



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

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ABSTRACT

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

1. Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

³ Pun Inlee, pers. comm., 2001.

fierce debates and scrutiny, a compromise version passed the Lower House. However, when the bill went to the Senate, it faced strong opposition from a group of conservative senators comprised of former civil servants and retired officials who lacked understanding of how people's livelihoods are linked to forests, and had no trust in rural peoples' ability to manage the forest. The senators strongly opposed the provision in the bill that allowed community forests to be located in protected areas. Following legislative procedure, when there are major disagreements regarding a bill, a joint-vetting committee between the Lower House and the Senate is set up to scrutinize the bill. This turned out to be a serious stumbling block for the community forestry movement, since a large number of movement members were ethnic minorities who lived in protected areas. They knew that a community forestry law that disallowed community forests within protected areas would not solve their problems.

Rejection of the people's community forestry bill truly reflected the social reality of division between urban-based elite classes and rural-based farmer classes in Thai society, not only in vision and practice when it came to environmental conservation, but it also reflected deep divisions within the social fabric of Thailand. The bill continued to be debated in parliament until the elected government led by former Prime Minister Thaksin Shinawatra was overthrown by a military coup d'état in 2006 after a lengthy street protest by pro-royalist groups. Ironically, however, under the military-appointed National Assembly that followed, the community forestry bill was deliberated and finally became law. However, the major principles of this new community forestry law had been modified to the extent that it was no longer acceptable to the network of the community forestry movement that originally pushed for it. In any case, the community forestry law was only in effect for a short time, as it was nullified by the constitutional court due to a lack of quorum during its approval in the national assembly. Since that time people stopped talking about the bill, and the initial momentum that propelled it was lost.

3. From community forestry to communal land titling

The Asian financial crisis in 1997 created a shock wave in Thai society, one that in many ways became materially and also discursively linked to forest and land resource management. While the community forestry movement was in decline, land conflicts started to boil up with some people claiming that at least some who lost their jobs in the big cities had returned to their homes in rural areas and wanted to go back to their original agricultural livelihoods. While it is not clear to what extent those returning to rural areas after the financial crisis were actually unable to find land, at the very least a resistance narrative emerged that told the story of those people finding little or no land available, thus leading to tensions and conflict. In 2002, in Wiang Nong Long and Pa Sang Districts, Lamphun Province and Ban Pong Sub-district, San Sai District in Chiang Mai Province, a group of landless farmers decided to seize the lands left idle in their community, and start cultivating them to make a living. Some of these were common lands previously used for grazing livestock. However, they had been converted into private lands with land titles issued by the Land Department. The villagers questioned what they saw to be the illegitimate issuance of land title deeds. A number of these farmers were later arrested for illegal encroachment on private lands and brought up on criminal charges. Many were imprisoned and some are still fighting their cases.

These circumstances led to the formation of the Northern Farmer Network (NFN) in the same year, which aimed to campaign for community land reform, citing the failure of state land reform that resulted in a considerable amount of agricultural lands ending up in the hands of rich non-farmers. They fought both in and outside the court system for changes in land policies and legislation. One of the major components of the campaign was to push to enact a law to recognize CLT. Those at the forefront of the movement argued that this form of land rights

would prevent local communities from losing land to outsiders, and that CLT would keep the lands for livelihood security under the control of community members. Local communities would be granted collective rights to land and would be able to manage these lands collectively. The CLT movement partially succeeded in getting the Democrat Party-led government to adopt its idea of CLT, by using a Prime Ministerial decree, dated June, 11, 2010 to issue the first community land title to a community and to prepare to issue more. The office of CLT was also provisionally set up under the Prime Minister's Office. However, a Prime Ministerial decree is considered subordinate to regular laws in the Thai legal system. It is not deemed to be an inalienable right as is the case with the Land Code. Therefore, government policy on CLT was stalled after the Phue Thai Party was elected to government in 2011. The Prime Minister Yingluck Shinawatra's government regarded CLT as a policy of the previous government and did not want to pursue it, fearing that the Democrat Party would get credit if it succeeded. Finally, Yingluck's government was ousted in 2014 by a military coup, after a long political conflict that included intensive street protests and counter-protests.

The NFN, later renamed as the Northern Farmer Federation (NFF), was, however, determined to continue pushing for a CLT law by re-submitting the CLT law as one of the legal packages included in '4 laws for the poor' (popularized with the banner "4 Laws 4 the Poor"). Apart from the CLT law, the other laws promoted were the Land Bank Law, the Progressive Land Tax Law, and the Justice Fund Law. The poor farmers supporting the NFN believed that these four laws would be the once-and-for-all solution to land conflicts in Thai society. The NFN also changed its strategy by networking with other peoples networks under the name of "Peoples Movement for a Just Society" or "P-Move". P-Move was established to de-politicize the people's movement, since it had been undermined by the divided politics recently evident in Thai society. Key leaders of P-Move have learned from experiences associated with the community forestry movement that they cannot expect to be able to win support from urban-based middle-class people. Some members of P-Move have pinned their hopes on the military-appointed National Reform Council (NRC), to help push their ideas through the coup-appointed National Legislative Assembly (NLA). However, the military government had its own ideas regarding land issues, ones quite different from those of P-Move. The Prayuth Chan-Ocha government ambitiously established a National Committee of Land Policy to oversee land-related issues.

The current military government did acknowledge the inequality problem in Thai society and pledged to solve it through reforms. However, when the 4 laws for the poor were submitted to them their response was mixed. For example, they adopted the idea of the Justice Fund and pushed it to become law in a relatively short period of time, so as to provide a mechanism for the poor to receive loans to fight court cases. However, they empowered provincial governors to decide who should gain access to these funds, which has resulted in those engaged in legal battles with the state not being able to access the funds. That was not the way the fund was originally expected to be implemented. They rejected the progressive land tax, which would have resulted in people owning over 50 rai of land having to pay a higher land tax rate. They claimed that it was not suitable for Thailand's current economic situation. Nonetheless, they did come up with an inheritance tax law and followed up with a land and building tax law, although they were relatively lenient on the rich. They agreed with the idea of a land bank but heavily modified its proposed structure so that it would be operated using funds generated from its own revenues, just like other government banks which tend to be commercially oriented. There has been speculation that the land bank law will be promulgated during the term of this military government.

For the CLT law, at first the military government agreed to continue with the policy adopted by the Democrat Party-led government, but it initially dragged its feet in terms of appointing the executive team required to run the program. Finally, the National Committee on Land

Policy (*Khana Kammakarn Natyobai Thidin Haeng Chat*) announced the *Kor Tor Chor* (KTC) program, which represents a new idea for CLT, but crucially, one that is much less rights-oriented, and which will be discussed in the next section of this paper.

Notably, the CLT movement has engaged in the preparation process for qualifying some communities to apply for the present government's CLT program. The activities have included mapping individual and collective plots using new cartographic techniques such as GPS and aerial photographs. Household data were also required for registration. These processes have been carried out by NDF and NFF in collaboration with rural communities, initially with financial support from Oxfam (UK). They adopted a nine-step process (*Bandai Kao Kun* in Thai) to ensure the sustainability and security of farmers' livelihoods (Wittayapak et al., 2016). By the time the KTC program was launched, most of the communities that belonged to the network had the necessary information in hand.

4. From empowering communal land titling to uneven access and benefits without full rights and with considerable present-day and future uncertainty

After seizing power from the elected government in 2014, the military rulers vowed to tackle two chronic problems related to forest and land resources. It adopted a two-pronged approach. On the one hand, it adopted a policy to "reclaim the forest" known in Thai as "*Tuang Khuen Phuenpa*", encroached upon in forest reserves and protected areas. On the other hand, the KTC program was initiated to allocate degraded forest land to landless farmers who already occupied those lands. At the beginning, the reclaiming forest policy seemed to win the heart of the public when they saw the combined forces of the army, police, and park officials raiding luxurious resorts inside protected areas owned by rich and influential people. In some cases, protected area officials used heavy machine-like backhoes to tear down expensive resort houses. However, the implementation of this policy backfired with the poor when the military used chainsaws to cut down hundreds of rubber trees that farmers had planted during the rubber boom of the 2000s (Fox and Castella, 2013), accusing them of forest encroachment. In some cases, farmers insisted that they planted rubber trees on their own lands. The public started to dismay when a number of poor farmers were arrested by soldiers and prosecuted for forest encroachment.

The government is allowing farmers who have already registered for the CLT program adopted by previous governments to join the KTC program. However, the KTC program has imposed additional conditions for granting lands to rural communities. Crucially, those lands must be outside Watershed Classification 1 and 2 areas; must not be in protected areas; and must not have been occupied after the cabinet resolution issued on June 1, 2002. These conditions differ considerably from the CLT process that locals had previously engaged in. With these additional conditions, many farmers lost the opportunity to include their lands within the KTC program, because the RFD intends that up to 50 percent of those lands should be replanted with trees. The most controversial aspect of the KTC program is that it stipulates that the government is not required to give ownership rights to the farmers or the community over the collective plots of land, as would have been the case with the CLT process, but instead provides them with 30-year leases, which are paid for at a rate of 25 Baht (less than US\$1) per rai (equal to 1600 m²). The rent rate is nominal, but the key issue is that the program's rules contradict long-standing farmer claims to have owned the lands before the forest reserves were declared. Therefore, joining the KTC program means that people receive official access rights to forests that they did not previously have, but to gain this access they have to implicitly accept that the lands they are being given official access to are owned by the state, not by them. As seen in a KTC collective plot certificate given to the farmers, article 16 of the National Forest Reserve Act B.E. 2507 (1964) has been invoked, which

authorizes the Director-General of the RFD to transfer forest lands in forest reserves to the provincial governor. Then the governor sets up a committee to consider the allocation of the lands to farmers, but without actually relinquishing ownership rights. Moreover, the existence of the KTC program implies that areas that cannot be legally included in it should be returned to the state. While the KTC program was created by the military government presently in power in Thailand, thus making it likely that the military will continue to respect the policy, it is less clear how the policy might be viewed by future civilian governments, although it appears that the RFD supports the policy.

In early 2017, farmers living in five areas under the implementation of the KTC program were interviewed with the goal of learning about their opinions regarding the program. These are the first communities to receive communal land titles under the KTC program. The following is what we found.

1) Bua Yai Sub-District, Na Noi District, Nan Province

We interviewed Mrs. Thikumporn Kongson, the leader of CLT movement there. She was selected as Nan Province's representative within the National Reform Council (NRC) after the 2014 coup d'état, to the delight of NGOs and the CLT movement. Many hoped that their voices would be heard through having a representative at the policy level. According to others in the CLT movement, she did a moderate job as a member of the NRC, which is dominated by military personnel, civil servants and technocrats. Two local officials from the Tambon (Sub-District) Administrative Organization (TAO) were also present to provide data since TAO has cooperated with this program.

Bua Yai was allocated 2796 rai of forest lands situated in Watershed Classes 3, 4, and 5. This area was divided into 31 collective plots linked to 456 individual farmers. In total, 480 individual plots were mapped. Unlike most of the households living in the forest lands, who normally insisted that they lived on the lands before forest reserves were declared, Mrs. Thikumporn accepts that some of her fellow villagers illegally encroached on forest lands after the Bua Yai area was declared as a national forest reserve in 1987. Therefore, she thought that the KTC program could prevent those people from being arrested by RFD officials.

Rules and regulations have been put in place since preparations were made to apply for CLT during the time of the previous government. For example, the villagers are not allowed to sell land to outsiders but can transfer it to their children or other members of the community. They said the conditions imposed on them by the KTC program were similar to those included in the Agricultural Land Reform Certificate (*Sor Por Kor*) program, except that the *Sor Por Kor* program is for individual not communal titles, which has been in place since 1975, and is the responsibility of the Agricultural Land Reform Office (ALRO). If farmers do not follow the conditions, the land certificates could be revoked and returned to the government. Bua Yai leaders also mentioned the role of the Community Organization Council – COC (*Sapa Ongkorn Chumchon*) in the management of KTC land allocation at the Sub-District level. The COC Act B.E. 2551 (2008) allowed each Sub-district to set up COCs to balance power with TAOs. Most members of the COC are respected elders and local intellectuals.

The most important positive aspect of the KTC program has been the recognition that the community now receives from government agencies. After the KTC certificate was issued, the villagers were satisfied that various government agencies have come to work in the village without the villagers having to be worried about being accused of breaking the law. For example, the Land Department came to help measure the plots. RFD officials helped validate the boundaries of the KTC areas. The Agricultural Extension Office sent experts to provide technical assistance regarding organic farming practices. The TAO executive members were willing to allocate development funding to improve infrastructure inside the KTC areas. In particular, the villagers are now confident that their agricultural produce, especially feed corn, will not be turned down by big buyers like the Chareun Pokaphand (CP) Group, the biggest corn buyer in the country.

Dramatic accusations, mainly coming from people in urban areas, especially Bangkok, have previously been leveled at farmers, especially in Nan Province, who have been accused of destroying forest to cultivate upland corn. As a result, giant agri-business groups, such as CP, have been pressured to take responsibility for the deforestation they have indirectly contributed to. In response, CP announced that it will no longer buy feed corn from producers who do not have official land certificates. In other words, the farmers who clear forest lands to grow feed corn would be unable to sell their products. The people of Bua Yai deemed that the KTC program has helped to legalize and legitimize their agricultural practices.

Mrs. Thikumporn told us that during her time as a member of the NRC, her efforts to push for the CLT law were steadfastly opposed by the RFD. She acknowledged that KTC certificates, like Communal Land Titles issued by the Democrat Party government in 2010, were not secure if government policy changed, since they are based on lower status regulations, not self-encompassing legislation. She explained that the next step is to negotiate over villagers' lands in the Watershed Classification 1 and 2 areas, which were excluded by the KTC program. Bua Yai villagers argue that if they were to plant trees or keep the lands as forest, those areas should be considered community forests which the villagers could use. Unfortunately, we were unable to interview the villagers whose lands are in Watershed Classification 1 and 2 areas. However, it seems highly likely that those villagers do not want to give up their land, and are not happy with their land not being included by the KTC program.

Since 2002, Bua Yai has created rules to regulate their community forest. The community forest has been demarcated so as to be outside of the KTC plots. It encompasses an area of 3000 rai. The villagers want RFD officials to back up their control over their community forests, especially when dealing with outsiders. It seemed to us that they were in fact resigned to accepting that the lands included in Watershed Classification 1 and 2 areas will have to be managed following a government-mandated conservation approach. At the end, however, leaders in Bua Yai confessed that they were tired of fighting with the state for such a long time. They participated in the CLT movement by rallying and protesting during the early period but later withdrew because they were exhausted and saw no concrete results. The leaders insisted that they have not given up on the CLT law but for now they have decided to accept whatever is being offered to them. Moreover, they are uncertain whether the CLT law can really make a difference. However, they only received about 20 percent of the lands through the KTC program that they initially applied for via the CLT program.

2) Phi Sub-District, Ban Luang District, Nan Province

This area was part of the previously discussed "*Ban Luang Huang Pa*" movement in the 1980s. Like Bua Yai, the KTC program in Ban Phi Sub-district has involved the TAO in executing the whole process. Ban Phi Sub-district covers an area of 135 square kilometers or 84,375 rai, with 776 households included within five villages. The villagers have been practicing mono-cropping for decades, especially cultivating feed corn, on forest lands. In 2004, forest and district officials, in cooperation with community leaders, initiated a ground survey and prepared maps to demarcate cultivated land from areas still forested, in order to prevent further encroachment. The authorities also started to enforce existing forestry regulations. A number of villagers were arrested for forest encroachment.

In 2011, key village leaders went to Mae Tha Sub-district, Mae On District, Chiang Mai Province for a study trip. Mae Tha Sub-district, discussed below, has been a leading force in both the community forest and the CLT movements. Ban Phi got the idea to apply for a CLT from Mae Tha. The technical team from Mae Tha came to help Ban Phi survey and map lands in preparation for applying for a CLT. A CLT committee was formed to oversee the process, and village operational rules were modified to fit with CLT management. The TAO of Ban Phi became involved through issuing regulations to formalize the CLT application process. Government agencies from provincial offices,

including the Land Department and the Natural Resources and Environment Office lent support through measuring land plots.

Under the KTC program, Ban Phi received 3454 rai out of a total of 12,000 rai applied for through the CLT committee. Only 256 households received KTC certificates. In this case, the villagers whose lands are in Watershed Classification 1 and 2 areas and were therefore not included in the KTC program, but were occupied before the year 2002, can presently be used for agricultural purposes, provided that they are not expanded. Infrastructure development has, however, been prohibited in these areas. Lands occupied after 2002 may, however, be confiscated by the RFD for tree planting in the future, thus making the situation somewhat precarious. Any encroachment after 2014 will be prosecuted.

Overall, the KTC program has helped solve some villager problems. One of the villagers was quoted as saying "Feed corn produced from the KTC lands can now be sold to CP company." Other villagers commented that, "We would have liked to have been allocated all the lands submitted to the KTC program, as we have demarcated them out of forest and the TAO has issued regulations and set up a natural resource and environmental management committee to govern the matter." The villagers pointed out the benefit of the CLT program preparation process in terms of land surveying, mapping and data collection made them ready for obtaining a KTC certificate, as government agencies had all this information. The villagers insisted that land will still be important for their livelihoods in the future. Even though much of the younger generations have gone to work in the big cities, they continue to send money back to their families to invest in sustainable agriculture, so that they can have their own businesses when they return home.

3) Three villages in Yod Sub-District, Song Khwae District, Nan Province

Song Khwae District is one of the poorest parts of Nan Province. The majority of the inhabitants are ethnic Khmu who traditionally practiced swidden cultivation. The District is mostly mountainous, and has become a target area for a government project aimed at achieving poverty reduction, and for an integrated program on development and conservation. We were able to arrange for a focus group discussion regarding the KTC program. Group members included the mayor, a local school teacher, the Sub-district chief, headmen from the villages, and staff of development projects. We were initially briefed about the general situation and the livelihoods of the people. Conflicts between the villagers and the state over forest lands have become common over the years. This led to the demarcation of cultivated lands out of forest land through community zoning, in agreement with forest officials.

Two prominent projects related to Integrated Conservation and Development (ICD) operate in this area. They are the Pid Tong Lang Pra (PTLP) project and the Mae Fa Luang project, both of which are royal projects, and carry out similar activities in support of livelihoods and forest conservation. The Mae Fa Luang project has adopted a payment for ecosystem services (PES) initiative, in order to support the community to protect the forest. The villagers have been paid up to 300 Baht for forest conservation efforts, including tree planting and constructing firebreaks. The PTLP project, considered to be a King-initiated project, has been able to mobilize human resources, budget and machinery from government agencies to implement various activities to improve the livelihood of people and maintain forest ecosystems at the same time. The project employs GIS tools to demarcate cultivated lands from forest lands so that development activities and conservation measures can be implemented conflict-free.

The major obstacle in the execution of development programs in Song Khwae District has been village lands overlapping with Doi Pha Chang Wildlife Sanctuary. This has caused continued conflicts between local villagers and state officials. Holding cultivated lands designated as being inside forest areas has compromised the villagers of rights to receive compensation for agricultural losses caused by natural disasters or when market prices are low. Government budget can also not be allocated to people residing within areas designated as forest lands. All

these problems led the villagers to conduct mapping work inside their community forest. They tried to engage the TAO to make administrative regulations related to natural resource and environmental management. These regulations required the endorsement of District Officers and the Provincial Governor. Many were reluctant to endorse regulations, as they were not sure about the legality of doing so.

Only Na Rai Luang Sub-district initiated the CLT preparation process with the support of NFF. Song Khwae District became involved with the KTC program due to government operations to reclaim forest. A major incident occurred when soldiers and forest officials raided the rubber orchards of some of the villagers and used chainsaws to cut down 12 rai of rubber trees. The authorities accused the villagers of being linked influential people who had encroached on state forest land. In fact, one of the rubber orchards belonged to the local Sub-district chief. The villagers argued that they were ordinary farmers who had worked the land for many years. They claimed to have lived in the area since 1963, whereas the forest reserve was only declared in 1988.

After the above incident occurred, villagers were given the chance to join the KTC program. The villagers, at the same time, sought help from NFF, which coordinated the CLT movement of P-Move. The local community wanted forestry officials to join them in mapping the lands in the same way as the PTLP project has been doing. In this case, 13 households were forced to return 168 rai of land to the RFD in line with the reclaiming forest policy. In a symbolic event, the Governor presented a letter of acknowledgement to them but the villagers told us that, “we received the letter with tears in our hearts.” The RFD still demanded that an additional 200 rai be returned.

Participating in the KTC program, the villagers in Song Khwae received 6269 rai out of the 9000 rai they applied for. Most of the KTC lands were linked to the PTLP project. It is recognized amongst officials in Nan Province that this project commands some privilege in dealing with authorities, as it is a King-initiative. Lands excluded from the KTC program have been included in the “Bald Mountain” strategic plan of the Department of National Parks, Wildlife and Plant Conservation (DNP), and are expected to be replanted with trees. The villagers who occupied these lands were required to register with the DNP to assure that no further expansion of farming areas into the forest occurs.

Villagers would have preferred to have received a communal land title rather than a KTC certificate because they want to have secure rights over their lands. Under the KTC program they have to lease the lands for 30 years, and nobody can guarantee what will happen after then. They expressed concern for their children, and they expressed their discontent. One person stated, “Why do I have to lease my own lands? I will not pay even a single Baht for a KTC certificate.” For the farmers who received KTC certificates, they were, however, somewhat satisfied with the program because government agencies have allocated budget for development projects. Moreover, they do not have to fear being accused of violating the law anymore. In the past, when the government allocated five million Baht to each Sub-district in the economic stimulus plan, many could not spend the money because the lands they lived on were considered to be state forest. It has been observed that many government agencies have followed up on the KTC program to help the villagers improve their livelihoods.

4) Nam Pak Village, Tarn Choom Sub-District, Tha Wang Pha District, Nan Province

Nam Pak is the village where the Prime Minister came to present the KTC certificates to all four communities in Nan Province. The government wanted it to be a model for other communities. A group of communities including Nam Pak, Huay Thanu and Huay Muong Villages came together to form a community-based watershed management group for the Muong and Nam Pak sub-watersheds. They tried to convince the RFD to allow them to live in these watershed forests. They contended that they have protected almost 65 percent of the area as a watershed forest. Looming conflicts between the RFD and the villagers led the PTLP project to work in the area. Under the PTLP project, mapping of land uses was done quickly. The PTLP project was the

driving force in getting Nam Pak Village to join the KTC program. The headman thought that the KTC program might help prevent the communities from being harassed by the RFD. They proposed that an area of 3800 rai with 284 household be certified. However, only 2040 rai was approved. The rest of the land is included in Watershed Classification 1 and 2 areas. More than half of the community members were not qualified to join the KTC program.

The (former) headman revealed to us that he did not learn about the details of the KTC program until later, as the PTLP project urged him to join the program in a rush. However, after the village joined the program, and it became evident that many community members could not receive certification, he came under pressure from those community members who were not included in the KTC program. They feared that their lands would be taken back and replanted with trees, and they blamed him for agreeing to join the program. Under intense pressure, he decided to resign to take responsibility of the mistake. In this case, the KTC program created a rift within the community, especially between villagers who were included in the program and those who were excluded. The headman was doubtful about the PTLP project because he learned from other areas that the “*Na Laek Pa*” (literally meaning to get paddy fields in exchange for returning the forest) initiative had failed. The PTLP project made terrace fields for the villagers in exchange for them giving up shifting cultivation. He witnessed that after just a few years the farmers went back to growing feed corn again. He insisted that the villagers wanted to have rights and security for their lands, not just superficial solutions. However, through joining the KTC program and with the PTLP operating in the community, the villagers are under close surveillance since the authorities had obtained complete land use data. There were also concerns that villagers might have to pay local support taxes (*phasi bamrung thongthi*). The (former) headman believes that the RFD still dominates the KTC policies and treats the villagers as the enemy of the forest. He heard rumors that the CP Group will not buy corn from hotspot areas like his village. He claimed that the government has used satellite images to detect forest burning through measuring ground temperature.

5) Mae Tha Sub-district, Mae On District, Chiang Mai Province

Mae Tha was the first community to receive a KTC certificate from the military government. The coup leader, who is now the Prime Minister, presented the certificate during his first trip to Chiang Mai, and he vowed to use Mae Tha as a model for other landless communities throughout the country. Mae Tha is not a stranger to the farmer movement in northern Thailand. Mae Tha community leader, Sub-district chief Anan Duangkaewreun, has been a key leader in the community forest movement for decades. The first author met him when he was chairman of the Northern Community Forest Assembly in the 1990s. In his 70s now, he has transferred his ideology, knowledge and experiences to his son, Kanoksak Duangkaewreun, whom the first author interviewed. Mr. Kanoksak is the President of TAO of Mae Tha Sub-district.

Mr. Kanoksak takes pride in Mae Tha’s history concerning the fight for community forests after commercial logging had depleted the healthy forest of the area. The community is situated in a valley surrounded by mountains, and in the past it was relatively closed off from the outside. During the 1970s and early 1980s, Mae Tha was considered to be a “pink area” in terms of the infiltration of the CPT, since armed CPT members operated in the border region between Chiang Mai, Lamphun and Lampang Provinces, where Mae Tha is located. Like many communities in northern Thailand, Mae Tha started protecting the forest so as to ensure that there would be enough water to feed their traditional paddy field irrigation system in the valley. After the community forest movement declined, the communities in Mae Tha embarked on pesticide-free and organic farming. Their products supply the market in Chiang Mai and have become well-known amongst the network of alternative agriculture.

Mae Tha is a key member of the NDF network. In 2006, Mae Tha started mapping their land uses with NDF and joined the community

land reform movement. Later, Mae Tha became one of the frontline groups within the CLT movement and was amongst the first of 32 communities to complete the preparation process for applying for a CLT during the Democrat Party-led government period. However, Mae Tha's submission for a CLT was delayed by the RFD's refusal to hand over forest lands to the CLT Office. The subsequent government did not make any progress with the CLT program for reasons mentioned earlier. During the Phue Thai Party (the successor to the Thai Rak Thai Party)-led government, Mae Tha was still part of the CLT movement with P-Move, and pushed the military government to take action.

When the KTC program was offered to Mae Tha by the military government, the community members held a meeting to consider the opinion of the villagers. Some of them expressed frustration that they had been fighting and waiting for too long to get something out of their long struggles. They expressed exhaustion. Therefore, they felt that if there was anything coming along to help secure their land ownership, they wanted to grab it first. When asked whether joining the KTC program meant that they have abandoned the CLT movement, Mr. Kanoksak and others denied such a suggestion. He stated that, "We are always at the forefront of the people's movement. Why do we have to wait for others to be ready?" After a thorough discussion about pros and cons Mae Tha decided to join the KTC program and submit their land use data and maps to the KTC committee, requesting certification of 9000 rai. They were granted 7282 rai. A small part of their land was excluded because it is classified as buffer zone forest, and some idle lands were also excluded. The villagers do not mind turning these lands over to be forest. In the end, they seem content that they received more than they lost. In fact, they did not know about the conditions of the KTC program concerning Watershed Classification 1 and 2 areas until their application was already in the hands of the KTC committee in Bangkok, but fortunately only a relatively small portion of the lands they proposed were excluded.

What happened after joining the KTC program is important. Mae Tha's current leaders argue that in their history of struggles for forest and land rights, they were always at odds with the state. They never worked in collaboration with the RFD before. They wanted to try to work with the authorities for once, as they felt that they had nothing to lose. Like other KTC recipient communities, they have benefited from an increased number of government projects undertaken by various agencies. These have related to community development including livelihood improvement, agricultural extension, and tree plantation development. They have also developed a good relationship with RFD officials. Crucially, since the KTC program requires that the RFD delegate the power over the KTC lands to the Provincial Governor, Mr. Kanoksak said bluntly that, "In my view, talking to the governor is easier than talking to the RFD. We didn't know whether something worse would come from the RFD if we did not join the KTC program."

The communities at Mae Tha prioritized three respective needs in making the crucial decision to accept the KTC program. First, the villagers must have the ability to access lands and forests. Second, the community must be able to make the rules to manage lands and forests in the community. Third, the community must have property rights over lands and forests in the community. They acknowledge that under the KTC they have not achieved the third need yet. We would add that they have actually only partially achieved need two, since they do not have full control over management rules. This situation clearly shows that under the current circumstances, they favored development rights over inalienable property rights. When asked about the prospects after the 30 year KTC lease expires, the President of the TAO of Mae Tha simply said that, "Nobody knows but if we manage our natural resources and environment sustainably like what we are doing now, I don't expect any problems or negative change in the future."

5. Conclusions

In this paper we have described how the community forestry

movement in northern Thailand developed, and how it eventually shifted into a movement to obtain community land titles, and then finally transformed so that some communities have been able to obtain KTC certificates, which have provided some access to forest lands and government recognition and associated benefits associated with being able to access government funding and development support, but without receiving firm rights to the lands that they have been provided access to, and with some community members using lands classified as Watershed 1 and 2 areas with precarious access to those lands, and potentially facing eviction or being forced to participate in reforestation programs that threaten their agricultural activities and livelihoods.

The sorts of choices that villagers have made in the northern Thailand cases presented in this paper have come with both increased security and benefits, but also with considerable risks for some people at present, and long-term uncertainty for everyone. Indeed, these sorts of decisions, to enter imperfect but nonetheless somewhat beneficial land tenure arrangements are not limited to Thailand. For example, in Cambodia, where communal land titles are also available for some people officially classified and registered as "Indigenous communities"—an option not available in Thailand because the concept of indigeneity is not legally recognized in the country (Baird et al., 2017)—we see similar dilemmas associated with participating in such programs or not. Baird (2013), for example, has pointed out how communal land titles in Cambodia provide considerable rights and land security for swidden agriculture lands, including reserve lands for maintaining a rotational swidden system and expanding areas for future generations, but with the cost of indirectly having to relinquish rights to other non-agricultural forest areas that are important for local livelihoods, or accept relatively short-term community forestry arrangements with limited rights and limited land tenure security. Moreover, Baird (2017) has further pointed out how participating in the CLT program for Indigenous Peoples in Cambodia has resulted in communities becoming trapped in slow bureaucratic and expensive processes that force them to become subservient to the state, result in less than desirable outcomes in terms of the amount of land allocated to them, and even strip them of a certain degree of their dignity by being forced to engage in certain performative practices that are not actually in tune with cultural practices that people are comfortable with. Yet despite the problematic nature of such processes, as in northern Thailand those who participate in the CLT process in Cambodia do have the potential to gain some significant rights and benefits, potentially more than they could achieve if they wait for a better deal and not participate in the state mandated process at all. So ultimately, what is the right decision? As can be seen in northern Thailand, some communities and individuals are happy to have entered into the imperfect and uncertain KTC program, while others regret getting involved, or partially regret doing so, and still others continue to refuse to participate, instead hoping for a better deal. Does that mean that one group is right and the other is wrong? No! It means that there are a number of complex factors that come into play when choosing to participate or not in particular CLT programs. What might seem like the right decision for one group, could well be the wrong one for another. The big problem is trying to predict the future. Accepting gains now, and setting a precedent that could lead to losses in the future, is always a hard decision, because it is difficult to predict what the future might bring. It is a type of natural resource management gamble that people have to make all the time, not only in relation to options related to CLT, but with regard to various other natural resource management decisions as well. There are rarely situations where everyone gains forever, or when nobody gains forever. Rather, natural resource management decision-making is always done in the context of complicated pasts and presents, and uncertain futures.

Communal land titling has recently been presented as a panacea for various land-use problems and conflicts, and while it does often promise to lead to some improvements, we are unaware of any actually-realized CLT options, at least in Southeast Asia, that do not come with benefits and successes, but also risks and uncertainty. So where does

that leave us? It makes us aware that we need to think critically about CLT options in their various forms. That does not mean that we should immediately reject such options; it might even mean that we should take hold of options when they emerge, since the window of opportunity may be short. Ultimately, however, we should not assume that CLT options are always going to be beneficial for everyone forever, and in fact, entering such programs could ultimately be perilous. Therefore, we need to consider the complicated contexts in which such options arise, and recognize that what might be the right decisions for some, do not necessarily represent good options for others. We need to approach CLT with some hope, since it clearly does present opportunities, but also with a critical lens, so that mistakes are not made that could lead to disappointment and regret either in the short-term or the long-term. Clearly, these are tough decisions, and there are no easy or potentially unproblematic options. The only advice we can provide is to gain as much information as possible, and then allow the people who will ultimately be affected by the direction ultimately taken to have a real role in the tough and timely decisions that need to be made.

The cases discussed above also inform us that the specificity of place and time which people make choices need to be considered, to the extent that they are likely to be difficult to be duplicated elsewhere. The histories of the development of struggles over resources, and the lessons learned from previous experiences, shape peoples' decision-making. Although gaining strong rights is generally a desirable objective, people are frequently constrained to prioritize their needs by grabbing tangible rights that provide material and economic gains, albeit sometimes short term and uncertain ones. However, to interpret this as an ultimate goal of peoples' movements regarding communal resources would be inaccurate, as we were narrated from time to time during the lengthy course of our interviews that resource rights are human rights and justice in society, as resonated in the seminal work of Macpherson (1978).

The dilemmas related to communal rights regarding forests and lands that have been the focus of this paper help shed light on bigger problems in Thailand. They represent struggles of the rural poor for equal rights in various facets of Thai society. Conflicting views of people regarding relations with forests and lands reflect the highly differentiated views that generally exist in Thai society, particularly among people variously located, both socially and geographically, at the cores and peripheries of society. Moreover, dismissal of land and agriculture as irrelevant to rural development based on reductionist views of changes occurring in Thailand that emphasize the increased importance of non-agricultural sectors have the potential to lead to condemnation of the poor and landless farmers and result in them falling deep into poverty. For these people, lands are not only the means of material production but are also their livelihood security and represent the meaning of being farmers.

The case studies presented here provide broader lessons. We can see that despite years of community forestry efforts and associated advocacy in northern Thailand, the question of who owns the forest remains highly contested. In addition, the reassertion of state authority in the context of authoritarian/military rule has led to new tensions in relation to forest use and management claims. Another point that this paper makes clearer is the historical role that those previously associated with the CPT have used as leverage in relation to forest negotiations with the state over the last few decades. Indeed, to varying degrees, authorities were sometimes afraid of driving villagers into the hands of the CPT, and thus made some concessions to local people. However, with the collapse of the CPT, and as their supporters become older and less active, the question now is, can the Thai state now enforce its policies with greater impunity? Indicative of this, the Thai state seems to be making more use of a carrots and sticks approach to manage forest areas. They provide project funds/development assistance as incentives for people to join government programs such as KCT, while still holding onto a stick to use to potentially punish those who do not follow government policy. Indeed, there are a wide variety

of projects, powers, and histories of mobilization and exhaustion that have helped shape present circumstances with regard to forest and land management in northern Thailand.

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