

COUNTRY REPORT: THAILAND

Recent Developments in Forestry Rights in Thailand

WANIDA PHROMLAH*

Introduction

This Country Report discusses recent forestry rights arrangements in Thailand. The Report begins with a brief outline of the current forestry rights followed by more detailed discussion of the issues that may be implied from the current forestry rights arrangements. The conclusion to this Report identifies research agendas for consideration by the IUCN Academy of Environmental Law.

Current Forestry Rights Arrangement

Rights to forests in Thailand are held by the State: the power to determine use, access, control and management of forests is vested in the State.¹ A number of reforms have been attempted, once the management of forests by the State was recognised to have failed. Such reforms aim to increase the involvement of all stakeholders, particularly forest-dependent people, recognizing their customary forestry practices and allocating some rights to decision-making on forest management to them.²

* Australian Centre for Agriculture and Law, School of Law, University of New England, NSW, Australia. Email: wphromla@une.edu.au.

¹ Regional Office for Asia and the Pacific of Food and Agriculture Organisation of the United Nations, 'Thailand Forestry Outlook Study' (2009) *Asia-Pacific Forestry Sector Outlook Study II - Working Paper Series* No. APFSOS II/WP/2009/22, FAO, 15; L. Sureeratna, 'Trends in Forest Ownership, Forest Resources Tenure and Institutional Arrangements: Are They Contributing to Better Forest Management and Poverty Reduction? Case Study from Thailand' in *Forestry Policy and Institutions Working Paper 14: Understanding Forest Tenure in South and Southeast Asia* (2007) FAO, 326-327; and F. Wataru, 'Dealing with Contradictions: Examining National Forest Reserves in Thailand' (2003) 41(2) *Southeast Asian Studies*, 209.

² J. Hafner & Y. Apichatvullop, 'Farming the Forest: Managing People and Trees in Reserved Forests in Thailand' (1990) 21(3) *Geoforum*, 338; Wataru (supra note 1), 228; P. Hirsch, 'Forests, Forest Reserve, and Forest Land in Thailand' (1990) 156(2) *Geographical Journal*, 170-171; V. Brenner et al, 'Thailand's Community Forest Bill: U-turn or Roundabout in Forest Policy?' (1999) *SEFUT Working Paper* No. 3 (Revised edition), Albert-Ludwigs-Universität Freiburg, 15-16; J. Lasimbang & C. Luitthui, 'Natural Resource Management Country Studies: Thailand' (2006) United Nations Development Programme: Regional Indigenous Peoples' Programme, United Nations, 35; Y. Sumarlan, 'How Participatory Is Thailand's Forestry Policy?' (2004) *Policy Trend Report*, Institute for Global Environmental Strategies (IGES), 52.

However, the reforms leave the power of decision-making with state agencies; the community can conduct forestry practices only if approved by the State.³ A movement aimed at legalizing community rights to forests started in the early 1990s.⁴ Since then, the *Community Forest Bill* has been drafted and debated by stakeholders.⁵ The issues of debate encompass what the rights to forest are; what common property to forest is; what the definition of a forest community is; and whether the community can live in protected forest lands or not in harmony with forest.⁶

The Thai *Constitution* recognises the rights of the community to forest management,⁷ but in practice communities have not been able to take advantage of this law. This is due to the fact that there has been no revision of the relevant forestry laws so as to implement the *Constitution*.⁸ The long proposed *Community Forestry Bill* that was enacted in 2007, suggests that a forestry community is a “social group” living in the same locality and having the same cultural heritage, who can apply for recognition of that status after a minimum of five years’ experience in safeguarding forest land. Existing government rules (which still prevail) define a “community” as comprising at least 50 individuals living in proximity to forest, regardless of how long they have been there or how forest is managed. There was concern by the opposition that people may exploit this legal gap by using 50 people to establish a community forest, as a way of maximising their private interest such as through conducting commercial plantations rather than managing forest in desirable ways. The fear is that this may contribute to deforestation.⁹

³ E. Fischman, 'The Relevance of Tenure and Forest Governance for Incentive Based Mechanisms: Implementing Payments for Ecosystem Services in Doi Mae Salong' (2012) *View of Doi Mae Salong*, IUCN, 8-9; Lasimbang et al (supra note 2), 18.

⁴ FAO, 'Reforming Forest Tenure: Issues, Principles and Process' (2011) *FAO Forestry Paper No. 165*, 39.

⁵ R. Fisher, 'Thailand's Forest Regulatory Framework in Relation to the Rights and Livelihoods of Forest Development People' in H. Scheyvens (ed), *Critical Review of Selected Forest-Related Regulatory Initiatives: Applying a Rights Perspective* (2011) Forest Conservation Project (Institute for Global Environmental Strategies (IGES), 73-75; Sumarlan (supra note 2), 52-54; C. Johnson & T. Forsyth, 'In the Eyes of the State: Negotiating a “Rights-Based Approach” to Forest Conservation in Thailand' (2002) 30(9) *World Development*, 1595-1596.

⁶ Fisher (supra note 5), 69; Sumarlan (supra note 2), 54; Rights and Resources Initiative, 'Thailand's Community Forest Bill: Jeopardizing Rights and Livelihoods?' (2008) *Rights and Resources Initiative; Rights and Resources Initiative*, 'The Thailand Community Forest Bill' (2008) *Rights and Resources Initiative*.

⁷ *Thailand Constitution* (2007), sections 66-67 read with sections 27-29, 56-60, 62, 73, 81-82, 85, 87, 163 and 290.

⁸ Rights and Resources Initiative, 'Tenure Data: Thailand' (2012) Rights and Resources Initiative, 1; M. Colchester & C. Fay, 'Land, Forest and People: Facing the Challenges in South-East Asia' (2007) *Listening, Learning and Sharing: Asia Final Report*, Rights and Resources Initiative, Appendix 1 in the Table titled 'Comparative Table of Tenures'.

⁹ Johnson et al (supra note 5), 1596; N. Jinarat, *The Process of Public Policy Formulation: A Case Study of the Community Forest Bill B.E. 2550 (2007)* (2010), 140.

Government officials often believe that forestry communities are a main cause of deforestation; for example, through “slash-and-burn” practices causing significant loss of forests.¹⁰ In 1998, the new Director-General of the RFD indicated a lack of trust that people could live in harmony with the forests. This led to more re-working of the *Community Forest Bill*, and more debates on such issues among stakeholders.¹¹ Forest dependent communities argued that they had been living in harmony with forests for generations.¹²

After long debate, the *Community Forest Bill* was passed by the Parliament on 21 November 2007.¹³ However, the Bill has not come into effect as it has been challenged on constitutional grounds.¹⁴ Two issues relating to the the *Community Forest Bill* have been taken to the Constitutional Court for determination. The first issue relates to article 25 of the Bill, which limits eligibility to establish community forests to groups that can prove to have lived in and managed forests for at least 10 years prior to the promulgation of the Bill. This affects some 20,000 communities who have been living around the protected forests for less than 10 years, and would mean that they have no rights to the forests they have been dependent on for the livelihoods for years. The second issue relates to article 35 of the Bill, which prohibits logging within the protected forests. This provision, together with article 25, effectively jeopardizes the rights of communities and indigenous peoples to access forest land and will hinder their previous use of forest resources.¹⁵

¹⁰ Forest People Programme, 'Customary Sustainable Use of Biodiversity by Indigenous Peoples and Local Communities: Examples, Challenges, Community Initiatives and Recommendations Relating to CBD Article 10(c)' (2011) *A Synthesis Paper Based on Case Studies from Bangladesh, Cameroon, Guyana, Suriname, and Thailand*, Forest People Programme, 27; A. Neef & R. Schwarzmeier, 'Land Tenure Systems and Rights in Trees and Forests: Interdependencies, Dynamics and the Role of Development Cooperation-Cases Studies from Mainland Southeast Asia' (2011) Sector Project: Importance of Land Policy and Land Tenure in Developing Countries, GTZ, xi, 16 and 18; Johnson et al (supra note 5), 1597.; R. Buergin, 'Shifting Frames for Local People and Forests in a Global Heritage: The Thung Yai Naresuan Wildlife Sanctuary in the Context of Thailand's Globalization and Modernization' (2003) 34(3) *Geoforum*, 384.

¹¹ Johnson et al (supra note 5), 1596; Sumarlan (supra note 2), 54.

¹² Johnson et al (supra note 5), 1596; Sumarlan (supra note 2), 54; Highland Mapping Development and Biodiversity Management Project, Inter-Mountain Peoples' Education and Culture in Thailand Association (IMPECT) and Forest Peoples Programme, 'Indigenous Knowledge, Customary Use of natural Resources and Sustainable Biodiversity Management: Case Study of Hmong and Karen Communities in Thailand' (2006) Inter Mountain Peoples' Education and Cultures in Thailand Association, 70-71.

¹³ Rights and Resources Initiative, 'The Thailand Community Forest Bill', (2008) *Rights and Resources Initiative*.

¹⁴ Supra note 4.

¹⁵ See further: Rights and Resources Initiative, 'Thailand's Community Forest Bill: Jeopardizing rights and livelihoods?' (2008) *Rights and Resources Initiative* (available at <http://www.rightsandresources.org/blog.php?id=246>); Rights and Resources Initiative, 'The Thailand Community Forest Bill' (2008) *Rights and Resources Initiative* (available at <http://www.rightsandresources.org/blog.php?id=34>); and N. Jinarat, *The Process of Public Policy Formulation: A Case Study of the Community Forest Bill B.E. 2550 (2007)* (2010) Doctor of Public Administration Thesis, Ubon Ratchathani University (Thailand), 174-176.

At present, forestry rights in Thailand are controlled by six Forestry Acts including the *Forest Act*, B.E. 2484 (1941), the *Wildlife Conservation and Protection Act*, B.E. 2535 (1992), the *National Parks Act*, B.E. 2504 (1961), the *National Reserved Forest Act*, B.E. 2507 (1964), the *Forest Plantation Act*, B.E. 2535 (1992), and the *Chainsaw Act* B.E. 2545 (2002).¹⁶ These laws focus on extracting¹⁷ and conserving forest areas and overlook the interests of community groups - particularly indigenous and disadvantaged groups whose livelihoods depend on forests.¹⁸ As a result of the difficulties in reconciling community interests to either commercial exploitation or environmental protection, implementation of forestry laws is very difficult and can be considered to have failed, as it has been resisted by those who are impacted.¹⁹

Lessons Distilled From the Current Forest Property Arrangements

Secure forest tenure can provide a stronger incentive to all stakeholders to properly manage forests.²⁰ It can ensure the forest users earn longer-lasting benefit from forests, which encourages them to invest in forest management.²¹ With no assurance that such rights will be long-lasting, forest users can feel reluctant to dedicate themselves to investing in forest management. As a result, insecure rights to forests can fuel forest users exploiting as much forest as possible as quickly as possible to maximise their short term interests. This can

¹⁶ K. Manassrisuksu & W Sangkrajang, 'Forest Land Management In Thailand' (2011) *Country Reports on Forest Tenure in Asia and the Pacific: Proceedings of APFNet Workshop on Forest Tenure*, Asia-Pacific Network for Sustainable Forest Management and Rehabilitation, 130-131; V. Jalayanavanin & S. Vitayaudon, 'Forest Law Enforcement and Governance in Thailand' in *Forest Law Enforcement and Governance: Progress in Asia and the Pacific* (2010) Asia-Pacific Forestry Commission: FAO, 191.

¹⁷ Lasimbang et al (supra note 2), 16.; M. Matsumura, 'Coercive Conservation, Defensive Reaction, and the Commons Tragedy in Northeast Thailand' (1994) 18(3) *Habitat International*, 110.

¹⁸ Wataru (supra note 1), 208. Rights and Resources Initiative, 'What Rights?: A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights' (2012) Rights and Resources Initiative, 16.; Fisher (supra note 5), 78.

¹⁹ Matsumura (supra note 16), 106 and 112.; FAO Regional Office for Asia and the Pacific (supra note 1), 20.

²⁰ G. Feder (1993) *The Economics of Land and Titling in Thailand* cited in R. Heltberg, 'Property Rights and Natural Resource Management in Developing Countries' (2002) 16(2) *Journal of Economic Surveys*, 207; F. Romano et al, 'Understanding Forest Tenure: What Rights and for Whom?: Secure Forest Tenure for Sustainable Forest Management and Poverty Alleviation: the Case of South and Southeast Asia (with case studies of Orissa and Meghalaya, India and Nepal)' (2006) *Access to Natural Resources Sub-Programme: Livelihood Support Programme (LSP) Working Paper No. 29*, FAO, 11; B. Robinson, M. Holland & L. Naughton-Treves, 'Does Secure Land Tenure Save Forest?: A Review of the Relationship Between Land Tenure and Tropical Deforestation' (2011) *CGIAR Research Program on Climate Change, Agriculture and Food Security: Working Paper No. 7*, 30-31.

²¹ Robinson et al (supra note 19), 30; L. Ellsworth & A. White, 'Deeper Roots: Strengthening Community Tenure Security and Community Livelihoods' (2004) Ford Foundation, 6; J. Bruce, K. Wendland & L. Naughton-Treves, 'Whom to Pay? Key Concepts and Terms Regarding Tenure and Property Rights in Payment-based Forest Ecosystem Conservation' (2010) *Tenure Brief: University of Wisconsin-Madison*, 7.

cause considerable forest degradation. An example is the insecure property rights to forest land driving deforestation in the Brazilian Amazon.²²

The FAO (2008) states that “both formal titling of individual ownership and systems based on customary tenure can respond to the needs of the poorest and marginalized groups”²³ which ensures that social equity in forest management is being met.²⁴ The Thailand *Constitution* recognises the rights of the community to forest management,²⁵ but as a result of a lack of revision of forestry laws to implement the *Constitution*,²⁶ decision-making on forest management remains with state agencies²⁷. This diminishes the security of rights of the community to forest management, as decisions can be readily changed by the state officers.²⁸

The six Forestry Acts²⁹ focus on either commercially exploiting³⁰ or conserving forest areas. They largely overlook the interests of community groups - particularly indigenous and disadvantaged groups whose livelihoods depend on forests.³¹ The Acts retain the power of decision-making on forest management with state agencies.³² The response of these agencies to community demands and interests has been based upon attempts to either ignore or incorporate community interests as a subset of state control (rather than by attempting to legitimate these interests as suggested by the *Constitution*).

An example is the community forest project being implemented by forestry conservation agency, RFD. This project is intended to increasingly involve the community in maintaining and protecting forest land. To involve the community under this project, the RFD relies on section 17 of the *Forest Act*, B.E. 2484 (1941) and section 19 of the *National Reserved Forest Act*, B.E. 2507 (1964) as the administrative power enabling it to implement the

²² C. Araujo et al, 'Property Rights and Deforestation in the Brazilian Amazon' (2009) 68(8–9) *Ecological Economics*, 2464; W. Sunderlin, A. Larson & P. Cronkleton, 'Forest Tenure Rights and REDD+: From Inertia to Policy Solutions' in A. Angelsen et al (eds), *Realising REDD+: National Strategy and Policy Options* (2009) Center for International Forestry Research, 154.

²³ FAO, 'Understanding Forest Tenure in Africa: Opportunities and Challenges for Forest Tenure Diversification' (2008) Forestry Policy and Institutions Working Paper No. 19, 19.

²⁴ FAO (supra note 4), 56.; Winrock International & The Ford Foundation, 'Emerging Issues in Community Forestry in Nepal' (2002), 30.

²⁵ See note 13.

²⁶ See note 14.

²⁷ See note 3.

²⁸ A. White & A. Martin, 'Strategies For Strengthening Community Property Rights Over Forests: Lessons and Opportunities For Practitioners' (2002) *Forest Trends*, 1.

²⁹ See note 16.

³⁰ See note 17.

³¹ See note 18.

³² See note 3.

community forest project. Both Acts further strengthen state ownership over forest lands and limit the practices people can conduct in forest areas.³³

To illustrate, section 19 of the *National Reserved Forest Act*, B.E. 2507 (1964) empowers the RFD president to appoint RFD staff to implement Community Forest Projects. Under this project, the RFD staff, working with the community, is to undertake forestry activities in reserved forest land with the aim of protecting and maintaining reserved forest. The community can have rights to forest management only under conditions set by the RFD president through his staff.³⁴ There is no assurance of the forestry rights of the community, as these can be changed by the conditions issued by the State.³⁵ Even though the community has the right to propose a community forest management plan, which can be registered as a community forestry project, the final decision for a plan to be registered is completely subject to state discretion. This does not assure the forestry rights of the community.

Customary Forestry Practices Undermined by National Forestry Laws

Traditional knowledge is potentially significant in effective forest governance.³⁶ Local communities have long settled in forest areas and have practical forest-management skills. Such skills include techniques of identifying animal and plant species to be preserved,³⁷ knowledge about non-timber products to be utilised, the best season for collection of forest products,³⁸ ways to protect forests from forest fires,³⁹ and traditional patrolling approaches.⁴⁰ Traditional forest knowledge contains the means to exploit forest for subsistence, not for commercial purposes.⁴¹

³³ Fischman (supra note 2), 8-9.

³⁴ Ibid.

³⁵ See note 26.

³⁶ J. Parrotta & R. Trosper (eds), *Traditional Forest-Related Knowledge: Sustaining Communities, Ecosystems and Biocultural Diversity* World Forests (2012) 1st Ed, Springer, 4.

³⁷ Forest People Programme (supra note 8), 6-7, 16 and 22.

³⁸ Ibid, 6 and 10.

³⁹ Forest Peoples Programme (supra note 10), 16; S. Karki, 'Community Involvement in and Management of Forest Fires in South East Asia' (2002) Project FireFight South East Asia, IUCN & WWF, 13.

⁴⁰ S. Kritsanarangsarn & K. Thaiying, 'Thailand: Forest Management Through Local Level Action; Small Grants Programme for Operations to Promote Tropical Forests (SGPPTF)' (2008) European Commission, United Nations Development Programme, Southeast Asian Regional Centre for Graduate Study and Research in Agriculture, 7; A Salam, T. Noguchi & R. Pothitan, 'Community Forest Management in Thailand: Current Situation and Dynamics in the Context of Sustainable Development' (2006) 31(2) *New Forests*, 281.

⁴¹ Forest Peoples Programme (supra note 10), 21; J. Amornsanguansin & J. Routray, 'Planning and Development Strategy for Effective Management of Community Forestry: Lessons from the Thai Experience' (1998) 22(4) *Natural Resources Forum*, 280.; C. Colfer & Y. Byron (eds), *People*

However, use of these forms of knowledge is not likely to thrive in the context of a professionalised and bureaucratised forestry agency culture, not least of all because of the power relationships associated with modern forestry management strategies (whether for commercial or conservation management purposes). The use of traditional forest knowledge can be best supported by providing communities with secure rights to forests.⁴² If the community has secure rights to manage the forest, they have a greater opportunity to apply their traditional forest knowledge to manage the forest sustainably.⁴³

In Thailand, even though the *Constitution* has recognised the right of the community to preserve its traditional knowledge and the right to participate in natural resource management, including forestry traditional knowledge and management,⁴⁴ this has not been translated into effective means for recognising customary forestry practices. The constitutional challenges to the new *Community Forestry Act* represent a further barrier to the implementation of the constitutional protection of the interests of forest dependent people.⁴⁵

The Government continues to enforce restrictive conventional forestry laws, which significantly limit the community in the area of forest management, particularly limiting the power of the community to make decisions on forest management together with the Government. As a result, the customary forestry practices are not respected and not recognised by laws, and these practices can be undermined.

Government's Lack of Trust in the Community to Effectively Manage Forests

Although over generations the community has demonstrated that it can effectively manage and can live in harmony with forests, Thai forestry authorities have yet to trust these community practices and approve community competence.⁴⁶

Managing Forests: the Links Between Human Well-being and Sustainability (2001) Resources for the Future and CIFOR, 304; J. Nelson & M. Venant, 'Indigenous Peoples' Participation in Mapping of Traditional Forest Resources for Sustainable Livelihoods and Great Ape Conservation' (2008) Forest Peoples Programme, UNEP, 1.

⁴² Parrotta et al (supra note 36), 23-25.

⁴³ Ibid.

⁴⁴ *Thailand Constitution* (1997), section 46; *Thailand Constitution* (2007), section 66.

⁴⁵ Parrotta et al (supra note 36), 375; Forest Peoples Programme (supra note 10), 27-28.

⁴⁶ Regional Office for Asia and the Pacific of Food and Agriculture Organisation of the United Nations, 'Thailand Forestry Outlook Study' (2009) *Asia-Pacific Forestry Sector Outlook Study II- Working Paper Series* No. APFOS II/WP/2009/22, 31; Colchester et al (supra note 14), 13.

Trust among actors in forest management is necessary for them to manage forest resources through collaborative efforts⁴⁷ that can result in effective forest management.⁴⁸ By way of illustration of the problem, mistrust and conflict between government departments and local stakeholders has been demonstrated to have caused a major barrier to effective forest governance in Pakistan and Nepal. In Pakistan, mistrust between forest officials and forest users has led to tension in joint forest management programmes. Similarly, in Nepal, different views and mistrust regarding forest land reform among political parties, the state and local people have made it difficult to make progress on forest-land reform.⁴⁹ Similar dynamics are evident in Thailand today.

A lack of trust between Government and communities can inhibit effective decentralization of forest governance and constrain innovation in finding locally appropriate solutions to deforestation.⁵⁰ If the government mistrusts the community, the government will hold tightly to its discretionary powers in administration of forest management. As the power of decision-making remains vested with state agencies; the community can only conduct forestry practices if approved by the state. Given the nature of community knowledge and community dynamics, this is not likely to result in effective harnessing of the capacity of the community.

Divergent Views Among Stakeholders

There is a variety of stakeholders with different interests in forests. They include commercial foresters, users of the non-harvest values of the forests such as hunters and collectors of plants, those concerned with biodiversity and other conservation values, those concerned with carbon sequestration, people whose interests are cultural and religious, and forest dependent (particularly subsistence) communities. The long debates that emerged during the drafting and ratification of the *Community Forest Bill* highlight that the many forest stakeholders have significantly different views on forestry issues and potential rights. Such differences include diverse attitudes to the issue of what the rights to forest are (or should

⁴⁷ T. Kusumanto, 'Shaping Opportunities for Improving Forest Quality and Community Livelihoods in Central Sumatra and East Kalimantan, Indonesia' in R. Fisher, R. Prabhu & C. McDougall (eds), *Adaptive Collaborative Management of Community Forests in Asia: Experiences from Nepal, Indonesia and the Philippines* (2007) Centre for International Forestry Research, 120.

⁴⁸ Ibid, 100.

⁴⁹ National Centre of Competence in Research (NCCR) North-South, 'Mediated Policy Dialogues to Address Conflict Over Natural Resource Governance' (2011) Regional Edition South Asia No. 2: South Asia Research Evidence for Policy, National Centre of Competence in Research (NCCR) North-South, 1-2.

⁵⁰ D. Capistrano, 'Decentralization and Forest Governance in Asia and the Pacific: Trends, Lessons and Continuing Challenges' in C. Colfer, G. Dahal & D. Capistrano (eds), *Lessons from Forest Decentralization: Money, Justice and the Quest for Good Governance in Asia-Pacific* (2008) Earthscan, 215.

be), what is common property within forests, the definition of a forest community and concerns about whether the community ought have the right to live within protected forest lands, and whether if people can live in harmony with forests being managed for different values.⁵¹

To achieve effective forest management, it is important to ensure that consensus among stakeholders is achieved.⁵² As highlighted in this case of Thailand, reforming rights to forests is essentially a process of negotiation among stakeholders who have different perspectives and interests. Once agreement is reached as to how these human matters can be reconciled, the legal issues of how to draft and implement suitable laws become feasible. Without this consensus, the legal problems remain insurmountable even if there is a formal constitutional provision in place.

Research Agenda for IUCNAEL

The above discussion raises a number of possible research agendas for consideration by the IUCN Academy of Environment Law (IUCNAEL).

How Can Laws and Institutions to Ensure Security of Forestry Rights for the Community?

Secure forest tenure can provide a stronger incentive to all stakeholders to properly manage forests.⁵³ In contrast, having immediate rights, or informal licenses to use forests, with no assurance that such rights will be long-lasting, will make forest users reluctant to dedicate themselves to investing in sustainable forest management. This in turn can fuel forest users exploitation of the forests as quickly as possible and over as much of the forest as possible so as to maximise their insecure their interests. This is likely to cause significant loss of forests, to the cost of all interests. Researching how laws and institutions can be arranged to ensure security of forestry rights of the community, whilst accommodating other legitimate interests, would be an important underpinning for effective forest governance in Thailand.

How Can Laws and Institutions Assure and Recognize Customary Forestry Practices?

⁵¹ Supra note 6.

⁵² FAO, 'Reaching Consensus-Multi-Stakeholder Processes in Forestry: Experiences from the Asia-Pacific Region' (2007) *RAP Publication* No. 2007/31, 4; FAO (supra note 4), 66-67.

⁵³ Supra note 20.

Laws relating to intellectual property rights might be a basis for strengthening protection and recovery of the value of people's knowledge that has been traditionally used to protect and sustainably exploit forests. However, existing intellectual property rules are weak in the protection that they can provide for customary intellectual products and traditional practices.

At the local level in India, peoples' biodiversity registers (encompassing records of individuals' knowledge of biodiversity, its use, trade, and efforts for its conservation and sustainable exploitation) have been established and recognised in the Indian *Biological Diversity Bill* (2000). These have reportedly contributed to the recovery and conservation of traditional forest-related knowledge in India.⁵⁴ This is a start, but it is clear that the protection and recognition of customary knowledge and interests falls well short of what is needed to ensure sustainable and equitable forest governance, insofar as the interests of forest communities are concerned.

How Can Laws and Institutions Achieve Effective Negotiations That Result in Mutual Understanding and Maintain Trust and Collaboration?

A government is likely to be reluctant to make reforms for transferring management rights to the community if they are not confident that the community can effectively manage the forests.⁵⁵ Reviewing the implementation experiences in different jurisdictions could help governments to reflect on the success and impacts of community forestry practices, and this could increase decision-makers' confidence in the effectiveness of community ownership and control reforms.⁵⁶

One approach to reviewing implementation experiences to support effective negotiation processes that may be worth researching further is 'Adaptive Collaborative Management' (ACM). This encompasses three core elements, including the communication and creation of a shared vision, social learning and joint action.⁵⁷ ACM has been used to create ways of involving stakeholders in forest management in Nepal, Indonesia and the Philippines,⁵⁸ enabling them to express and to share ideas and to learn from each other's experiences.

⁵⁴ Parrotta et al (supra note 36), 580.

⁵⁵ FAO (supra note 4), 70.

⁵⁶ Ibid.

⁵⁷ Fisher et al (supra note 47), 18.

⁵⁸ R. Fisher, R. Prabhu & C. McDougall, 'Introduction: People, Forests and the Need for Adaptation' in Fisher et al (supra note 47), 6.

This has resulted in mutually agreed decisions⁵⁹ and building trust regarding forest management.⁶⁰

The International Union for Conservation of Nature (IUCN) initiated a project entitled 'Strengthening Voices for Better Choices (SVBC)' between 2005 and 2009 in six countries: Brazil, Ghana, Democratic Republic of Congo, Tanzania, Sri Lanka and Vietnam. This project originated from the understanding that forest management and conservation are determined by options for society, and that reform of governance systems only occurs with the support of society. This requires the effective involvement of stakeholders and the negotiation of mutual interests. For this reason, the SVBC project focused on supporting, facilitating and promoting multi-stakeholder dialogue (MSD), whilst contributing to capacity-building and a more genuine participation of stakeholders in forest governance.⁶¹ It would be worthwhile for Thailand to consider the extension of project, opening up a multi-stakeholder dialogue and a learning process which could result in improved forest and community outcomes based upon greater trust and understanding.

Forest property right reform is a learning process.⁶² It requires an adaptive approach to gradually and continuously identify incremental and experiential changes that can be useful for supporting reform.⁶³ It would be worthwhile to carry out further research on what type of rights should be devolved to what levels⁶⁴. The outcomes of this could be useful to increase decision-makers' confidence in the reforms' effectiveness.

Conclusion

This Report has discussed the recent arrangements regarding rights to forest in Thailand. The arrangements have attempted to increase the involvement of all stakeholders, particularly forest-dependent people, recognizing their customary forestry practices and allocating some rights to decision-making on forest management to them. However, the reforms have failed even given a clear constitutional mandate, as the power of decision-

⁵⁹ Fisher et al (supra note 47), 17-18.

⁶⁰ Kusumanto (supra note 47), 116.

⁶¹ L. Pires, 'Strengthening Voices for Better Choices: Lessons Learnt About the Development of Sectoral Agendas for Forest Governance in Acre' (2010) IUCN, 7-8.

⁶² FAO (supra note 4), 55

⁶³ Ibid, x, 44 and 55.

⁶⁴ P. Katila, 'Devolution of Forest-related Rights: Comparative Analyses of Six Developing Countries' (2008) Tropical Forestry Reports, 115-130; P. Cronkleton, J. Pulhin & S. Saigal, 'Co-Management in Community Forestry: How the Partial Devolution of Management Rights Creates Challenges for Forest Communities' (2012) 10(2) *Conservation and Society*, 93.

making has remained with state agencies; the community can conduct forestry practices only if approved by the state.

Significantly, existing arrangements do not adequately provide secure forestry rights for the directly affected community, and this may lead to undermining of traditional forest-related knowledge which can play a key role in sustainable forest management.

Timely research and reform proposals to overcome the failings of the current forest property arrangement would provide useful input to Thailand's efforts to achieve sustainable forest management that is also in the interests of the less powerful people who depend on the forests for their livelihood.