

Common property rights regimes: Dynamics of management of freshwater fishery resources in communities of lower Songkhram River basin.

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*Fisherfolks consider a space for placing fishing tools a property not different from a space for a house or a paddy field; people recognize the right and do not seize the space from others.*¹

The significance of the question

Property as generally understood and used in daily life means a right to possess something. In anthropology, it is seen as a right of possession that guarantees the holder of the right to gain interest from it in the future; the holder does not own the 'thing', but rather holds the right over that 'thing'. Property is thus a matter of right and needs to be understood and explained in terms of social relationship that determines human behaviors in using and possessing resources. In other words, the property relationship only exists in the social relationship² which consists of 3 components: benefit, right and duty.³ In this sense, property differs from resources in that the former concerns the right of possession, whereas the latter concerns utilization.

Arguments in the study of property right can be divided into two schools of thought. The first mostly includes neo-classical economists who are proponents of the notion of state property and private property as they basically believe that, being state property, resources will be well protected and kept from degradation by the state, and, being private property, resources will yield benefit with maximum efficiency. They perceive the common property regime being the same as non-property regime or open access. The other school criticizes this as misperception. As illustrated in studies conducted worldwide, the common property regime has been in place⁴ ever since primitive societies began hunting and collecting wild products to societies that keep livestock as well as more modern agricultural and industrial ones.

¹ Baird, G. Ian, *A rapid study of fish and fisheries; and livelihoods and natural resource along the Sesan River* (Rattanakiri, Cambodia. Livelihoods and Natural Resources Study Oxfam (UK and Ireland) and Novib, 1995)

² Hann 1998:4-5, as referred in Yod Santasombat, "Property in Property Science: a cultural perspective", in *From Economic Crisis to Civil Society - a commemorative book on the 60th anniversary of Ammar Siamwala, 29 May 1999*, edited by Nipon Puapongsakon (Bangkok: Faculty of Economics, Thammasat, 1999), p. 264; Hallowell 1943, referred in Barfield Thomas, *The Dictionary of Anthropology* (Oxford: Blackwell Publishers Ltd, 1997) p. 378.

³ Bromley, W. Daniel, *Environment and Economy Property Rights & Public Policy* (Cambridge: Basil Blackwell, 1991) p. 2.

⁴ Wendell H. Oswalt, "Economic Organization", in *Life Cycles and Lifeways An Introduction to Cultural Anthropology* (Palto Alto: Mayfiled Publishing Company, 1986); McCay, Bonnie J. and James M. Acheson (editors), *The Question of the Common: The culture and ecology of communal resources* (Arizona: University of Arizona Press, 1990); Ostrom, Elinor, *Governing the Commons* (New York: Cambridge University Press, 1990); Bromley, W. Daniel, "The Commons, Property, and Common-Property Regimes", in *Making the Commons Work: Theory, Practice, and Policy* (San Francisco: Institute for Contemporary Studies Press, 1991); Chusak Wittayapak, *Local Institutions in Common Property Resources: A Case Study of Community-Based Watershed Management in Northern*

However, there is an argument among proponents of the latter school that, in theory, the regimes can be differentiated, but, in practice, the common property regime cannot be definitely separated from the state and private regimes; sometimes a property neither solely belongs to the state nor communities, rather belongs to both as the property right is a product of a long historical relationship between the state and local people. The state does not have complete control in management and regulation of the property relations which are complex, ephemeral and uncertain.⁵ And sometimes there can be multiple rights to a property at the same time⁶. Once the property relations change, property institution also has to change. The property institution may be redefined in regulating (and changing) the characteristic and boundary of the property right regime over natural resources.⁷ As property involves human relations over resources, it thus differs in each context of each locality and changes according to the economic, social and political changes which have rapidly happened since Thailand adopted the first National Economic and Social Development Plan in 1961. The study on freshwater fishery resource property in this paper focuses on a transitional process of the property right regime under the influence of the external economic and political changes that affect communities in the lower Songkram river basin in Northeast Thailand as well as the internal cultural factor.

The area of study is Nong Nam Yai village in Akat Amnuay district, Sakon Nakhon province in northeastern Thailand. The community is located in seasonally flooded area where freshwater resources are abundant. The local livelihood is closely related to natural resource use and management.

Theory

The author employs the concept of Human Ecology in data collection and analysis of the property rights regime and the fishery resource management, and Cultural Ecology concept to study social and cultural organization, and the communities' belief in resource management as their base of subsistence and as common resource. The study also covers their adaptation to the changing local ecosystems and the external economic and political changes through political science.

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⁵ Vandergeest, Peter, "Rethinking Property", *The Common Property Resource Digest* no.41 (January 1997): 5.

⁶ Rose and Grafton, "Property Rights for Natural Resources", in *Economic Rights and Environmental Wrongs - Property Rights for the Common Good*, p. 83-84.

⁷ Bromley, W. Daniel, *Environment and Economy Property Rights & Public Policy*, p. 22.

Related studies

Studies on the freshwater resource common property regime are conducted in other countries; for example, the Amazon basin (Peru, Brazil) and Benin in Africa. There are studies in Burma, Lao and Cambodia including cases of failure and success in common resource management by communities and cooperation between the state and communities.

Cases of communities succeeding in common resource management include communities in El Chino located on the banks of Tahuayo river in Amazonian floodplain⁸ in northeastern Peru and communities of Liha de Sao Miguel (ISM) on an island south of the Amazonian floodplain in Brazil.⁹

Factors and conditions contributing to development and management of the two cases are different in details. Communities in El Chino have flexible managements in different situations: strict during less fish stock and relaxed during more fish stock. The change in power relations with a local *patron* who viewed the management system as a threat for his commercial interests is needed. Because of his social status within the community, he was able to convince community members to dismantle the vigilance system.

In the case of communities of Liha de Sao Miguel, there are the social structure of the group, ecological structure of the system and institutional structure of the fishing agreement or, in other words, social capital (ecological knowledge, history of livelihood, relatives and political organizations) and ecological capital (habitat and food source preservation and physical condition) are brought together to manage resource in the lake.

Where fisher folks in Muang Kong, Champasak province in southern Lao¹⁰ are successful in co-managing freshwater resources with the state, villages are an essential element in planning strategy in setting up fish conservation zones. In this case, support from the state in communities' resource management is important, contributing to the success. It is so called 'village law' approved by the state.

In cases of the Irrawadee River in Burma, Tonle Sap Lake in Cambodia and Aheme Lake in Benin, it is found that political change from colonialism weakens the local authorities in managing common resources. Water sources and fishery resources have

⁸ Danny Pinedo, Percy M. Summers, Richard C. Smith, Johnny Saavedra, Rafael Zumaeta and Angelica M. Almeyda. Community-Based Natural Resource Management as a Non-Linear Process: A Case Study in the Peruvian Amazon Varzea. The Eighth Biennial Conference of the International Association for the Study of Common Property (IASCP) in Bloomington, Indiana, U.S.A. May 31st-June 4th, 2000.

⁹ Fabio Castro de, David G. McGrath, Marcelo Crossa. Adjusting to Change: The Crafting of Community Lake Management systems in The Brazilian Amazon. The Eighth Biennial Conference of the International Association for the Study of Common Property (IASCP) in Bloomington, Indiana, U.S.A. May 31st-June 4th, 2000.

¹⁰ Ian G. Baird. Towards Sustainable Co-management of Mekong River Inland Aquatic Resource Including Fisheries in Southern Lao PDR, 1999.

become state properties and local communities have lost their right to access the resources. Newly drafted laws allow influential figures more access. That has caused conflicts that are so profound and complex that newly state-established institution cannot cope.

Study Area

In Nong Nam Yai village, Pone Ngam subdistrict, Akat Amnuay district, Sakon Nakhon¹¹, there are two ethnic groups: Yo, the majority population (82%), and Tai Lao.

The main beliefs are Buddhism and animism. The local people worship the ghosts twice a year before cultivation and after harvest for the natural fertility.

The villagers depend on natural resources as their subsistence: fishery, food, firewood, livestock-raising in seasonally flooded forests.

Process of property regime change of the Nong Nam Yai community

It is found that the property regime of the community faced a turning point in the late 1980s caused by the economic development and the expansion of the state's political power over local administration and resource management.

The economic and political change from outside affected the local economy and resource management of communities of the lower Songkhram basin including the Nong Nam Yai village. Since the late 1950s, the economy has changed from subsistence and barter system to commercialism connected to external markets. Fisher folks were spurred to develop their fishing tools to catch more fish. Subdistrict Councils and Subdistrict Administrative Organizations were introduced to local administration; individual or collective property rights to fishery resources was changed to common property - from 'Kad Moon' to 'community right'.

However, the transformed property regime is not singular; the reservoir resource management is a multiple right regime: that is, state right, individual right and community right are overlapped.

***Kad Mun*: traditional right regime**

'Kad' is a dialect referring to shutting or blocking waterways to catch fish¹². 'Mun' means legacy or heritage.¹³

¹¹ See figure 2 in Appendix

¹² Surat Warangrat, Fishery Culture in Songkhram River of Thaiso community, Pak Un village; Thai Lao community, Pak Yam village, *Sisongkhram District, Nakhon Panom* (Sakon Nakhon: Culture and Art Institute of Ratchapat Sakon Nakhon 1997), p. 75.

¹³ Buchita Sangkaew, Fish Culture and the End of Mun River Fish Hunter Legend (Bangkok: Committee on Propagation and Promotion of Development Works, 1987), p. 35.

In the old days, pioneers who first cleared their ways through seasonally flooded areas to catch fish would hold their rights to the places in the following years. In the dialect, '*Luang Kad*' means the right to a place where one places his/her fishing tools. Such rights can be inherited, hence the name '*Kad Moon*'.

The sizes of Kad Moon vary: small Kads for waterways or creeks to large marshes. A person's right will be recognized by the community members only if the person continues in that place every year. In case of large Kads, families and relatives hold collective rights as more labor is needed.

The Nong Nam Yai village is one of the most suitable places for '*Kad Pla*' – meaning method of catching fish by shutting or blocking waterways. But most owners of Kad Moon in the village's public land are from other villages as they have had '*Luang Kad*' before the Nong Nam Yai community settled there.

Common property regime establishment: struggle, negotiation and flexibility

The change of ownership of '*Luang Kad*' as inherited by families or relatives to the community has gone through struggle, negotiation and flexibility between traditional owners and authorities - Kamnan (chief of village heads), for 12 years (1987-1999).

The idea to cancel the Kad Moon was initiated by official community leaders - Kamnan and village heads, to raise money from selling the right to the marshes or Kads to 'develop' the village in line with the state development policy. The subdistrict council agreed to revoke the right to Kad Pla from individuals and families to belong to the Nong Nam Yai village in 1986. The revocation was, however, not implemented abruptly, rather with flexibility by allowing the Kad Moon owners to Kad Pla every second year: the village and the owners take turn every year until 1995 and the right would be held by the village afterwards. The struggle and negotiation on traditional owners' part did not stop after 1995; It was not a smooth process as conflicts and negotiations continued until 1999.

'Kad' auction: privatizing the right under community right

After the traditional regime was over, the village together with other villages in the area put the Kads on sale. Although it was a privatization of the right with price bidding, it was still regulated by the communities.

Money raised by the auctions were allocated: 90% for the village and 10% for the Subdistrict Administrative Organization.¹⁴ The auctions would be held in June every year with village heads sending letters to 10 other villages nearby. After the auctions, the Kads would be announced reserved during the fish catching season (November-December).

The auction was based on participation by community members and common interest. The areas for auctions are decided based on a majority consent from household

¹⁴The Nong Nam Yai village has continually been able to increase its portion of the allocation of auction money until the present.

representatives present at the meetings, otherwise the areas cannot be auctioned. Certain areas are reserved for Nong Nam Yai villagers.

The criteria on which to decide which areas and what kinds of methods - wet or dry - are to be auctioned are reconsidered on a yearly basis, with various factors considered such as the village's need of money and levels of rainfall in each year. In a year with less rainfall, less Kads are to be auctioned in order not to affect the villagers' catch or the wet method is more favored in that particular year.

Management of public ponds

The rules for utilization of the ponds had been set before the auction or over 20 years ago. When the auction began in 1987, the management of the public ponds has been an issue to be considered together with the auction system. Certain parts of the marshes need to be reserved for the villagers from Nong Nam Yai and other communities: that shows how resources are distributed to individuals or families who rely on common property for their living. In other words, individual right is also important as is the common right, but the right must be subject to rules decided by the community. In addition, the Nong Nam Yai villagers reserve their exclusive right to use certain (normally forbidden) fishing tools on traditional festivals.

Pond management organization

The traditional Kad Moon is a property right regime established to share freshwater resources inherited by families and relatives. When the regime changed, the establishment has to be adjusted. The management of ponds of Nong Nam Yai is handled by a state mechanism – the village committee. The village committee is dependent on conditions such as economics, society, culture. For example, the necessity of depending on natural resources of the village community members and the beliefs and rituals of the community.

The village committee oversees the village's resource management including seasonally flooded areas, Kad auction, common pond management, fish conservation zone, etc. The management is based on three principles: 1) community members' participation in decision making; 2) flexible practice to regulate resource use; 3) multiple rights that recognize individual and community rights.

In addition to resource management in the form of common property regime, there is also another form which is a right to a particular place for placing certain fishing tools, or 'Luang'.

'Luang': local rights regime for placing fishing tools

'Luang' means a space for placing fishing tools; others cannot use the same space¹⁵. The rights to Luang can be divided into usufructs and ownership.

¹⁵ Interview with fisher folks of Pak Yam village, 16 December 2001.

Certain tools such as *Lob* and *Tong*¹⁶ are placed statically in a place. Rights to own Luang may belong to families, relatives or partners. Fisher folks are well aware of which places belong to whom.

Lob

Lob is a traditional fishing tool. It is used in the rainy season on the banks of the Songkhram River, ponds or streams. It is favored for use in the Songkhram River as it catches commercial fish better than other areas. Fisher folks would consider the



currents and streams proper for placing Lob¹⁷, usually at the concave side of a river.¹⁸

The first person who places Lob in a particular place and continues to do so every year is entitled to own the Luang – a right that nobody can violate. The ownership of Luang can be handed down to children or relatives. If the owner stops his/her practice for 1-2 years, others can use the place and the owner cannot take it back. However, lately Lob and Luang have become more commodified albeit to a small degree.

Tong

Tong is a big fishing tool (no one in Nong Nam Yai uses it). It is only used during the months of September-October.



The Luang is important in using Tong. Long and steady stream make for a good Luang for placing Tong and some special skills need to be learned as to how to place it. But these techniques are less important than finding and choosing the Luang.

The location for placing Tong is more important than the features of Tong itself. When Tongs were first used, Luangs were claimed as if they were plots of land. The best Luangs were all claimed. Owners can allow

¹⁶ No one uses Tong in Nong Nam Yai.

¹⁷ Interview with fisher folks of Pak Yam village, 16 December 2001.

¹⁸ Interview with fisher folks of Na Dokmai village, 18 November 2001.

temporary use by relatives or can sell the right. In most cases, Tongs are sold together with Luangs. Luangs are thus not different from farmlands as an individual property that can be sold.¹⁹

Catching fish with Lobs and Tongs in the lower Songkhram river basin demonstrates the local rights regime in fishery. Both tools need proper locations for placing like farmers looking for lands that are limited, particularly locations for Tongs. Therefore, the regime allows owners to keep others from using their Luangs. And the first user holds the *de facto* right. The right is similar to individual right that can be handed down, sold or rented.

The features of this right regime are: 1) owners can keep others away from their Luangs and 2) the rights can be sold, rented or handed down. The differences between Tong which was invented later and Lob are that ownership of Lob location is based on utilitarian right while that of Tong is individual property that owners still retain even when they no longer use them.

Conclusion

The livelihood of Nong Nam Yai community does not depend on only a single natural resource; the villagers need various resources such as farmlands, seasonally flooded areas for raising cattle, ponds for fishery and agriculture, and the river for fishery. The resource management of Nong Nam Yai does not include only freshwater fishery resource. So there are various management systems for various resources or groups of users. For example, men usually catch fish while women in groups collect food.

The regime change from Kad Mun to community property right in the case of Nong Nam Yai is an institutional change; that is, the structural change of right and duty involving relation between people and resources. The Nong Nam Yai community merges formal institutions such as the village committee and Subdistrict Administrative Organization with local institutions such as belief in ancestral spirits used in fish conservation zones. Multiple rights are recognized: individual rights and community rights. For example, certain parts of ponds are reserved for villagers or groups of villagers. The recognition of right to location for fishing tools (or 'Luang') and Kad Pla rights are entitled to individuals in the auction.

The community manages its resources, freshwater fishery resource in particular, in common property regime as cooperation is better than competition.

The property right regime change in the case of Nong Nam Yai shows that it is not necessarily the case that the property right regime has to change in only one direction: that is, from common property right to individual or collective rights. The rights can be switched back and forth between individual and community; for example, the Kad Mun right which belongs to individuals or households is transferred to the community and can be turned into individual right again after auction.

¹⁹ Interview with fisher folks of Na Dokmai village, 17 November 2001.

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