

**Contested legitimacy on land access in SEZs :
Case Studies from Thailand's borders**

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Summary Research report

One clear feature of the Special Economic Zones policy in Thailand is the contested legitimization of different groups of actors in order to increase their power to exclude other actors from accessing land. Parallel legitimacies found in this study include those developed by people, government agencies, local governance organisations, whereby each set of actors build legitimacy to protect and exclude other actors from accessing land and also to negotiate for their interests. This research has developed the following findings on the way different groups build legitimacy in accessing land.

- 1) Legitimation of a special regulatory regime by the state, including the central state (military regime), local and national government agencies, using special powers (s 44), laws, and regulations to capitalize land as assets, by excluding one group of actors from land in order to transfer it to another set of actors.
- 2) Counter legitimization by ordinary people. In the case of the Mae Sot Special Economic Zone in Tak province, local people developed a group identity as a means to build up their power and establish a negotiating platform. They built legitimacy through the use of public space and by relying on laws and state regulations, to delegitimise the government's actions.
- 3) Counter legitimization between state agencies. In the case of the Mae Sai Special Economic Zone in Chiang Rai province, the Thai Tobacco Monopoly has been assigned the rights to use and benefit from the land. This state enterprise claims legitimacy in the national interest, based on the benefits that the state derives from growing tobacco, in order to argue their opposition to the use of the land by businesses in the Special Economic Zone.
- 4) Building legitimacy of negotiations to benefit the local people. In the case of the Khlong Yai Special Economic Zone, Trat province, local government organisations use legitimacy of their powers and responsibilities, their tourist income, the beauty of the coast to negotiate against any industrial development in the area.

1. Introduction

The establishment of the Greater Mekong sub-Region (GMS) in 1992, was the starting point of the inclusion of border cities in Thailand within the economic corridors in the Greater Mekong sub-Region. Since 2004, Thailand has proposed Special Economic Zones in the national development strategy, however it has not been able to push these through successfully, because opposition by local people against a Special Economic Zone in Chiang Rai province was taken up as a matter of common national interest to undermine the government then led by Thaksin Shinawatra.

The Special Economic Zones policy was dusted down once again after the military coup of 22 May 2014 through which the National Council for Peace and Order seized power. Under the powers of dictatorship (according to article 44 of the temporary constitution of 2014), the junta declared a plan for establishing 10 Special Economic Zones, by issuing Order number 17/2015 to reorganise land use and accelerate the development of Special Economic Zones. The main component of this Order specified that rights would be given to the private sector to be able to make use of state land for commercial and industrial investment. Secondly, it introduced amendments to the laws bringing in new exemptions to the rules restricting land allocation, the use of land, and investments in the areas which are established as Special Economic Zones. This was targeted at procuring state land, since after Special Economic Zones were declared, the price of private land in those areas immediately soared.

However, this land was already held, without land certificates, by local people and used for settlement and farming. The state therefore used the legitimacy of their rights under law to show their ownership of the land area. They also claimed the national interest in order to access the land. This led to conflict over the land between the state and villagers. However, claiming legitimacy was not just an issue of legality or illegality, it was also an issue of legitimacy in the access to and exclusion from the use of the land. Therefore the state was not the only party who sought to exclude people from the land, actions of exclusion may have arisen from the original settlers of the land, or the people whose rights were torn from them, in the process of push-back and resistance to the state's process of exclusion.

In Thailand, there are at least two aspects of Thailand's land governance arrangements make legitimisation particularly important. First, there is a great deal of illegality, ambiguity and negotiation in determining who has rights to live on and use state-owned land, meaning that legitimacy often precedes regulation in determining rights of access on such land. Second, the current regime has abrogated long-standing understandings by use of rule by decree, leading to a set of quite arbitrary arrangements whereby the politics of legitimisation take precedence over law in creating or revoking rights over land.

The main aim of this research study was to try to understand how the various actors involved in these struggles, whether they are state actors from national or local government, or local groups, build legitimacy in accessing land and excluding certain other groups from access to land. This study was carried out in three case study areas, in Tak,

Chiang Rai, and Trat provinces. We began by studying the history of the land and changes in the land rights regime from the opening up of border trade until the time of the Special Economic Zones policy. We tried also to study forms of legitimacy used by the state to exclude certain parties from accessing land, as well as the forms of parallel legitimacy and negotiation by villagers in order to protect their land rights. We collected information from research studies, related documents, and field data by interviewing relevant actors.

This study considers the term legitimation following the framework of the work " Powers of Exclusion: Land Dilemmas in Southeast Asia "by Hall, Hirsch and Li (2011) to analyse access and exclusion by the state and counter exclusion by people in the local areas were facing the loss of their land. This study distinguishes four types of exclusions (1) regulation (2) force (3) market and (4) legitimation.

Regulatory exclusion can refer either to a formal or informal determination of access or exclusion. This has four different aspects in relation to land: Statutes that set land boundaries, the determination of land-use classifications according to law, determining ownership and land use rights according to the different characteristics of land, and establishing criteria to underpin the claims of rights of individuals, households, groups or government agencies.

Forced exclusion is at the heart of regulation. The modern state tends to use force in claiming rights of the state. The state is the only actor which is uses the force of the law. However at the same time, the use of force is not monopolised by the powerful and well connected, poor people also use the power of force, as do influential private actors.

Market exclusion. Building up market power is clearly very important in the dynamics of access to and exclusion from land. For example. The price of land is a primary determinant of who can and cannot access land. Similar to other powers mentioned above, markets do not come to exist by themselves, their existence relies on regulation, force, and legitimation.

Legitimation is an important supporting factor in determining the form of different types of exclusion. This can be in setting up a yardstick for arguments about rights, in ensuring strong regulations and the capacity to enforce them, and in building up market power, in making it legal to exclude [people], and in various discourses which tend to be directly related to the conflict with the other side. The discourse between the state and the people may arise from the mobilisation of landless people claiming rights to land. At the same time, the goal of development in the national interest leads to the seizure of people's assets for the construction of dams or large-scale commercial plantations, claiming scientific knowledge or efficient administration and management (along with liberalisation of the land market) In building legitimacy of exclusion.

2. The dynamics of the land rights regime in border cities

Starting from the end of the Cold War in the late 1980s, the geography of the Thailand's border cities has been transformed from locations along tense international frontiers to zones of perceived economic opportunity, following the discourse of 'turning battlefields into marketplaces. One result of the establishment of the Greater Mekong sub-Region (GMS) In 1992 was to enlist the border towns of Thailand to become part of the economic corridor plans in the Greater Mekong sub-Region which began in the year 2000. These included the East-West Economic corridor, the North-South economic corridor, and the southern economic corridor¹. The Ayeyawady-Chaophraya-Mekong Economic Cooperation Strategy (ACMECS) in 2013 also had an impact in facilitating the access to land for private investors from various countries.

Furthermore, Thailand pushed for the establishment of Border Special Economic Zones as well as the industrial estates in the provinces of Chiang Rai, Mukdaharn, Trat, Tak (Tsuneishi, 2005), focusing most on Chiang Rai. The efforts of the government to set up Special Economic Zones and industrial estates were more evident in border cities than in other provinces.² This brought significant change to the way land was held and used in the border areas of the country, and caused land to change hands. Local wealthy individuals and politicians, and external investors played a part in buying land for various purposes, including for speculation, setting up businesses, trade and services, tourism, resorts, guesthouses, and commercial agriculture, influenced by the expansion of cities, zones for business and commerce, new factories for industry, and the policy promoting commercial crop production.

Prior to the first National Economic and Social Development Plan (1961) was a period of pioneering land for agriculture. Ownership of land was originally based on reservation (*jab jong*) and clearing of land. In the example of the border area of Mae Sod, in Tak province, it appears that the city of Mae Sot was established around 1861-1862. The first ethnic group to settle here were the Karen. People started to move into this area increasingly to the point where Mae Sot was established as a District in 1898. Some of the Northern Thai people who came to trade in Mae Sot city, settled in the village of Wangtakhian in Tha Sai Luad Sub-

¹ In 2011, the ADB Added another six corridors were linked to these. These were the North Corridor, the West Corridor, the Eastern Corridor, the North-Eastern Corridor, the Central Economic Corridor and the South Coastal Corridor (ADB 2011).

² A Cabinet Resolution on 9 November 1999 approved the plan for Special Economic Zones in the border areas, as proposed by the National Economic and Social Development Board following their study of 271 projects with an approximate value of 22.936 billion baht In 20 cities, 13 provinces, extending over 10 years (1999 to 2008). A further Cabinet Resolution on 19th of March 2002 approved a master plan to carry out development of 13 principal border cities. This also authorised pilot projects in three cities - Chiang Saen, and Mae Sai, both in Chiang Rai province in the North, and Sadao in Songkhla province in the South.

district (one of our case study areas), buying land from the original settlers who had cleared the land before them. They used the land for cultivation, planting rice, sugarcane, tobacco and planting vegetables for their own consumption. The land rights regime recognised the rights of people who reserved the land only after they had made use of it. In the Mae Sai area, Chiang Rai, it was found that migrants moved into the area around 1907. Villagers in the area of Pong Pha Sub-district used the land to grow paddy rice for their own consumption. At the end of the rice harvesting season, the villagers used to go to work in the tobacco plantations for the Tobacco Monopoly station.

Transfers of land reached their peak during the government of Chatchai Choonhavan from around 1987, under his policy of "Transforming the battlefield into a marketplace". In Mae Sot District, the first Thai Burma Friendship Bridge was constructed over the Meuy River (known as the Tongyin in Burma), and the first crossings began from 1997. This led to an increase in land prices in the Mae Sai Luad sub-district. The construction of this Bridge was seen as symbolic of the end of border conflicts between Thailand and Burma. It is also considered the starting point of the era of economic links and trade in the border areas under the policy of the Thai government from the late 1990s onwards. This led to the buying of land for the speculative accumulation of assets in the area of Mae Sot District.

In the Mae Sai border area, during the process of building the railway from Denchai to Chiang Rai from around 1975 to 1976, groups of wealthy individuals bought up land without making use of it. Then from around 1989, there was boom in the price of land. Villagers rushed to sell their land (paddy fields) to traders both from the city of Mae Sai and from elsewhere. Land in the area of the Paholyothin Road was transformed from rice fields to become villages, resorts, commercial shops. Farmers in the sub-district of Pong Pha still grow rice to this day, 47% of the area of rice cultivation is rented (in the 2015-2016 season). All of the rice fields have full land title documents (*chanode*).

Prices of land in Mae Sot District rose yet again in the starting from 2007 when the government authorised the construction project of the second Thai-Burma Friendship Bridge in 2009, as part of the East-West economic corridor and in 2010, the government had a policy to develop a Special Economic Zone for Mae Sot³. The price of titled land increased to several million baht per rai. In particular, in areas which were clearly going to be in the path of the road and were close to the area of construction of the Bridge. Thus, in 2015, the average price of land in the district of Mae Sot increased by up to 92%. This was the highest increase compared with the Special Economic Zones in other provinces⁴. Certain areas increased up to 600 times, even 800 times (Matichon Online newspaper, 2015). The type of land which changed hands included both land which had land certification documents and those which did not. Those who had accumulated land included both people who were from

³ Matichon Online, 19 October 2010

⁴ Press statement by Jakkrit Paraphatakul, Director of the Treasury Department, on the declaration of the use of the Land Valuation budget 2016 to 2019.

the local area of Mae Sot District and people from other provinces. buying and selling included both for accumulation and for the cultivation of rubber.

During the land pioneering years, villagers could go to notify their use of the land and would obtain a basic land use certificate known as (*SorKor1*). However not all villagers made this declaration. Also, land that was cleared after the original certificate was issued did not have land certificates. The National Reserve Forest and the Permanent Forest Estate were declared after the villagers had already begun making use of their land. Land certificates in this area include both properly and improperly issued land use certificates (*SorKor1*). *"In the period of 1975, 1979, certificates known as NorSor3kor began to be issued. Those who did not have cash were unable to obtain them. In those times, the elderly did not have money so they did not obtain SorKor1 or did not go to notify anyone of their use of land. For the most part, people who have land certificates were not those who held the land from the beginning. In most cases, the land had already been sold. Some used flying SorKors⁵ to obtain NorSor3"* (interview with Mr Sunthorn Sribunma, 17th January 2017).

3. Creating the state of exception, access and exclusion

Under the special political powers of the military regime, Special Economic Zones have moved forward very quickly by use of article 44, which has the effect of law. An Order 17/2015 was issued to create exemptions in the sections of the law which limited access to land by foreign investors. The government emphasised the state land, that is, land which was part of the Permanent Forest Estate, the National Reserve Forest, Public common land (*sataranaprayot*), and land governed by the Agricultural Land Reform Office. This was because speculation after the declaration of the Special Economic Zone had meant the price of privately held land had risen sharply.

In the initial phase of the Special Economic Zones policy, the NCPO government issued Order 17/2015, which created exemptions in sections of certain laws to convert the status of various categories of state land into government treasury land (*ratchapasadu*). This Order helped to eliminate certain conditions and limitations of leasing land to foreigners. Since the National Reserve Forest law, the Public interest land law, Agricultural Land Reform law and the Cabinet Resolutions for the allocation of permanent forest estate had many sections which regulate the use of land, including the determination of specific areas of land where leasing was allowed, the type of industries permitted, and the area of land, whereby if the area exceed 100 rai, it must be authorized beforehand by the Director-General of the Land Department.

Furthermore, another Order of the NCPO 3/2006, aimed at implementing the Special Economic Zones policy, created an exemption in the enforcement of another two other laws - the Urban Planning Law 2015 and the Buildings Control Act 1979 - as a means to speed up

⁵ The "flying SorKors" refers to the use of SorKor1 Certificates issued in one area [illegally] as justification for the applying for land title documents in other areas.

the establishment and administration of the Special Economic Zones. This process reflects that the government sought to capitalize its land as assets through the amendment and exemptions of certain provisions of the law which had previously presented obstacles. A follow on consequence of Order 17/2015, was the impact on land users in the area, whose land rights were withdrawn immediately. In the case of the Special Economic Zone of Mae Sot, an area of 2,182 rai was designated, according to the plan that was annexed to the Order. Whereas, even though the most of the land was officially Permanent Forest Estate, that is State land, under the normal process, local people are entitled to offer proof that they have rights to hold and use the land.

4. Creating and defining legitimacy in accessing land

4.1 Divergent Perspectives for Special Economic Zones; State and local businesses

The perspectives put forward by the state and local business people on the Special Economic Zones are divergent. The national government believes that the Special Economic Zones will create opportunities, preserve economic competitiveness, reduce development disparities, raise standards of living of the people, as well as increase border security, by increasing employment in border areas to help resolve the problems of foreign migrant labour (Charnvit Amatamathuchadt, 2015).

This differs from the perspectives of the local business people and business owners who view that the state's policy on the Special Economic Zones has not created opportunities for local business people, but rather has offered opportunities for wealthy groups from other areas. They say the role of local businesses has been diminished as a result of the implementation of the Special Economic Zones policy which is centralised and top-down in nature and relies on waiting for orders from the central government, more than ensuring participation and giving importance to the views of local business groups.

In the case of Mae Sot district, in Tak province, representatives from the Chamber of Commerce put forward the view that the state has given importance to the industrial sector, even though Mae Sot strengths lie in border trade. Therefore, the state should promote and facilitate border trade, making it faster and improving its competitiveness, rather than promoting the industrial sector.

At the same time, in the case of the Special Economic Zone in Trat province, the Provincial Industrial Council pointed out that the province has a border with Cambodia's Pursat and Battambang provinces, which are important fruit producing regions for Trat province. In their view the state should announce a Special Economic Zone in Bor Rai district to promote investment by the private sector in processing industries for fruit for export. There is no need to set up factories in Khlong Yai district, when the raw materials are in Khao Saming and Bor Rai district. Furthermore, opening a permanent border trade crossing will not lead to any benefits for local businesses or villagers. Trat province will become merely a crossing

point for transit as people from Cambodia will cross over to buy products directly from Bangkok.

Furthermore in relation to labour, even though on the one hand, the government has spoken of the impact that they project that the Special Economic Zone will have on raising incomes for local people, in reality there has not been any clarity on the type of employment that will be generated, the terms and conditions, the knowledge and skills required, nor the number of people to be employed.

On the other hand, one of the objectives put forward by the government in setting up the Special Economic Zones in the border areas, is to absorb cheap migrant labour from neighbouring countries. In the case of the Special Economic Zone in Trat province, the expansion of the economy in Koh Kong province of Cambodia, for example through the establishment of the Special Economic Zone of Koh Kong in Cambodia has expanded the alternatives for Cambodian labour. This, combined with the strictness of the regulations on cross-border labour of the Thai Foreign Migrant Labour Regulations 2017, has meant that Cambodian migrant labour has gradually returned to their home country. This has meant that the factories in the fisheries sector have suffered a significant shortage of labour (interview with Manit Labhthamrong, Deputy Leader of Khlong Yai sub-district Administration Organisation, 27 March 2017). The proposed Special Economic Zone seems unlikely to help generate incomes for local people. According to an interview with the President of the Industrial Council, given the centralised approach to promoting investment by large external investment groups, local business groups hardly have a chance to step in and take any substantial share of the benefits. *"In the case of the Special Economic Zone In Khlong Yai, the only benefits that the local people will have is feeding raw materials to the production process. Local businesses will not gain any of the main benefits."* (Interview with Pipat Rueksahakul, President of the Industrial Council, 28th June 2017).

4.2 Legitimising exclusion and access to land: State and people lose land rights

In the case of the Special Economic Zone of Mae Sot, Tak province, the way in which the government legitimises the exclusion of people from land and loss of their land rights is to use the law, accusing the villagers of encroachment on state land. They also claim that the fact that villagers do not have any lawfully issued land certificates means that they cannot claim land holding rights. Villagers in the area are seen as living on and holding land without rights certification documents. Paying local taxes and holding tax receipts (*porborthor5*) are not taken to be evidence of land rights. The government claim that some villagers sold rights to the land with only a *PorBorThor5*. Some brokers or investors bought up all the land to hold for speculative purposes and grew trees in order to take advantage of compensation on compulsory purchase. This land had been declared by the Cabinet as Permanent Forest Estate since 1983 as a reserve for the protection of natural resources or for other public interests. The communities are therefore abusing the law according to Sanchay Hatayatanti, Former governor of Tak province, (cited in Somchai Tak Governor and Team's Facebook page, 13 November 2015). As for the villagers who have lost their land, they have collected

data on their land use and land holding which shows evidence both in writing and from witnesses who maintain that their landholding and land use has been continuous since before the declaration of its status as state land.

4.3: Legitimising exclusion and access to land: State and state agencies

In the case of the Special Economic Zone of Mae Sai, Chiang Rai province, an area of land of 870 rai of government treasury land (*ratchapasadu*) has been demarcated along the Paholyothin Road, which is under lease to the Tobacco Monopoly of Thailand. This is an area which the government wants to develop for the Special Economic Zone given its high potential, as it is linked to the Paholyothin Road, and is only 4 km away from the second customs border post of Mae Sai. This would be convenient for the transfer of products to neighbouring countries if an industrial estate is established for processing products, since it is close to sources of raw materials (Thansettakij newspaper, 16 February 2016). Tobacco has been grown in this area since approximately 1942. It is the Tobacco Monopoly's most important source of high quality tobacco. Even though the status of the land is government treasury land (*ratchapasadu*), the Tobacco Monopoly obtained this piece of land by buying the land from the villagers and developing it as an area for cultivation of high-quality tobacco which generates significant income for the state. This is the basis given by the Tobacco Monopoly for its claims of legitimacy in excluding the government from accessing the land.

This area of government treasury land, is used by the Tobacco Monopoly to grow 500 rai of tobacco, an area of 150 rai has been designated as a Royal Project of Princess Maha Chakri Sirindhorn (Jakraphanphensiri centre), and an area of 220 rai is allocated to a centre for the promotion of learning and demonstration of tobacco cultivation. Taking this land for the purpose of this Special Economic Zone therefore has an impact on the Tobacco Monopoly's operation and the livelihoods of the growers of tobacco, as well as the incomes generated by the Tobacco Monopoly will send to the state. Therefore, the Federation of State Tobacco Enterprise Workers has raised this issue to argue that the state should be excluded from accessing land to set up the SEZ.

"This area of around 500 rai has been growing the best Virginia tobacco in Thailand for a long time, up to 70 years, this has generated incomes from the cultivation of tobacco of around 48.8 million baht per year, not counting the income from the special economic crops such as maize which the villagers grow as a rotational crop also of around 5.4 million baht. Therefore, if this area becomes part of the Special Economic Zone, tobacco factories will lose 400,000 kg of raw materials per year, which will increase production costs and will have an impact on profitability and the production of cigarettes for the international cigarette manufacturers. This will mean that the state will lose the vast income it gets from tax collection. In the 2015 fiscal year, this tax amounted to around 59.354 billion baht" (from the press statement of the Federation of State Tobacco Enterprise Workers, 22 March 2016)

"These three areas of tobacco cultivation have helped to reduce imports of tobacco leaves from other countries from 30% to only 3% per year, to the point where we aim to stop

importing tobacco from other countries." (Daonoi Suthiniphaphant Acting Director, Tobacco Monopoly, cited in Chaikhob newspaper, 27 June 2017).

The Tobacco Monopoly and the Federation of Tobacco Workers have therefore become important actors who have continuously held tobacco growing land in the district of Mae Sai, Chiang Rai province and derived benefit from it over a long period of time. The group of tobacco growers therefore use the legitimacy of the tobacco factory in excluding the state from the land and have collaborated with the Federation of State Tobacco Enterprise Workers so that they can continue to use the land to grow tobacco.

4.4 Legitimising negotiations for local interests: State and local governance institutions

In the case of the Special Economic Zone in Trat province, the announcement that the status of the land had been converted from "public common land" (*sataranaprayot*) to government treasury land (*ratchapasadu*) was not met with consolidated opposition from villagers. However, this can be considered one area in which local governance institutions, specifically the Mai Ruud sub-District Administration Organisation, played a role in negotiating to take part in the decisions to select enterprises that would not have a negative impact on the local area. It also served as a negotiation platform in dealing with the state agencies, local government and central government. They used their status as a local government unit, which has power and responsibilities to protect and look after the interests of the local people in the area where the Special Economic Zone will be located.

The sub-District Administration Organisation of Mai Ruud, has a role in determining which enterprises can take part in the Special Economic Zone, specifying that the enterprises coming in to invest must not have a negative environmental impact, enterprises such as tourism business or border trade. They also do not accept the establishment of industrial factories in the Special Economic Zone, since Mai Ruud Sub-district is a beach district, and one of Trat provinces' important tourist destinations, and has a border with Koh Kong province in Cambodia. *"The Special Economic Zone that will be set up in Mai Ruud sub-District must not be an industrial factory. Our area is on a trade border, we deal in trade, consolidating products for transport, and tourism. We have consistently put forward this issue, we have not emphasised industrial estate"* (interview with Kridpas Srisaengkajorn, Deputy Leader of the Mai Ruud Sub-district Administration Organisation in Khlong Yai district, Trat province, 27 March 2017)

5. Parallel legitimacies and negotiations : Case study of Mae Sot Special Economic Zone, Tak province

5.1 Identity and establishing negotiation mechanisms

The first strategy which the villagers used has been to organise themselves into a group called "*Mae Sot Raksthin* Group" which translates as Mae Sot Local Preservation Group. This group was developed in order to be a mechanism for the negotiations with the local

government and to show their identity to the public. Petitions in the name of the group were sent to various government agencies at almost every level. However, this did not lead to any of the changes demanded. On the contrary, the local government agencies used the mechanism of the *MaeSot Raksthin* group as a means to negotiate informally with the leaders of the group to influence the members of the group to accept the compensation offered for the loss of their land. As a result, members of the group one by one began to withdraw their complaints, opposing the issuance of title deeds by the Ministry of Finance. Thus, the list of those opposed reduced from 33 to just 6 people, as the pressure of members accepting compensation one by one gradually influenced others, also in some cases, leaders took it upon themselves to influence members in the group themselves. This is because leaders received promises from the government that the boundaries would be adjusted so that a part of their lands and the village would be exempted from the area demarcated for developing customs facilities/industrial estate and villagers would be given rights to lease the land from the Treasury Department (this land is right on the boundary of the SEZ) Some of the leaders received compensation greater than the value of their land when they bought it and the value of the crops in which they had invested. However, many of the villagers had to accept compensation because they were pressured that they would not get any compensation at all, if they did not withdraw their opposition (interview with *Mae Sot Raksthin* Group, 26 September, 2016)

However, the groups mobilisation and negotiations did have an impact on the issue of the value of the compensation. This increased from thousands or tens of thousands of baht to a matter of hundreds of thousands of baht. This led to a set of criteria being fixed for the assessment of compensation at three levels, namely: 140,000 baht per rai for land that is not connected by road; 300,000 baht per rai for land that is on a Soi and 560,000 baht per rai for land that is by the roadside.

5.2 Creating a space for public advocacy

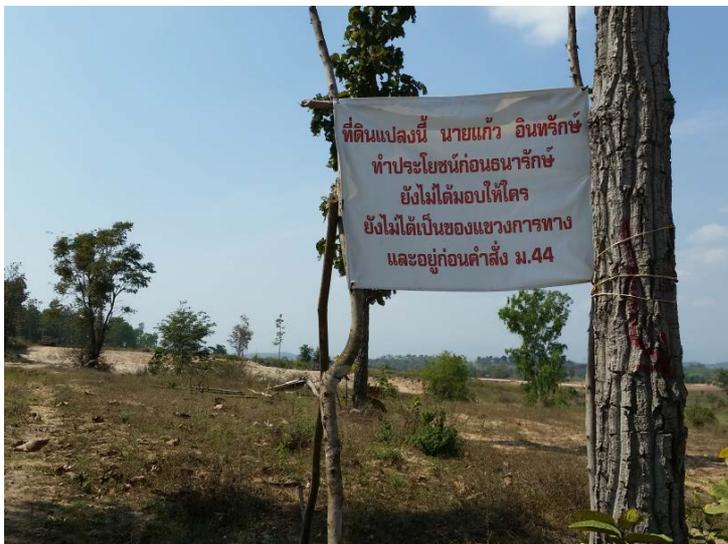
In the past, the mainstream media gave importance to monitoring and regularly reporting on the complaints and reflected the voices of the villagers in this area and the mobilisations of the *Mae Sot Raksthin* Group. This meant that this issue became widely known. They started using social media, opening their own Facebook page to communicate to the public. A Google search for the term "*Mae Sot Raksthin group*" returns a total of 39,000 hits. This reflects the success of the villagers in building a public space in the media, they posted messages communicating their opposition, and photos of signs which villagers had hung up on fences next to the road and their farmlands, voicing their disagreement with the use of section 44.

This is a banner opposing the use of article 44 at Wang Takhian village, in Mae Sai Luad Sub-district, Mae Sot district, Tak province which says "*Using art. 44 to seize houses, farms, then letting the private sector sign a cruel lease for 99 years, no "good person" could do this.*"



Source: Thai lawyers for human rights accessible at https://tlhr.2014wordpress.com/15/10/2015/maesot_raktin/

Sign put up in the fields of Kaew Intaraks, one of six people who persisted with his case [all the way to] the Administrative Court "Mr Kaew Intaraks has been using this land plot before the Treasury Department ever give it to anyone, before it was taken over by the highways department, and before article 44."



5.3 Using laws and regulations to delegitimize the State

Villagers use the legitimacy of the law to counter the rights to request land titles from the Treasury Department, according to section 60 of the Land Code of 1954, by making an appeal to the Administrative Court. At the beginning, 75 villagers who were impacted went to register their opposition to the issuing of land titles by the Finance Ministry (from a total of 93 people). From then on, gradually people dropped their opposition until there were only six people left at the end who submitted their case to the Administrative Court. It was a case concerning the improper issuing of land titles under the law, according to the Land Code of 1954, in which the accused was the Ministry of Finance (Defendant number one) and the Provincial Head of the Lands Department in Tak province, Mae Sot branch (Defended number two). The complaint related to the improper issuing of land titles.

The result of the case in the Administrative Court, led to Land Department staff being prevented from issuing any more titles over the lands belonging to those involved in the

case. This meant that the Finance Ministry's land title therefore comprised of a plot with many holes where there were exempted lands, either lands of the plaintiffs or of people who held legal land documents. According to Order 17/2015 (section 5), where a private person has rights of ownership or landholding of any plot that lies within the boundaries of land that has been classified as government treasury land (*ratchapasadu*) according to the Order, the Special Economic Zones policy committee has the power to order relevant government organisations and agencies to exchange their land for another plot of government treasury land (*ratchapasadu*), or instead offer monetary compensation in exchange for all land or part of it.

6. Conclusions

Thailand's Special Economic Zones are an innovative part of the development of economic corridors under the Economic Cooperation Framework Agreement for the Greater Mekong Sub-region (GMS) which began in 1992. The border areas of Thailand were drawn into the strategy of the economic corridors in the greater Mekong Sub-region, and since the late 1980s, the border areas were included in the strategy of "converting battlefields into marketplaces". This was the starting point of significant change in the land rights regime in the area of the borders of Thailand.

The establishment of the new Special Economic Zones with the economic corridors of the greater Mekong Sub-region, was pushed by many groups of actors, both at the Sub-regional level and at the national level. At the Sub-regional level, the Asian Development Bank was an important player, providing financial support and technical assistance to prepare feasibility studies for Special Economic Zones in the various countries in the Mekong sub-region, including Thailand. Actors at the national level included the National Economic and Social Development Board which was responsible for determining the strategy and plan, and the Council of the Chambers of Commerce and the Provincial Councils of Industry. These various actors had a role in promoting a vision for the new Special Economic Zones, which is one way in which access to land was legitimised.

In the case studies areas, the main actors - the state, the people who were about to lose their land, and local government institutions - each developed their legitimacy of access to land and excluding others from the land through the implementation of the Special Economic Zones policy in the following four ways:

1. Building up legitimacy of state action

The form in which the state built its legitimacy in excluding others from the land in the Special Economic Zone areas included the use of law, regulations, and special powers (section 44) and the policy of turning land into assets.

2. Building up counter legitimacy of people who face losing their land.

The case of the Special Economic Zone in Mae Sot district, Tak province, illustrated how ordinary people sought to build up their legitimacy in excluding others from accessing their

land, including building their identity and power, and setting a negotiating platform. They used public space as way of building negotiating power and used the law and regulations to delegitimise the state's actions.

3. Building up counter legitimacy of state agencies (the Thai Tobacco Monopoly) in exclusion and access to state land.

The case of the Special Economic Zone in Chiang Rai province, Mae Sai district illustrated the way in which government agencies, including Thailand's Tobacco Monopoly, together with the Federation of Tobacco Workers and the tobacco growers sought to build their legitimacy in excluding the government from access to that land. They claimed legitimacy based on the income that the Tobacco Monopoly sends to the State each year, which is considered an important source of income for the country. Also the group emphasises the fact that this area was the source of the highest quality tobacco produced in the country, which has brought benefits for the country, generating employment and incomes for groups of tobacco farmers.

4. Building up the legitimacy of negotiations in the interests of local government units

The case of the Special Economic Zone in Trat province, Klong Yai district, illustrates how local governance institutions sought to build legitimacy to build their negotiating power so they could select the enterprises which will be allowed to do business in the Special Economic Zone. They claimed legitimacy because the area is a tourist destination along a beautiful coast that is inappropriate for the establishment of industrial estates which would have an impact on the touristic area.

The contested legitimation in the new Special Economic Zones, which appear in all the three SEZ case studies, indicate the different parallel forms of building legitimacy by each group of actors to exclude other parties from access to land. This includes the government which wants to turn the land into capital and allow investors to use it in business activities specified for each Special Economic Zones. The various forms of building legitimacy mentioned above are ways in which power is built, for negotiation, protection, and preservation of the interests of various relevant interest groups. This reflects the important challenge of the new Special Economic Zones which are still being argued by economists, that governments in each country which want to implement the SEZs, use large amounts of capital to implement these policies, whether this is through foregoing tax receipts, adjustment of labour laws, pollution of environments, the use of the nation's natural resources, and in particular, access to and exclusion from land as a direct result from the policy of Special Economic Zones.

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