. In this early stage of rapid infrastructural development, there were no Environmental or Social Impact Assessments required as part of the feasibility studies due to the lack of adequate knowledge of both the government and civil society.

During the 1970s, in the third and fourth plans, population control policy was adopted and decentralisation concepts introduced. Regional urban centres were identified as growth centres to attract people away

from Bangkok. The promotion of cash crop cultivation such as maize, sugar cane, cassava, jute and Para-rubber was achieved through a policy introduced by the government during the fourth plan (1977-81). Agricultural development programmes were introduced to increase crop productivity. Many poverty eradication programmes were implemented during the fifth plan (1982-86) based on the concepts of self-reliance and people's participation. During the 1980s, still adopting the growth-centred development paradigm, villagers were encouraged to cultivate cash crops for export, resulting in serious forest encroachment. Agricultural products constituted 25 % of the GDP. 60% of income was from exports and 70 % from labour.

The switch from import-substitution to an export-oriented policy can be seen from the widespread industrialisation activities undertaken during the sixth and seventh plans (1987-91 and 1992-96). Other agricultural activities promoted by policies of this period include commercial forestry, the cultivation of fast growing trees, forest plantations and the production of other types of forest products. Agricultural products became the main export products of the country. During the seventh plan, the government supported the agro-processing industry, contract farming, agricultural machinery, as well as other products such as textiles, metals, petrochemicals, iron/steel, and tourism.

The negative impacts of growth-centred development on people have been widely documented. The debate between growth-centred and people-centred development paradigms started in the 1980s and intensified in the 1990s. The people-centred development paradigm was included in the text of the eighth plan (1997-2001). However, the sincerity of the economists in the planning offices has been questioned. With strong resistance from the people locally, globally and transnationally, a gradual shift in development paradigms has occurred. The 1997 economic and financial crisis opened the eyes of many investors. The fall of the financial sector was saved partially by the strength of the agriculture sector in 1998 as the price of agricultural products helped save the economy to some degree. Aggressive investments were slowed down, and the 'efficiency economy' concept was promoted and finally adopted in the tenth development plan (2007-2011).

### *Impacts on human rights: conflict over use of natural resources*

The rapid economic expansion of the past is partly a result of intensive exploitation of natural resources, without systematic management and rehabilitation of the resources leading to greater conflicting resource use. Thailand's natural resources, which had once served as key contributing factors to national economic prosperity, have now become constraints for future development which must be carefully taken into consideration. Conflict over the use of natural resources may be summarised as follows:

1. The development of the land tenure system relegated many farmers to the status of landless cultivators. Frequently referred to as 'encroachers', they are seen by officers as 'illegal' because they have no land documents, despite the fact that most of their ancestors have been cultivating the land for generations.
2. Dam construction has forced people out of their former settlements to give way to reservoirs. These communities became involuntarily internally displaced persons (IDPs) without being provided with adequate, if any, compensation. They have been forced to give up their rights to fertile land in exchange for infertile land and meagre compensation.
3. During the 1990s when the debate over forestry policy was strong, the government succeeded in promulgating the Forest Plantation Act in 1992, while the Community Forestry Act never succeeded. This resulted in the growth of large plantations producing cash crops and forestry products. More and more small farmers become landless or contract farmers.

### *Conclusion*

The *International Covenant on Economic, Social, and Cultural Rights (ICESCR)* states clearly the State's obligations to protect the rights of individuals to economic, social and cultural rights. Similarly, the *Declaration on the Right to Development* was endorsed by the United Nations General Assembly in 1986. In the same year, a group of experts confirmed that Right to Development are an extension of the ICESCR as is evident in the document adopted by the General Assembly titled 'Limburg Prin-

ciples on the Implementation of the ICESCR'. The 1993 Vienna World Conference on Human Rights reaffirmed that Rights to Development are universal, cannot be violated and are fundamental rights. Rights to development cover economic, social and cultural rights with the aim being the sustained wellbeing of the people on the basis of participation as well as equal and fair distribution of benefits. There are only ten articles in the Declaration covering the basic concepts and the roles of the State.

To further strengthen as well as bring about the realisation of the right to development, the UN General Assembly again adopted the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights in 1977, ten years after the adoption of the Limburg Principles in 1986. The Maastricht Guidelines identified clearly the obligations of States in respecting, protecting and fulfilling the economic, social, and cultural rights of people. States have the obligation to respect and not violate rights of the people, the obligation to protect the rights of the people from being violated by third parties, and the obligation to fulfil the rights of people through rules, laws and regulations, as well as provide financial and other support. The States' obligation to 'fulfil' requires that the conduct or implementation of projects and programmes to provide services to the people is in accordance with human rights standards. States also have the obligation to 'result', meaning that States must take concrete actions to provide fundamental rights and protect people from human rights violations.

In 2005, UN Secretary General Kofi Annan appointed Prof. John Ruggie as his Special Representative on the issue of human rights and transnational corporations and other business enterprises. In 2008, the Special Representative of the Secretary General (SRSG) proposed a 'three pillars' framework to address business and human rights. The framework covers: (1) the State's duty in international law to protect citizens from the violation of human rights by transnational business; (2) the corporate responsibility to respect human rights; and (3) the need for access to effective remedies including through appropriate judicial or non-judicial mechanisms. The Special Representative held many consultative meetings and the Framework has been endorsed and employed beyond the Human Rights Council by governments, business enterprises and associations, civil society, workers' organisations, national human rights institutions and investors.

It is clear that the UN Framework follows the Maastricht Guidelines with some adjustments. While the Maastricht Guidelines suggested that States have the obligation to 'protect, respect, and fulfil', the Ruggie Framework expanded further that in addition to States' obligation to fulfil (through the obligation to conduct or implement and the obligation to result), States need to be clear on their obligation to provide effective remedy to people whose rights have been violated. The third pillar, 'remedy', substitutes the 'fulfil' pillar which focuses on the State's obligation to provide infrastructure and services to fulfil the basic and fundamental rights of all people. The 'remedy' obligation brings in the dimension of reconciliation and compensation.

In its resolution 8/7, the Human Rights Council extended the Special Representative's mandate to June 2011, asking him to 'operationalise' the Framework and agreeing that the recommendations should take the form of 'Guiding Principles'. According to Clause 11 of the Report:

The Guiding Principles addressing how governments should help companies avoid getting drawn into the kinds of human rights abuses that all too often occur in conflict-affected areas, emerged from off-the-record, scenario-based workshops with officials from a cross-section of states that had practical experience in dealing with these challenges. *In short, the Guiding Principles aim not only to provide guidance that is practical, but also guidance informed by actual practice* (UN General Assembly 2011). (emphasis added)