

Land and Agricultural Development Policies Impacting on Human Rights in Thailand

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Introduction

This paper will be looking at issues related to land policies and agricultural development programs impacting on human rights situations in Thailand. Due to limited time and space, the issues discussed will be selected based on my personal involvement in some of the projects.

1. 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 thinking of most villagers. 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, 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 on when population size became larger 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.

Paper presented at a conference on *Human Rights and Business: Plural Legal Approaches to Conflict Resolution, Institutional Strengthening and Legal Reform*, Convened by KOMNASHAM, Hotel Santika Premierre Beach Resort, Bali, Indonesia, Nov. 28-Dec. 1, 2011.

During the 19th Century in the 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 are 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 the Central Plain areas. Sense of land ownership was formally introduced at the turn of the 20th 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. 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 the information and most villagers did not register their rights to land even if they were cultivating the land.

In 1924, lands which had not been registered by individuals were declared by the government to be public or government land without there being any really legal document issued to identify the 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. They 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 14 October 1973 when the military dictatorship had been overturned. This date has been marked as the beginning of modern democracy of Thailand. Since 1974 the Department of Lands has started to identify public land and planned to complete all of the identification of public land within 10 years. Attempts were made to identify both public and private lands. This had been a very difficult task because old land markers were made of wood and had been rotten. Boundaries cannot be easily drawn. The task had been doubly difficult when farmers had been 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 utilizing 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 tenancy. In the Central Plain, the size of land holding is large with a high rate of tenancy. In the Northeast, most villagers cultivate their own land and there is little landlessness or large land ownership.

Traditional understanding of “right of ownership” had been very loose. It was the implicit recognition and acceptance of the rights of first settlers/squatters in the absence of any formal legal basis. In 1955, settlers/squatters were asked to request legal documents called so kho nung which is a deed 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 may 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/ squatters also went to the land office to pay the land tax and were given receipt (pho bo tho). This piece of paper is given to anyone who declares his occupation and utilization of a piece of land without actually specifying legal status of ownership. The district office accepts the tax payment without examining the actual plot, which may well be on public land or in a national reserve area. The settlers/ squatters cannot be blamed for the mistake of assuming that they have legal rights to the pieces of land for which they have been paying land taxes for many years. In the eyes of the villagers, the difference between public land and private land was 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 programs. Once an area is declared to be a land reform area, no transaction is supposed to be made for 3 years. During this period, the land reform officers must collect information on the present land ownership status and make plans for land consolidation programs.

When this is done, the people can move into their allotted plots and are given documents of occupation. Land at this point can be transferred to sons or daughters but cannot be sold. One problem which land reform officers encounter is that when a land reform area is declared, all land transactions are supposed to be frozen for 3 years. Farmers owning more than the allotted size of land are asked to sell the excess to the ALRO. But since most of the farmers have no legal papers, their land is taken without compensation. In the eyes of the villagers, the ALRO is 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 be used as collateral when borrowing money.

Forest Land

Forestry Policy has been included in the First National Development Plan (1961-64) indicating 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 %. Returns on land use for agriculture give highly attractive returns for individuals which include local villagers as well as urban investors. Cultivation of cash crops such as cassava and sugar cane, became very popular.

Roughly, forest areas may be classified into protected forest and commercial forests.

Protected forests are forest areas having a slope greater than 35 degree and high erosion potential if not cover with forests, 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.

Management policy of protected forests is in terms of conservation consisting of 3 main activities, namely, the prevention of encroachment, forestry management, and reforestation to restore forest cover in areas where the natural forest has been disturbed.

Confrontation between state conservation forest policy and individuals rights to livelihood became human rights issues observed during 1970s and 1980s. During 1980s there was a strong debate on conservation of forest areas without people and the right of people for subsistence living in the forest areas. Advocacy groups started to

promote the concept of “community forest” at this time. Unfortunately, advocacy groups have not succeeded in promulgating the Community Forest Act. The law 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 should have low agricultural suitability and require a high investment for agricultural use.

Management of commercial forests has the objective to realize the potential economic benefits which can be derived from the utilization 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 support for commercial forests.

2. Agricultural Development Policies

The First 5-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-centered development, the first and second plans focused very heavily on infra-structural developments with constructions of physical infrastructures such as roads, railroads, airports, dams, and irrigation systems. Social infrastructures were also implemented including constructions of schools and health care centers. These constructions of infra-structures were viewed positively by government officers as well as villagers, hoping that these constructions will bring about development. The first two multipurpose dams, Bhumibhol Dam and Sirikit Dam came about during this period. In this early stage of rapid infrastructural development, there were no Environmental with Social Impact Assessment required in the feasibility studies due to lack of adequate knowledge of both government and civil society.

During the 1970s, in the third and fourth plans, population control policy was adopted with the decentralization concepts introduced. Regional urban centers were identified as growth centers to attract people away from Bangkok. Promotion of cash crop cultivation such as maize, sugar cane, cassava, jute, and para-rubber were the policy introduced by the government during the 4th plan (1977-81). Agricultural development programs were introduced to increase crop productivity. Many poverty eradication programs were implemented during the Fifth Plan (1982-86) with the concepts of self-reliance and people’s participation. During the 1980s, still adopting growth-centered development paradigm, villagers were encouraged to cultivate cash crops for export, resulting in serious

forest encroachment activities. Agricultural products constituted 25 % of GDP, 60% of income from export, and 70 % of labor.

The switch from import-substitution to export oriented policy can be seen when industrialization activities became very much evident during the sixth and seventh plans (1987-91 and 1992-96). Other agricultural policies promoted include commercial forestry cultivating fast growing trees, forest plantations, and other forest products. Agriculture industry became the main export products of the country. During the 7th plan, the government supported agro-processing industry, contract farming, agricultural machinery, as well as other products such as textile, metal, petrochemical, iron-steel, and tourism.

Negative impacts of growth-centered development on people have been documented. The debate between growth-centered and people-centered development paradigms took place since the 1980s and 1990s became more and more intensive. In the 8th plan (1997-2001), people-centered development paradigm was included in the text of the plan. The sincerity of the economists in the planning offices has been questioned. With strong resistance from the people both locally, globally, and transnationally, shift in development paradigms are being observed slowly. The 1997 economic and financial crisis opened the eyes of many investors. The fall of the financial sector was saved partially by strong agriculture sector in 1998. Price of agriculture products helped save the economy somewhat. Aggressive investments were slowed down, and efficiency economy concept was promoted and finally adopted in the tenth development plan (2007-2011).

3. Impacts on Human Rights: Conflict over Use of Natural Resources

The rapid economic expansion in 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 use of natural resources may be summarized in the following paragraphs.

(1) The development of land tenure system forced many farmers to be identified as landless cultivators, they are called "encroachers", and 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.

(2) Dam constructions have forced people out of their former settlements to give way for reservoirs. They became internal involuntary displaced persons without adequate compensation. They have been forced to give up their rights to fertile land in exchange for infertile land and small compensation.

(3) During 1980s when the debate over forestry policy was strong, the government succeeded in promulgating “Forest Plantation Act” in 1992, while the Community Forestry Act” has never succeeded. This resulted in the growth of large plantation producing cash crops and forestry products. More and more small farmers become landless or contract farmers.

4. Conclusion

ICESCR (Intercovenant on Economic, Social, and Cultural Rights), The Declaration on Right to Development (1986), The Limburg Principles (1986), the Maastricht Guidelines (1997), and the Ruggie Framework on Business and Human Rights (2011).

The ICESCR states clearly the state 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 Rights to Development is an extension of the International Covenant of Economic, Social and Cultural Rights (ICESCR) as is evident in the document adopted by the General Assembly titled “Limburg Principles on the Implementation of the ICESCR. The 1993 Vienna World Conference on Human Rights reaffirmed that Rights to Development is universal and cannot be violated and is part of the fundamental rights. Rights to Development cover economic, social, and cultural rights with the aim toward the continuous well being of the people on the basis of participation as well as equal and fair distribution of benefits. There are only 10 articles in the Declaration covering basic concepts and the roles of the states.

To further strengthen as well as bring about the realization of Rights to Development, the UN General Assembly again adopted the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights in 1977, 10 years after the adoption of the Limburg Principles in 1986. **The Maastricht Guidelines identified clearly the obligations of the states in respecting, protecting, and fulfilling the economic,**

social, and cultural rights of the people. The states have the obligation to respect and not violate rights of the people, the obligation to protect rights of the people from being violated by third parties, and the obligation to fulfill the rights of people through rules, laws, and regulations, as well as providing financial and other support. The states obligation to fulfill require that the states have the obligation to conduct or implement projects and programs to provide services to the people according to human rights standard. The states also have the obligation to result, meaning that states must be able to bring about concrete output in providing fundamental rights and protect people from facing human rights violations.

In 2005, the 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 beyond the Human Rights Council, the Framework has been endorsed and employed by individual governments, business enterprises and associations, civil society and worker’s organizations, national human rights institutions and investors.

It is clear that the framework follows the Maastricht Guidelines with some adjustments. While the Maastricht Guidelines suggested that States have obligation to “Protect, Respect, and Fulfill”, the Ruggie Framework, expanded further that in addition to states obligation to fulfill (through obligation to conduct or implement and the obligation to result), states need to be clear on its obligation to provide effective remedy to people whose rights have been violated. The third pillar “Remedy” is substituting the “Fulfill” pillar which focuses on the states obligation to provide infrastructure and services to fulfill the basic and fundamental rights of the 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 until June 2011, asking him to “operationalize” the Framework and agreed that the recommendations

should take the form of “Guiding Principles”. According to the 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).