CHAPTER 6: RESULTS FROM THE SECOND SET OF INTERVIEW

6.1. Introduction

Chapter 5 concluded by noting that further information is needed to arrive at firm recommendations for resolving the forest governance issues raised in the review of the literature and interviews with stakeholders. In particularly, it was concluded that it was necessary to obtain a more in-depth understanding of how to balance the power to manage forests between the government and the community, and what issues underlie the lack of trust and divergent views about forest management among stakeholders.
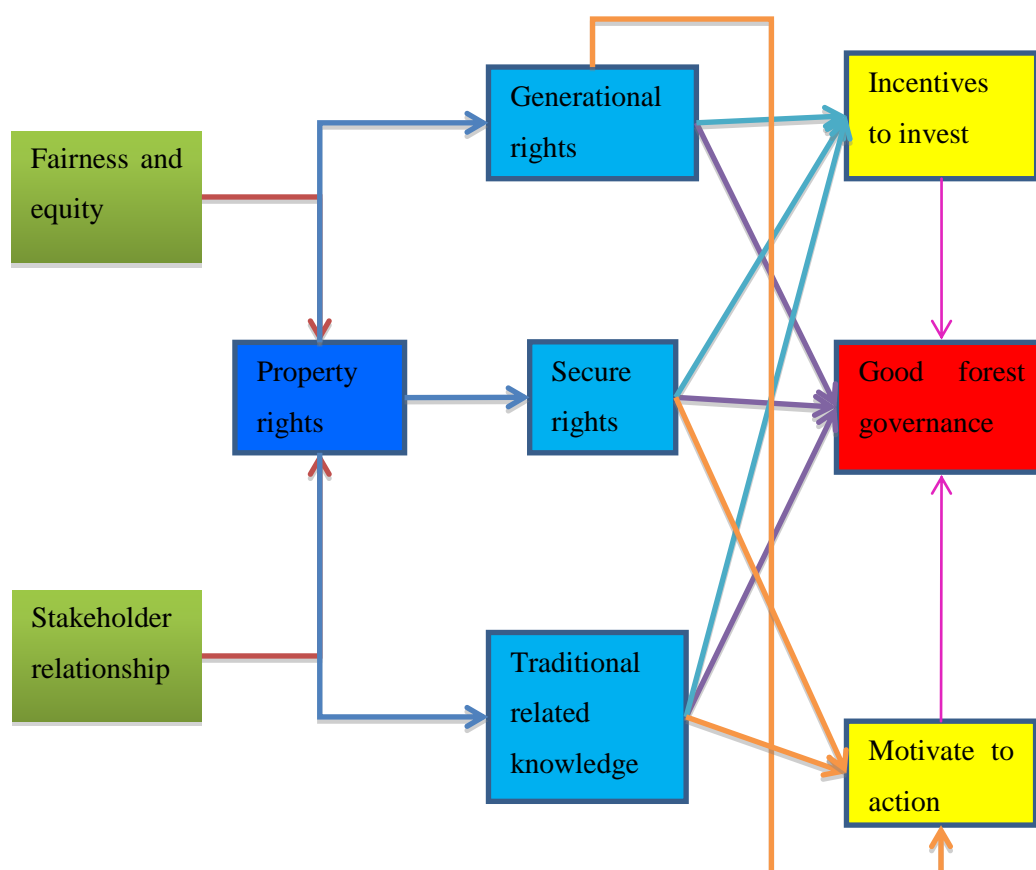
Property rights particularly influence components of two criteria: Fairness and Equity (Criterion 7) and Stakeholders Relationships (Criterion 10) as shown in Figure 6.1. As is discussed in the various governance reports explored in Chapter 3, having established rights over forest resources is generally believed to motivate stakeholders to care for the forest and to invest in management of the forest over the long term. This is because security of rights (rights recognised in legislation) over forest resources gives stakeholders power over the utilisation of such resources. When stakeholders with rights, particularly those whose livelihoods rely on forests, participate in decision-making over how the forest should be managed they can more powerfully express their forest resource needs and have the ability to influence forest management to take these needs into account. This is likely to encourage such stakeholders to participate in the ongoing management process. Such a system is also likely to be more fair and equitable. However, private individual rights can have perverse effects, and so property arrangements must be carefully tailored.

Recognising rights in this thesis means not only providing secure rights but also explicitly recognising traditional forest-related knowledge and culture held predominantly by indigenous people. Such knowledge, for example knowledge about harvesting forest products, selecting trees for planting, hunting, etc, has developed as a result of the needs of these people. Setting up systems that help to ensure fairness and equity should also create the circumstances to enhance trusting relationships among stakeholders. Having property rights should enable stakeholders to be actively involved, by right, in forest governance, giving them more opportunities to work and learn from one another. However, to explore whether these expectations have a reasonable chance of fulfilment requires local knowledge.

The second set of interviews was predominantly focused on gaining a further understanding the issue of property rights. Seventeen stakeholders participated in this set of interviews (see Table 2.2), representing Central Government, Regional Government, consultants in forest governance, NGOs, scholars and communities. As with the first set of interviews, participants were provided with a list of questions a week before interviews were held. The questions were used to help structure the

interviews but questions were open-ended and interviewees were free to express their views and elaborate on issues relevant to forest management. All interviews were recorded and transcribed and data subjected to thematic analysis.

Figure 6.1: The effect of property rights on good forest governance

Sections 6.2 and 6.3 discuss interviewees responses to questions about property rights under the two criterion headings: Criterion 7: Fairness and Equity, and Criterion 10: Trusting Relationships among stakeholders. Interviewees also provided insights of other issues related to other criteria relevant to good forest governance. These insights are detailed in Section 6.4.

Finally, Section 6.5 summarises the findings from the second set of interviews and provides conclusions, which will be further explored in Chapters 7 and 8.

6.2. Criterion 7: Fairness and Equity

As noted in Section 4.3.5, the just distribution of benefits and burdens of forest management should enable all members of society to improve and maintain their wellbeing from forest resources. When fairness and equity are not considered, people are more likely to rapidly extract resources from forests for their short-term benefit. The results from the second set of interviews support the view that: unclear specification of rights to forestland or resources; lack of recognition of the capacity of traditional forest managers in caring for the forest; and not recognising the interests of forest

communities are all implicated in poor forest governance. The 'voices' under the following sub-headings provide details of interviewees' thoughts on these issues.

6.2.1.   Interview Voices: Impact of unclear rights

Unclear rights to forests create a situation in which those settled in forestland are vulnerable. This issue was emphasised by four stakeholders in the first set of interviews[622] and confirmed by interviewees from the second set of interviewees:

> I have to work with and deal with people who have been settled in forestland without permission. This problem is quite a big problem in Thailand. There are so many people living in forest areas and this is because of many factors such as for livelihood, for building resorts, or for investing in that land for agricultural benefit. This problem is very difficult to deal with, as there are so many people living in forest areas – up to 100,000 people, so it is quite big issue as it affects a large number of people – all forest areas have people living in them. *(Participant 1)*

> Under the National Park Act, people are never to live in reserve forest areas. However, currently there are a number of people living in the reserve areas and the Cabinet resolution was imposed to deal with this problem and now the government is taking into account how to help these people. (*Participant 7*)

A participant with 25 years experience on issues of natural resources management, including forest management with a focus on indigenous people, affirmed that:

> Now there are around 10 million people living in protected forest areas and out of this amount approximately 80 per cent are indigenous people living in reserved forest areas. It means that those people (according to the laws) live illegally in the forest areas.

> The national parks in the north are managed together by the watershed network and government. This is a positive sign, showing that the community is increasingly aware of a sense of belonging to forest. However, this is still not security, as their status is not assured by any relevant legislation. The joint management practice is only a learning process for forest staff. It can be changed at any time depending on who is going to be the next head of the national park department. The head of the national park department determines how much people can participate in forest management in each area. (*Participant 10*)

6.2.2.   Interview Voices: Clarification of rights to forests

An interviewee from the Government stated that:

> If we can clearly identify each type of rights to forest, it is good. The ownership belongs to the State, but community have the rights to manage. This can be good. (*Participant 2*)

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[622] Interviewee P1, P2, P3, and P4 from the first set of interviews.

A representative from Community Forest Network stated that:

> Conducting my role under the forest legislation such as Forest Act, BE 2484 and the National Reserved Forest Act BE 2507, it is still not clear, for instance, under the National Reserved Forest Act – Communities have been clearing and occupying forestlands for their livelihood over generations. Government use the National Reserved Forest Act to get such forest areas back. This causes conflict between government and communities. (*Participant 14*)

One interviewee from the community also stated that:

> We sometimes have the problem on reserved forestland such as if the Government allows the community to look after forest, the community can keep the forest. But there is no law to assure that we have rights to manage forest so we are not sure about protecting the forest. *(Participant 17)*

6.2.3.   Interview Voices: Valuing forest traditions

This issue was raised by three participants in the first set of interviews[623] and eight participants in the second set of interviews.

One interviewee with more than 30-years experience in dealing with people who live in forest areas and community forests in national parks confirmed that:

> It is possible for law to accept customary practices to manage forests which have been conducted since ancient time by indigenous people or ethnic people. (*Participant 7*)

A retired forest official, now a forest policy consultant of the State, who has 37 years experience in forest management was concerned that national forest laws undermined traditional forest management practices:

> Forest management practices that have to be conducted based on customary laws that incorporate people's belief systems, but forest laws do not recognise customary laws. It is necessary to incorporate customary practices in law to enable community to engage community in forest management. At present, it is possible to allow community to manage forests. It is possible for government to accept that community can effectively manage forest, and now there is evidence that communities can manage forests very well, so this issue should be taken into account by government or policy makers. *(Participant 5)*

One frontline participant with the 33 years experience in forest management, including responsibility to encourage community in forest management, highlighted the need to recognise customary forest practices:

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[623] Interviewee C2, C3, and C4 from the first set of interviews.

I really think that Thai forest law should recognise customary forest practices of the community. Nowadays, I've noted that strong communities have been successful in forest management as they still employ customary rules to manage forests. Every community forest has a shrine, which is built for the ancestors. It is called by local people 'Sarn Poo Ta'. People believe that the ancestor living in the shrine will help them to protect the forest. People have taken an oath to Sarn Poo Ta that they will protect their forest. They believe that they have to strictly keep such oaths otherwise they will get into trouble. In conclusion, I highly support that customary forest rules established by the community since ancient times have to be accepted. (*Participant 3*)

An interviewee, who also has been devoted for a long time to strengthen and help Thailand's community forest movement advance, noted that national forest laws do not recognise customary forest rights:

There is no clear legal recognition of customary forest rights. Recently, there was a workshop calling for recognition of these rights. (*Participant 6*)

An interviewee from Central Government supported the above statement:

It is possible for law to accept the customary practices to manage forests, which have been practiced since ancient times by indigenous people or ethnic people. (*Participant 7*)

Two interviewees from the forest community network provided examples of how communities conducted traditional forest practices:

To establish the Community Forest Network, we mobilise people with a focus on encouraging them to utilise forest resources sustainably. We start intensively studying the types of forests that we already have and then divide forests into three types identifying which types should be protected or used. (*Participant 13*)

If there is encroachment in some forests, we just stop the encroachment by ordaining forests to declare the forest a certain type. (*Participant 17*)

Participant 10, who has 25 years experience in issues of natural resource management, including forests, with a special focus on issues concerning indigenous people in Thailand, emphasised the importance of customary forest practice and indigenous people*:*

For example, I am a descendant of indigenous people. We have the belief that the forest is common property or belongs to God. This belief plays an important role for us to follow and keep. This is not only my idea – these ideas belong to all members of my group over the generations, and most of the people over the country who rely on forests. So it is needed to convert these beliefs into law or policy. It would help to change the national policy if we help each other – if we collaborate. (*Participant 10*)

6.2.4. Interview Voices: Forest laws and policies overlook the interest of communities

Four interviewees from the first set of interviews raised the issue that forest laws and policies overlook the interest of communities.[624]

Participant 5 posed the concern that customary forest practices are undermined by national forest laws:

> Nowadays, the application of rights to forest resources in Thailand is not effective. The allocation of land to landless people is the main issue for forest degradation of Thailand. Also, we can see from an example of REDD+ about enabling people to protect the forest, but the program does not realise the rights of the community to manage forests. Once government makes laws, it does not normally take into account customary laws practiced by and based on the way communities live, so this causes a contradiction between government and community. (*Participant 5*)

An interviewee with extensive experience in community forests internationally and domestically noted:

> Two governmental actions that affect the rights of people to forests are the policy on logging ban in BE 2532 and the policy on increasing the forest areas. All of the land occupied by forest communities with no land title deed is forest areas used by Government to increasing forestlands. Communities become landless people because of such policy. (*Participant 9*)

6.2.5. Interview Voices: Developing the next generation

Three stakeholders from the first set of interviews noted the importance of developing the next generation to enable them to better manage forests.[625] One participant from the second set of interviews noted:

> It is also needed to educate young people enabling them to know more about natural resources and influencing them to have the will to protect forests. (*Participant 13*)

6.2.6. Interview Voices: The need to balance power

In Thailand, forests are owned by the State. The power of final decision-making on forest governance is vested in the State. This enables the State to design forest laws and policies that favour the interest of the State, marginalising the interest of those whose livelihoods depend on forests, potentially causing such people to become more impoverished and generating conflict among stakeholders. As discussed in Chapter 4, the evidence suggests a need to balance forest management power between the Government and forest-dependent people.

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[624] Interviewee P1, P4, L1, and C1 from the first set of interviews.
[625] Interviewee L1, C1, and C4 from the first set of interviews.

Several interviewees noted issues related to the fact that forests in Thailand are State-owned. This was also noted by three participants in the first set of interviews.[626]Participant 1 in the second set of interviews noted:

> My current responsibility is about people who live in forest areas. Nowadays there are a huge number of people living in forestlands illegally and we have to allow them to continue living in the forestlands. According to forest law, people are not allowed to settle on forest areas, unless permitted by government.
>
> People can only have rights to participate in forest management with government pursuant to laws but not for the rights over forestland; right over such land can be granted only by permission of RFD. Every authority has the same understanding that rights to forest are under RFD. Now RFD conducts its role under the National Reserved Forest Act, BE 2507, while the DNWPC is under the National Park Act, BE 2504. (Participant 1)

Another participant from Central Government agreed with this statement:

> In Thailand people have rights to forest but are under laws – people have rights to forests under the National Reserved Forest Act administered by the RFD. Communities can collect forest products for households, but it has to be according to announcement of the President of the RFD. *(Participant 2)*

One interviewee from Central Government noted:

> Under the National Park Law, there is never permission to allow people to live in such areas, but there is an encroachment and this is difficult to deal with as the population is increasing significantly. (*Participants 7*)

Participant 5 agreed:

> Now under forest laws, only the State has the right to manage forests. The people can only manage forests once they get the permission from government such as the rights for logging. The community can ask for the permission – then they can once they get permission.
>
> Also the rights to access, people might be given rights to access forest if they ask for permission from the State. Such as people can ask for access to forest for research purposes, and the State and people have to be together to conduct the research in the forest. (*Participant 5*)

One retired forest official who was the frontline manager with 21 years experience in forest management, particularly in the advocacy of applying common property for forest management in Thailand, also noted the issue of State control:

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[626] Interviewee P1, P2, and C1 of the first set of interviews.

We have legislation regarding rights to forest in Thailand, they are the Constitution, the Forest Act, BE 2484, the National Reserved Forest Act BE 2507, the National Park Act, BE 2504: the Wildlife Conservation and Protection Act, BE 2535; and the Enhancement and Conservation of the National Environmental Quality Act BE 2535. These laws pay attention to the issue of the protected areas. There are also a number of Ministerial regulations regarding public land as common property. According to these laws, the power of forest management is still under the State. (*Participant 6*)

Participant 8 described the limitations that people face in accessing forest resources:

Rights to forest in Thailand are exclusively held by the State. People have no rights in forestlands. People can be granted rights to forestlands, but still absolutely upon the determination of State. (*Participant 8*)

Participant 9 noted:

Most forest laws in Thailand limit the rights of the community to forests. The laws in Thailand only vest power over forest to the Government; forestlands exclusively belong to State. No one can use forests except with the state's permissions, which is indicated in the Forest Act BE 2484. Another law that affect rights of community to forest areas is the Land Act BE 2497. Since establishing RFD, the land law distinguishes land and forest areas. Forest areas are not land under the land law and the rights to manage forestlands are only under the Government.

Another one is the National Park Act BE 2504, this law is very strict: stricter than the Forest Act. The national park area is forestland that is strictly preserved. Within this type of land, people cannot even takeaway only one piece of rock as they will be punished under the National Park Act. As well, the community is not allowed to conduct any forest practice in the national park areas. (*Participant 9*)

Participant 10 emphasised:

Now in Thailand, forest areas belong to State. The power of forest management is still under the State which is based on strict conventional forest law. The indigenous people have made an effort to call for a review of such conventional laws, but there has been no such review so far. (*Participant 10*)

A scholar with 17-years experiences on land reform and forest management similarly noted:

Forest laws in Thailand only empower the State. For example, under the Forest Act BE 2484, the power of forest management under is vested with government, people can utilise forests only by getting permission to do so and being granted the concession from government. (*Participant 11*)

An interviewee from the community confirmed:

> If a law grants rights to community to manage forests, it is very good. It should be encouraged, as community can have the chance to participate in forest management. However, at present, there is no law that really enables the community to manage forest, laws only grant power to manage forest to some groups of people ranking from the Central Government to Kamnun (the Head of sub-district) and Head of village, not including the community. So I highly support the law to grant rights to community in forest management. (*Participant 12*)

A representative from Community Forest Network stated that:

> According to current law, there is still the problem that the community cannot access forests properly. This very much limits the community's access to forest resources. (*Participant 14)*

One participant, also from the community network noted:

> In terms of rights to forests, now people have limited rights to forest management, especially in the North and The Northeast region. (*Participant 17*)

A participant from the community forest network provided an example that emphasised the need to balance power between government and community in forest governance:

> When we submit a forest project to government, we know its approval depends on the trend of policy. If such project is consistent with what the government wants, the project might be approved, but if such a project is not consistent with what the government wants, then even if we propose the project, our project is still not passed. *(Participant 16)*

Participant 14 provided an additional explanation about the impact of imbalance of power in forest management:

> To conduct my role, I have to rely on the Reserved Forest Act, The National Park Act, especially *National Reserved Forest Act*. The problem is they are not clear about the rights of community under the *National Reserved Forest Act*. According to this Act, even though, community has sustainably managed forest for livelihood over generations, the Government can resume the forests at any time. This causes conflict between the Government and the community. (*Participant 14*)

Interview observations, therefore, show that even though communities may be allowed to be involved in forest management, the power of decision-making remains firmly under the State's control:

> To enable the community to legally manage the forest, the RFD establishes the community forest project based on the administrative power indicated in section 19 of the National Reserved Forest Act BE 2507. The president of RFD exercises his power based on the Act, appointing the RFD staffs to manage forests under the community forest project in conjunction with the community.

Then the community can help the government to manage the forest. Under the community forest project, the community has to propose the forest management plan to RFD for review. Once the proposed community forest plan is approved, the community can manage forest according to the conditions made by RFD. (*Participant 4*)

6.2.7. Interview voices: The need to implement the *Constitution*

As already noted, Thailand's *Constitution* recognises the rights of the community and indigenous people to forest resources and their traditional practices of natural resource management, but no specific law implements the relevant provisions.

Several participants from the second set of the interviews highlighted the need to implement the *Constitution*. As a retired forest official with 21 years experience on applying common property for forest management in Thailand noted:

> We have been calling for the transfer of management rights to forest to the community, not calling for the ownership over forestland. This is identified by the Constitution, both in the version BE 2540 section 46 and the current version BE. 2550 sections 66 and 67. These laws only generally indicate the purpose of application of rights to forest management. They need specific laws to enable implementation; to provide more exact details about how such rights should be applied. The forest laws are out-dated – people don't feel like they belong to such forests. (*Participant 6*)

A participant from Government with direct responsibility to the forest community confirmed that:

> In relation to the Constitution that recognises the rights of the community in natural resource management, the RFD still takes into account this issue, but at present there is not any specific law that identifies more exact details of how to grant rights over forest resources to community. (*Participant 2*)

And:

> Even the Constitution enshrines the community to have rights in forest management, however, in reality; the State has no will to devolve such rights to the community. (*Participant 8*)

Participant 9 explained:

> We have the Constitution, which realises the rights of community to forest management, but this law needs a specific law, such as a forest law, to be made and to provide more exact details of what and how such rights are. So as long as there are no such specific laws, rights of community to forest are not clear and do not occur. (*Participant 9*)

Participant 10 noted:

> In relation to the recognition of rights of community to forest, the current constitution recognises the rights of the community in forest management and this recognition should automatically come

into effect, as the most recent constitution does not contain the words 'as identified by law'. However, in practice, it is not automatic, the power of forest management is still under State control, and is conducted based on the restrictive conventional forest law. The indigenous people have made an effort to call for reviewing such conventional laws, but there has been no such review so far. (*Participant 10*)

The quotations above were supported by Participant 11:

Two Constitutions grant rights to community in forest management. The Constitution of BE 2540 had the provision 'as identified by laws', which means in practices that such rights will not be protected until there is the revision of any forest laws to bring them into line with the constitution. The latest version of the constitution was established in BE 2550. It removes the drawback of the constitution in BE 2540 by getting rid of the words 'as identified by law', which seems to make it is easier or is even automatic that the rights of community will be immediately protected once the constitution come into effect, as it does not need to make any laws meeting the constitution. Nevertheless, in practice, the government is still not sure about the details of how granting forest rights to community should be. As result, the way that government does it is by continuing to enforce restrictive conventional forest laws, such as the Forest Act, BE 2484and the National Reserved Forest Act BE 2507, which significantly vest power of forest management to the State. Thus, as long as there are no revision of specific forest laws to provide more details about how granting forest rights to community should be, the power of decision making on forest management is still vested with the government and the community still has to ask for permission to utilise and access forest. (*Participant 11*)

A participant from the community confirmed that:

There is the Constitution recognising the rights of community to natural resources, but we need the specific law to recognise rights of community in forest management. The forest areas managed by community are in very good condition. So any specific law that exactly and clearly grants rights to community in forest management should be very helpful."(*Participant 14*)

Section 3.3.4.1in Chapter 3 examined the progress of the proposed *Community Forest Act*, intended to address the issue of right of community. Participant 2 explained:

We are waiting for the Community Forest Act, but this law has not come into effect. This law has failed because there are not sufficient members of the 'ad hoc' committee voting to pass this law – there are only 66 members of the committee which is not enough – it is less than half of the total members of the committee. So, the Constitutional Court decided that this law has failed. (*Participant 2*)

Participant 9 also acknowledged that Thailand has made an effort to establish a specific forest act but failed:

Thailand has made an effort to establish specific forest act to implement the provision of the Constitution – it is the Community Forestry Bill. This *Bill* has been debated for a long time since BE 2533 until BE 2550, but it is failed to come into effect. This is because the details of this law still limit the rights of community in forest management. The disputed issue is community forest cannot be established within the protected areas so now it is appealed to the Constitutional Court. A technical problem arose when on the day of voting to pass this law there were not enough committee members present, so this law is failed to pass. (*Participant 9*)

6.2.8. Interview Voices: The need for high level of national laws to recognise and implement rights of community to forests

Implementation of the provisions of the *Constitution* was also recognised as necessary.

This issue was identified by Participant 9:

The ministerial regulation is also another type of legislation that affects the security of rights of people. Government likes to establish Ministerial regulations to solve forest problems. Forest rights of people under the Ministerial regulation are not secure enough as it can be changed very easily by the government without reference to Parliament. That is once a new government disagrees with the Ministerial regulation of the previous government, it can simply establish a new Ministerial regulation to repeal it. An example is that the previous government passed a Ministerial regulation at the aim to issue land title deed to group of people. However, this project has still not occurred, as the new government establish its own Ministerial regulation to change such a project. (*Participant 9*)

6.2.9. Summary: Interview voices (second interview set) on Criterion 7: Fairness and Equity

In summary, interviewees raised issues that provide further evidence that Thai forest governance fails to meet the fairness and equity criterion:

1. There is a lack of clear definition of forest rights resulting in insecurity for those who have settled in forestlands.
2. Traditional forest-related knowledge is not recognised and is undermined by forest laws.
3. There is inequitable benefit sharing, because forest management in Thailand is vested in the State and is mainly focused on forest conservation.

6.3. Criterion 10: Stakeholder relationships

As indicated in many of the quotes above, poor definition of forest rights to the community is a significant source of conflict. The following discussion provides further information about the nature of the conflict arising from the poor allocation of property rights.

6.3.1.   Interview Voices: Distrust among stakeholders

Interviewees highlighted that a lack of trust among stakeholder groups is a significant problem in Thailand's forest governance arrangements. On the one hand the Government distrusts community members to look after the forest appropriately and is especially concerned about providing rights to forest dwellers who do not have Thai citizenship. On the other hand citizens distrust the government. There are also divergent views about what the nature of rights to forest should be.

6.3.1.1 Community distrust of Government

In the 1998 Chuan Leekpai Government, the Director General of the RFD, Plodprasob Suraswadi, did not believe that people could live in harmony with the forest. This resulted in legislation undermining the forest – as already noted in section 3.3.4.1 of this thesis. Other draft Bills and debate have subsequently followed.[627]

In the second set of interviews, interviewees asserted that there are two key issues that fuel the government's lack of trust of the community: (a) the possibility that the community has weak control over its members, and (b) concern for the Government's duty to the population as a whole.

(a)   Only a community that has strong relationships among its members can manage forests effectively:

One interviewee from Government who has direct experience as the representative of the whole country on community and forest management stated that:

> If the community is strong enough, it is possible to transfer forest-management rights to them, as their awareness is strong enough to effectively look after forests. Thus, it can be possible to transfer rights to manage forests only in the community that is strong enough. *(Participant 2)*

Another three participants noted that only strong communities can effectively manage forests:

> Now in case of forests, the strong community can manage forests very well: there is no problem with deforestation in this type of community. The strong community is the community that has its own rules. People in the community help each other to establish such rules. As well, the leader of such a community is very devoted to achieve effective forest management in the community. In contrast, there is a problem in a community that is not strong. The community that is not strong exists a lot. RFD staff carry out a lot of negotiations and communications to convince this type of community to effectively manage forests. *(Participant 3)*

> The villages that have strong relationships among villagers with willingness to protect and keep forests for the long term, will apply to establish the community forest. These villagers will propose the forest management plan to the government and then, before approval, the forest

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[627]Johnson and Forsyth, above n 281, 1596; Sumarlan, above n 283,53-54**.**

management plan will be verified to ensure that the villagers are able to manage forests effectively. (*Participant 4*)

Effective forest management is mostly conducted by a strong community. The important characteristics of this community seem to be in the form of organisation – having rules and methods of natural resource management that enable people to live in harmony with the environment. Such rules can be practical and established by members of the community. As well, the community has a strong leader. (*Participant 10*)

The above statements suggest that the Government is cautious about trusting the community and requires proof of strong relationships within the community and their capacity to manage the forests.

Although Participant 5 stated that the community were generally competent to manage forests:

It is possible for government to accept that community can effectively manage forest, and now there is evidence that the community can manage forests very well. So this issue should be taken into account by the government or policy makers. (*Participant 5*)

Participant 8 indicated ongoing reluctance by Government to trust the community:

Even though the Constitution recognises the forest rights of community, the reality is that the state has no will to devolve such rights to community. The State does not believe that the community can effectively manage forests. The State believes that the community is the key actor who encroaches and destroys forests. (*Participant 8*)

Participant 6 added:

The only problem for Thailand is government never transferred forest-management power to the community and the main point of such a problem is that the Government never trusted the community. It is still not sure that the community can manage forests well. (*Participant 6*)

An interviewee from the community clearly indicated that community could effectively manage forests:

Most of forest left today is because of the forest have been protected by community. Community can manage forests effectively. (*Participant 12*)

However, another participant from the community clearly stated that the perspective of government is very important to forest governance:

To change we need to change the attitude of the leader (Government). We need to make the Government have the correct understanding about what the community forest is. (*Participant 17*)

(b)   Concern for government's Duty

This was made evident by two interviewees:

> In practice, lacking of Thai citizenship of indigenous people really limits them to effectively manage forests. The government believes that indigenous people migrated from other countries. Thus, granting citizenship to them can cause insecurity in the country.

> However, government has to, on the other side, look at the fact that even if such indigenous people migrated from other places; they have been living in harmony with forests for generations. So, the Thai Government has to change and open its mind to take into consideration this issue. (*Participant 10*)

Participant 7 noted:

> It has been possible for the law to accept customary forest practices conducted by indigenous people since ancient times. However, in this case, it is not only the problem of deforestation but it also extends to problems about if they are Thai citizen or not, which links to two issues that the Thai government has to carefully take into account. These are the security of the country and the issue of the state of citizenship of those indigenous people. (*Participant 7*)

6.3.1.2 Government distrust of other stakeholders

The second set of interviews also revealed that there is not only government lack of trust of the community, but also distrust of the government by other stakeholders.

> We believe that the government trusts communities to manage forests. As you can see from the community forest projects administered by the RFD, the government trusts communities to manage forests, but it could be that other stakeholders do not trusts that government trust in the communities. In Thailand there is lack of trust among stakeholders not specifically that government lack of trust to community or community not trust in government. *(Participant 4)*

However, one participant indicated that in some areas the trust of government by communities is gradually being developed.

> In the area that I have been working, in the past people did not trust staff from forest agencies because they like to strictly patrol forest areas with holding weapons all the time, so people are rather frightened of and do not trust those staff. However, at present the officials like to work more closely with people with no weapons, as a result, people are getting have more trust to those staff (A Participant 3)

6.3.2.   Divergent views among stakeholders

Two interviewees from the government group who have direct experience as national representative on community and forest management issues stated that:

We have to minimise encroachment into forest areas, by allowing only people who already live in forest areas – individual by individual – not as a group – with the condition that those people have to look after forestland in return. Under laws, the government can only allow people to live in forestland; the government cannot transfer the ownership over forestland to community.

(Participant 1)

Community manages forests under law, but they don't have ownership over forestland. It is good if community doesn't have any ownership over such forestland. Because, if community has ownership over forest areas, they may compete for such ownership and there may be conflict among them. Granting the ownership over forestland to the community is impossible. The ownership over forestland has to be only with the State. Community only have rights to manage and maintain forest with officials. I think if we have the community forest law, this can pose more problems. This is because it involves so many stakeholders and community may not understand well enough about what such a community forest law is which we still need to clarify. I disagree to totally transfer the rights to manage forest to community. *(Participant 2)*

On the other hand, another participant noted:

We have been calling for the transfer of only rights to manage forest to community, not calling for the ownership over forestland. (*Participant 6*)

Similarly, another key interviewee who has been working on forest management, including community forests since 1993 stated:

The right to be transferred to the community is not of 'ownership' of forestland; it is only the rights to manage, to maintain, and to conserve forests. It has to be acknowledged that the existing forest areas left now is not only because of protection of by officials, but has significantly been protected by communities for many years. (*Participant 8*)

The quotes provided by the four interviewees above highlight that stakeholders have different understandings about what forest rights should be transferred to the community; they may include ownership, or only rights to manage. There needs to be greater clarity among stakeholders what the forest rights are being transferred.

Another problem is that, although Thailand is a democratic country, which is supposed to be people-focussed, the reality is different. Thus, it needs to communicate and make clear the rights of people. They need to understand better what rights are enshrined in the Constitution. (*Participant 10*)

Participant 3 added:

There are different views on rights to forests between stakeholders, especially people who live in remote areas (around 70 per cent), who still lack a sound understanding what rights to forest

should be. People only claim for their right without realising that some rights cannot be transferred to the community as it can cause harm to the environment and biodiversity. (*Participant 3*)

The problem of having different views among stakeholder was confirmed by other interviewees:

There is the different view on rights to forest between Government and community. This can be seen from an effort of making the Community Forest Law. The way how government views rights to forest is based on laws – what the law said. In contrast, how community acts is based on their customary way. *(Participant 8)*

One interviewee, who has long been devoted to helping the community to advance Thailand's community forest movement, provided more details about what such different views are:

The community Forest Bill has been debated for a long time since BE 2533. The debate is about whether a community forest can or cannot be established within the protected areas. This issue was then appealed to the Constitutional Court. (*Participant 6*)

Likewise, Participant 5 observed:

There are different views about forest rights among stakeholders: the community relies on customary practices to interpret rights to the forest, but the Government depends on what is in existing laws. (*Participant 5*)

Participant 10 said:

The State or people who live in urban areas very often think that the cause of deforestation is people who live in the forest. This thought has been reinforced in the curriculum at school. The State thinks that it plays the leader role in forest management, but the community believes that to implement sustainability, the community has to take the main role in forest management. The community should hold the rights to forest, and the State should only help. So there are different views on forest management in Thailand**.** The application of rights to forests in Thailand is still the centre-focus, which leads to conflict among stakeholders. State and community is unlikely to manage forests together. But now there are several areas to prove that forest management has to involve the community, such as managing the national park in the north. This is collaboratively managed by the Watershed Network and the Government. (*Participant 10*)

One interviewee also noted that there are differences in application of forest rights among stakeholders in Thailand:

All stakeholders have different views on rights to forest: the Government still believes that the community can participate in forest management if there is permission by legislation. To make forest right more effective, we need to change attitudes by increasingly involving community in forest management, but it is quite difficult. *(Participant 11)*

In addition, three interviewees from the community noted:

> There are different views on rights to forest management: The Government only thinks that rights are based on law, but the community thinks that rights to forest are based on nature, based on the interest they got from forest, and based on their tradition. (*Participant 12*)

> There are different views on rights to forest between government and community, as the government still only relies on law to interpret what rights to forest is. (*Participant 14*)

> To make the change, we need to change the attitude of the leader. I mean that the Government – we need to make the Government have the correct understanding about what a community forest is. (*Participant 17*)

6.3.3. Interview voices: Inequitable benefit sharing

Two participants described the problems arising because of inequitable sharing of benefits:

> To conduct my role, I have to rely on the Reserved Forest Act, The National Park Act, especially *Reserved Forest Act*. The problem is they are not clear about the rights of community under the Reserved Forest Act. According to this Act, even though, community has sustainably managed the forest for their livelihoods over generations, the Government can resume the forests at any time. This causes conflict between the Government and the community. (*Participant 14*)

> Nowadays, the application if rights to forest resources in Thailand are not effective. The allocation of land to landless people is the main issue for forest degradation of Thailand. Also, we can see from an example of REDD+ about enabling people to protect the forest, but the program does not realise the rights of the community to manage forests. Once government makes laws, it does not normally take into account customary laws practiced by and based on the way of communities live, so this causes a contradiction between government and community. (*Participant 5*)

6.3.4. Summary, insights (second interview set) into Criterion 10: Stakeholder relations

In summary, the interviews suggest that relationships in the forest governance system are strained because of lack of trust and inequitable sharing of benefits. The factors identified that cause a lack of are:

1. Concern by the Government that if communities are not cohesive and have strong leadership they will not care appropriately for the forest over which they are granted rights.
2. Reluctance by the government to provide rights to those (indigenous communities) who lack Thai citizenship.
3. Stakeholders have divergent views about the preferred form of rights over forest resources.
4. Inequitable sharing of benefits from forest resources among the community continues to undermine trust.

6.4. Insights into other criteria

The second set of interviews, although predominantly focused on gaining a better insight on issues related to property rights to forests, provided useful insights into issues relevant to other criteria on good forest management.

6.4.1. Criterion 1: Rule of Law

Legal inconsistency

The need to implement the provisions of the *Constitution* was noted in the quotes reproduced under section 6.2.7. They not only emphasise that a balance of power in forest governance is needed but also that there is inconsistency among forest related laws.

Legal complexity

Participant 9 reinforced the views expressed by others reported in Chapter 5:

> Thailand has as law the Enhance and Conservation of National Environmental Quality Act BE 2535. This Act seems to be positive on rights of community to forest, but this law still has the provision about Environmental Fund, which requires very complex conditions for the fund to be granted. (*Participant 9*)

Participant 10 provided another example of the complexity of laws:

> There is the ratification of international law by the Thai government to recognise indigenous people, such as the United Nations *Convention* on the *Rights* of the *Child (CRC)*. The Thai government ratified Article 7 of this Convention, which requires the government to have more acceptance of indigenous people. As a result of this ratification, children who were born from indigenous parents are eligible to be registered for their birth certificate, which Thai government hopes will help the children to use this birth registration claiming their Thai citizenship. However, to get this certificate, it still needs very long and complex process to be proven. (*Participant 10*)

A participant from a community forest network concluded succinctly that:

> The government needs to reduce the complex process, reduce the regulation to make it easier for effective forest management. (*Participant 13*)

Partial enforcement of laws

Several participants argued that laws in Thailand are generally good for forest governance but they are poorly enforced. For example, Participant 9 noted:

> At present enforcement of forest laws in Thailand is ineffective, such as the case of Kow Yai protected area. In this area, the influential people can build resorts but community cannot access it. This reflects that forest laws are partially enforced. (*Participant 9*)

This statement is supported by Participant 10:

> Even if the *Constitution* has the aim to protect everyone in Thailand, in practice the Constitution
> is interpreted so that only Thai people have rights, which excludes indigenous people who lack
> Thai citizenship from being protected under *Constitution*. (*Participant 10*)

6.4.1.1. Summary of comments on Criterion 1: Rule of law

Interviewees in the second set of interviews noted that Thai forest governance fails to meet the rule of law criterion because:

1. There is inconsistency between the *Constitution* and legalisation governing forests;
2. The implementations of laws to benefit the community are overly complex;
3. Laws are partially enforced, predominantly benefiting influential people rather than forest communities and indigenous people.

6.4.2.   Criterion 3: Accountability

Participant 3 noted that there was a lack of accountability in land allocation and corruption:

> At present, the forestland is still occupied mostly by the influential people and those influential
> people get such land illegally. (*Participant 3*)

6.4.3.   Criterion 5: Effectiveness

In addition to confirming that forest governance in Thailand fails to meet the criteria of Fairness and Equity (Criterion 7), the quotations provided in section 6.2.7:the need to implement the *Constitution*, also reflect that Thai forest governance fails to meet Criterion 5 (Effectiveness).

A participant emphasised that lack of capacity is what causes ineffectiveness:

> At present, the application of rights to forest is not effective. The important cause of such
> ineffectiveness is that the Government lacks the capacity to manage the forests by itself; it is not
> sufficient to only manage forests by the Government. *(Participant 6)*

6.4.4.   Criterion 6: Efficiency

Four interviewees in the second set of interviews were particularly concerned that Thailand's current forest management policies change too frequently. Extra expense is incurred when activities that have already been partly conducted and have already had resources and time spent on them need reallocation of resources and time because of policy changes.

> Another problem based on my experiences is that the policy of government changes very often –
> not continuing from the previous policy of the previous government. Different governments have
> their own policy, which is different from the previous government and these policies normally

affect the way to manage forests. Such as the policy of Kukrit government allowing people to live in the forest. This enables many people living in forest areas, which directly affect the forestland. Then there was also the policy of land reform of other governments, which leads to the reduction of forestland. As well as the policy on promoting rubber plantations as a cash crop of another government, which also affect forestland. These policies impact both directly and indirectly on forestland and make it more difficult to deal with deforestation. (*Participant 1*)

So many projects the MNRE intends to work for dealing with deforestation, but very often implementation of these projects are interrupted by the political cycle. The political interruption is over control. The government has been changed very often and each government likes to have their own policy, which changes from the previous policy of previous government. This really affects the way officials implement the policy as they also have to change their work guided by such a changed policy. (*Participant 7*)

Participant 3 noted:

Nowadays, the application of rights to forest resources is not effective and there may be a solution for this issue but we still need time and it is subject to the policy of Government, and the politics to be stable. The inefficiency of application of rights can be caused by the policy of Government that change very often. (*Participant 3*)

Participant 17 agreed:

The application of rights to forest is not effective, as there is still conflict among government – governments change very often which make its policy change as well. This significantly impacts the way that forests are managed. (*Participant 17*)

6.4.5. Criterion 8: Coordination

Participants 1, 7, 3 and 17 provided information on this topic under section 6.4.4. In addition Participant 4 from Regional Government emphasised the need for coordination among relevant authorities:

To implement the community forest project effectively needs the forest agencies to collaborate – including the land department. Even though forest and is directly under the umbrella of the RFD, sometimes such forestland can be accompanied by other types of land title deed which are under the supervision of the MOI. So before incorporating such forestland into the community forest project, the approval from such Ministry needs to be obtained. (*Participant 4*)

Participant 8 also emphasised the need for consistent policy:

Another important issue that significantly influences the transfer of rights of forest management to the community is the politics issue. This issue indeed affects the direction of rights of the community for a long time. Some Governments disagree with transferring rights to forest

management to community, but some agree, so the political situation really impacts the way of how forest rights of community would be designed. (*Participant 8*)

Participant 10 succinctly confirmed that:

The application of rights to forest in Thailand is still centre-focussed; the relevant agencies have no clear inter-sectoral role. (*Participant 10*)

Participant 8 provided more explanation indicating that the inconsistency among relevant authorities confuses and causes uncertainty to community about the direction of forest management:

The relevant authorities only rely on their own regulations – even if sometimes such regulations are not consistent with other relevant laws implemented by other agencies. An example is the RFD has its own law, similarly, the DNWPC also has its own law, and both agencies only rely on their own laws for forest governance and quite often the way they implement these laws for forest management is inconsistent, even those laws are from the same root. This affects people who live in or nearby forest areas, they feel uncertain about what the direction of government is. The enforcement of laws by RFD is more lenient than DNWPC. The enforcement of law by DNP is stricter because whoever accesses the national park and wildlife sanctuary is supposed to be arrested at the first instance. (*Participant 8*)

In summary, interviewees reinforced the conclusions of the first set of interviews and, in particular, the occurrence of:

1. Lack of continuity of policies across governments.
2. Lack of common objectives and a strategic approach among agencies.

6.4.6.   Criterion 9: Capacity and Incentive

Three participants from the first set of interviews[628] expressed a concern about Thailand not having enough resources for forest management. One interviewee from the first set of interviews who was interviewed for the second set of interviews restated the importance of problem:

One key problem of application rights over forest resources in Thailand is lack of sufficient budget. (*Participant 7*)

Other interviewees from the second set of interviews also supported this view:

Only the RFD has not enough budget to implement community forest, so we still need to ask for the budget from private sector. Now Thailand has 491 forest protection units and each unit comprises around 10 staff, it is not enough to patrol forests, as forest areas are very large and so there are many forest encroachments.(*Participant 2*)

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[628] Interviewee P2, P3, and L1 of the first set of interviews.

Even if the community had rights to participate in forest management, or even rights to access or use forest resources, these rights could be meaningless unless they understand their rights. Some interviewees reinforced this perspective:

> If we have laws granting rights to the community, we can have more problems – so many stakeholders are related and the community may not well understand about what rights are about, we still need to clarify these to the community. (*Participant 2*)

Participant 3 added:

> There are different views on rights to forests between stakeholders, especially people who live in remote areas (around 70 per cent), who still lack a sound understanding what rights to forest should be. People only claim for their right without realising that some rights cannot be transferred to the community as it can cause harm to the environment and biodiversity. (*Participant 3*)

One participant from regional government pointed out that not only should the capacity of the community be enhanced, but the capacity of local government to implement rights to forest management is also important:

> To successfully implement community forest projects, it is needed to also increasingly support the Local Government, as this organisation is the agency that has the closest relationship with the community. (*Participant 4*)

Participant 9 stated that Thailand has laws that attempt to transfer responsibility for natural resources management, including forest resources to community, and to involve the public. However, implementing this law is difficult, as people do not know about such transferred power:

> Another law that could benefit community is decentralisation law- the Decentralisation Act BE 2542.[629] This law devolves some responsibility for natural resource management to Local Government, and the community can be involved in managing natural resources including forest resources. The devolution of responsibility exists, but it is difficult for implementation as local people don't know what to do about such a transferred responsibility. At present, there are a few instances where a Local Government has established local regulation to involve the community in forest management, such as in South and North in Trang and Chiangmai Province. (*Participant 9*)

Participant 9 provided another example of the need for the community to understand and have the capacity to effectively protect their rights:

> People don't understand legal terms. There is a need to enable people to understand law easily – use easy, clear language – particularly in the issues of rights. The most important problem of law

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[629]*The Determining Plans and Process of Decentralisation to Local Government Organisation BE 2542 Act (1999)* (Thailand)

related to forest property rights issues are quite complex – it is difficult to understand law – the community doesn't know law – there are unclear provisions of law. (*Participant 9*)

Participant 10 agrees:

One problem of forest management in Thailand is the need to communicate and make clear the rights of people; people need to understand better their rights under Constitution. (*Participant 10*)

Participant 9 suggested that a proactive role of relevant agencies could help enhance the capacity of community:

Human rights commission should have a more proactive role to encourage the granting of rights to forest to community, such as through extension – providing educational services – helping community to better understand laws and rights. (*Participant 9*)

Participant 10 agreed that external support is needed to enhance the capacity of the community:

Community still needs the support of external groups and also from the Government to improve and recognise their rights and duties in forest management. It is possible and helpful to increasingly involve the media sector to highlight the issues and push the issues to Government, calling on them to pay attention to or to improve rights over forest resources of the community. (*Participant 10*)

Potential for partnership

Interviewees from the first set of interviews[630] emphasised that it would be better and possible for the community to work in collaboration with Government in activities such as patrolling. Stakeholders from the second set of interviews also noted that the community might work in partnership with the Government to arrest illegal loggers.

Participants 6 and 11 suggested that involving communities in forest management could help enhance the capacity of government:

At present, the application of rights to forest is not effective. The important causes of such ineffectiveness are Government lack of capacity to manage the forests by itself. It needs to involve the public to manage forest with the Government or the Government can transfer some parts of forest management to community to help Government in managing forests. Even though Thailand has decentralised power of natural resource management to community thorough Local Government, such decentralisation does not include the rights in reserved forest areas. So there is a need to do more research on how the government should decentralise power over forest resources to the community. (*Participant 6*)

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[630] Interviewee C1 and C4 of the first set of interviews.

Forests in Thailand are under the control of only two main agencies. This is not enough when compared with the amount of staffs and the large areas of forests. Involving community in forest management is really helpful for forest management, particularly when compared with the limited number of forest officials in Thailand. (*Participant 11*)

A Participant from the forest community network also observed that Thailand has not enough staff. Enabling the community to manage forests with the government can help alleviate the pressure on the national budget:

Granting rights to the community to make decisions in managing forest resources with government is a good alternative. This enables the community to have a more active role in forest management because relying only on the staff from forest agencies is not enough, Thailand lacks of sufficient amount of staff. At the same time, public participation in forest management can save the budget of the government. (*Participant 12*)

A retired official with extensive experience as a consultant to the Government recommended that:

To effectively apply rights over forest resources, the government should decentralise the power of forest management to the community. (*Participant 5*)

Now, once there is the problem or the dispute about forest management, it still has to be settled by Government; community can do nothing. Thus, this can constrain the community to manage forests effectively. The case of this point is in the case of illegal logging in community forests. The community cannot legally arrest or take any action against such an illegal logger. It does need the officials to solve such problems. *(Participant 15)*

One interviewee with the extensive experience working with community stated that a strong community, which has effectively managed a forest area, can support those communities who have failed to manage forests:

RFD also works in collaboration with a strong community to share the successful experiences of forest management provided by such a strong community to the community that is not strong. (*Participant 3*)

The same participant explained that government could support the community in forest management:

In case of community forests which are jointly managed between the RFD and the community, the RFD works in a technical role – the mentor providing knowledge and guidance to the community, while the communities provide the real information emerging from the ground – and then the community have the rights to utilise forests based on the recovering capacity of the forest. (*Participant 3*)

Developing the next generation

Three stakeholders from the first set of interviews noted the importance of developing the next generation.[631] One participant from the second set of interviews agreed:

> It is also needed to educate young people to enable them to know more about natural resources and influencing them to have the will to protect forests. (*Participant 13*)

Need for incentives

A participant from community forest clearly indicated the need for incentives for better forest management:

> We need to be subsidised by government, for example between the seasons of forest fires for around two or three months, we need some money from the government to deal with the forest fires. (*Participant 16*)

Participant 8 asserted that granting rights over forest resources to the community provides them with incentives to manage forests well:

> If community would be granted rights to manage forest, they will feel more secure and this motivates them to protect forests long lasting. (*Participant 8*)

Participant 17 provided an additional explanation supporting the above statement:

> Community have to be permitted by the government to manage the reserved forestlands. When the government allows community to look after the forest, we can do it and forests can be restored. But there is no law to assure our rights – that we have rights to manage the forest so we are not sure if we should protect the forest. (*Participant 17*)

6.4.6.1 Summary, Perspectives on Criterion 9

Interviewees in the second set of interviews provided further indications that capacity building and stronger incentives are needed for improved forest governance in Thailand. In the current system:

1. There are insufficient staff and funding to adequately carry out effective forest management.
2. There is also lack of recognition that the community could be better used, in voluntary partnerships, to increase the resources of forest authorities. This would require:
   a. Increased capacity building of the community;
   b. Incentives to create the partnership, such as subsidies and granting more secure rights.

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[631] Interviewee L1, C1, and C4 from the first set of interviews.

6.5. Discussion: Second set of interviews

The second set of interviews adds to the evidence from the first set of interviews on issues associated with Criterion 7 and Criterion 10. In relation to Criterion 7 (Fairness and Equity) interviewees reinforced that some perverse results arise from the fact that forests in Thailand are owned by the State and decision-making power over forests is significantly vested in the State. Interviewees pointed out that there is a need to re-balance the power over forest management between government and community. Interviewees in the second set of interviews pointed out that there is a need to implement the provision of the *Constitution* and for high-level specific laws to recognise and implement rights over forest resources.

In relation to the Criterion 10: Stakeholder Relationships, the second set of interviews highlighted that mistrust among stakeholders is a key constraint for devolving rights to the community to manage forests. There is mistrust on the side of Government who do not trust that communities can manage forests effectively and stakeholders do not trust the Government. Government does not trust communities, particularly those which are not cohesive and lack good leadership, to behave appropriately. Government is particularly cautious about devolving rights over forest resources to indigenous people who lack Thai citizenship.

The second set of interviews also reinforces the divergence of views about rights to forests between community members and the Government. The inequitable sharing of benefits was also reinforced by the second set of interviews as a cause of conflicts among stakeholders.

The second set of interviews further reinforced issues related to other criteria. These include: the problem of legal inconsistency, complexity and partial enforcement of the law under Criterion 1; lack of accountability regarding land allocation under Criterion 2; and, under Criterion 5, failure to meet effective outcomes because of lack of capacity and application of law. It was again expressed that Thailand's forest management policies change too frequently, causing inefficiencies (Criterion 6). The second set of interviews again highlighted agency coordination problems (Criterion 8) because of inconsistency and non-cooperation. Participants also discussed the lack of incentives and capacity (Criterion 9) in current forest governance arrangements. Generally they noted that: there is under resourcing of government agencies; poor recognition of the potential for partnership to help increase government resources; a need to increase the capacity of the community to understand laws and rights over forest resources; a need to develop the next generation of community stakeholders; a need for incentives, and the granting of rights to the community.

These findings provide a basis for the recommendations for ways to improve the forest governance system in Thailand. Draft recommendations were developed which were then discussed with

stakeholders in Thailand. The draft recommendations, discussion with stakeholders and finalisation of the recommendations are the subject of Chapters 7 and 8.

6.6. Conclusion

This chapter has discussed concepts of governance and, particularly, forest governance. It has explored the evolution of instruments to assess forest governance, and noted the critiques of available instruments. In general, the instruments have adopted an approach based on principles that should be upheld if there is to be good forest governance, and C&I to provide the definitional parameters of the principle. The development of instruments has highlighted two lessons: the C&I need to be comprehensive; and the instrument needs to target the intended outcome of the forest governance system.

Keeping these lessons in mind, the chapter lists the ten criteria relevant to this thesis' research requirements: to assess the forest governance system in Thailand and determine whether it is capable of halting the rate of deforestation and increasing the welfare of forest-dependent communities. Each of the criteria and its relevance to the research in this thesis is discussed at length.

The derived criteria have been used in the paper included in Chapter 3 by Phromlah (2012)[632] to assess Thailand's recently amended *Forestry Plantation Act*. Two criteria have also been used to assess developments in Forest Rights in Thailand and discussed by Phromlah (2013). A more detailed examination of the relevance of the criteria for Thailand is included in Appendix 3 in the paper by Phromlah (submitted for publication).

To further verify the validity and usefulness of the criteria, the researcher conducted field research by asking stakeholders to discuss their experiences of Thailand's forest governance system. The results of this field research are discussed in Chapter 5 and Chapter 6.

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[632]Wanida Phromlah, 'Country Report: Thailand- Recent Developments of Forest-Related Law' (2012) (2012 (1)) *IUCN Academy of Environmental Law e-Journal* 219, 221-224.

CHAPTER 7: FOREST GOVERNANCE IN AN INTERNATIONAL AND COMPARATIVE CONTEXT

7.1. Introduction

Using the experiences of other jurisdictions, this Chapter explores options for reforming forest governance. The discussion is in the form of two articles: the first paper (section 7.2), which has been accepted for publication, takes as its focus the governance issues confronting the preservation of the Western Ghats in India, applies the ten criteria of good forest governance developed in this research and investigates how other jurisdictions have attempted to overcome governance shortcomings. The second paper, which is under review, provides information about the standards of forest governance expected by the international community under REDD+ and the challenges that such expectations pose for Thailand.

7.2. Lessons from other jurisdictions

A method of policy research is to investigate the experiences of other jurisdictions addressing similar issues.[633]Thus, for this research, a literature review was conducted of the experiences of other developing countries. The details of the review are included in Appendix 4[634] but integrated into several parts of this thesis, particularly in this chapter and Chapter 8. An opportunity presented itself[635] to conduct a desktop study of the governance issues confronting the Western Ghat region of India. Many of the issues that confront that region are analogous to those confronting Thailand. The analysis and recommendations from that study are presented in the paper, reproduced below.

The Western Ghats is a large and internationally important biodiversity region on the west coast of India, from the Vindhya-Satpura mountain ranges in the north to the Kanyakumari mountain ranges on the southern tip of the Indian peninsular. The Western Ghats covers six Indian states.[636] The Indian Government has declared areas of the Western Ghats as national parks, biosphere reserves, sanctuaries, ecologically fragile and sensitive areas to provide it with special status and protection.[637]

The most important ecological issue in the Western Ghats is deforestation. Rapid land- use change and ineffective forest governance have contributed to forest degradation. Laws and institutions have been reformed, but forest encroachment, deforestation, and damage to biodiversity continue to occur.[638]

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[633]Paul von Nessen, *The Use of Comparative Law in Australia* (Lawbook Co., 2006) 28-29.
[634] These details are included in an Appendix rather than the body of the thesis to avoid repetition of details.
[635] An invitation to a conference in India.
[636] Mohan Raj K., *Western Ghats* (2012) OSAI <http://www.greenosai.org/environment/diversity/26-western-ghats.html>.
[637]Ibid.
[638]Sathis Chandran Nair, *A Background Note on the Project Proposal for Conservation of Biodiversity in the Western Ghats* (2004) Rainforest Information Centre <http://www.rainforestinfo.org.au/projects/india/sathis2.htm>.

Wanida Phromlah, 'A system perspective on forest governance failures and the implications for the Western Ghats, India '

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A systems perspective on forest governance failures and the implications for the Western Ghats, India[1]

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Abstract

There is substantial legislation focused upon the protection of forests and biodiversity in the Western Ghats in India. However, encroachment into and the destruction of forest lands and biodiversity still occur in this area. This suggests that whilst there may be a body of rules for forest governance, implementation is failing at least to some degree. This type of failure is far from unique to the Western Ghats. There are opportunities to learn from other jurisdictions about challenges and solutions, to better inform forest governance in this important ecosystem.

This paper looks at forest governance failures from a variety of sources and jurisdictions, which may be of relevance to the Western Ghats. These include (1) the conflict of roles between relevant institutions, often coupled with a lack of effective coordination and mutual understanding of key roles among relevant authorities; (2) unclear and contradictory provisions included in relevant legislation; (3) a lack of sufficient attention to the challenges of building trust and effective management of the potential tensions among stakeholders; (4) the lack of effective information sharing, particularly regarding forestry rights granted by law and misunderstandings about the rights holders under law; (5) the institutional challenges of achieving genuine stakeholder participation, particularly at the local level; and (6) the lack of effective monitoring and assessment of legal compliance.

The jurisdictions considered include: the United States of America (in the North) for the issue of effective coordination among relevant authorities; Gambia; Honduras; Bhutan; Bolivia; and Guatemala for the issue of unclear and contradictory laws; The Democratic

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Congo (DRC), Tanzania, and Nepal for their pioneering experience on effective conflict management, increasing trust among stakeholders, and public participation. The methods of effective information sharing between government and community, and among communities themselves in Viet Nam, Malawi, Sri Lanka, Bhutan, and Nepal are also reviewed. Finally, the State of Ontario, Canada is a case study for effective monitoring and assessment of legal compliance for forest management.

This paper will use this information to suggest potential directions for more effective forest governance in the Western Ghats.

I. Introduction

There is substantial legislation focused upon the protection of forests and biodiversity in the Western Ghats in India. However, encroachment into and the destruction of forest lands and biodiversity still occur in this area. This suggests that whilst there may be a body of rules for forest governance, implementation of effective governance is failing at least to some degree. This type of failure is far from unique to the Western Ghats. There are opportunities to learn from other jurisdictions about challenges and solutions, to better inform forest governance in this important ecosystem.

This paper looks at forest governance failures from a variety of sources and jurisdictions, which may be of relevance to the Western Ghats. The paper begins with a brief outline of the current forest governance in the Western Ghats. This is followed by detailed discussion of the sources of governance failures. Then potential directions learned from other jurisdictions about challenges and solutions are elaborated. The final section encompasses the potential reform directions for more effective forest governance in the Western Ghats.

II. The current forest governance

There is a substantial body of institutions and legislation focusing on the protection of forests and biodiversity in the Western Ghats.

The Western Ghats covers six states of India[2] including Gujarat, Maharashtra, Karnataka, Kerala, Goa and Tamil Nadu[3] with 44 districts, and 142 talukas.[4] The protection of forests

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[2]Western Ghats Ecology Expert Panel, 'Report of the Western Ghats Ecology Expert Panel: Part I' (Report of the WGEEP 2011 Submitted to the Ministry of Environment and Forests, Government of India, Western Ghats Ecology Expert Panel, 2011), **49**.

and biodiversity in the Western Ghats occurs within a highly diverse and complex institutional arrangement ranging across federal; state; and the local government.[5]

The Ministry of Environment and Forests (MOEF) of India is the key authority at the Federal level, and is in charge of protection of forests and biodiversity in the Western Ghats.[6] The MOEF formulates policy and law regarding protection of forests, wildlife, and biodiversity. Under this ministry, there are several central agencies with responsibilities of protection of forests, wildlife, and biodiversity relevant to the Western Ghats. They are the Wildlife Institute of India (WII), Indian Council of Forestry Research and Education (IFCRE), Botanical Survey of India (BSI), Zoological Survey of India (ZSI), Forest Survey of India (FSI), and Indira Gandhi National Forest Academy. These agencies are mainly charged with research, training and documenting forest and wildlife activities.[7]

Other independent agencies of the federal government including the Indian Defense Forces, Port Authority of India, Central Police organizations, Customs Bureau, Narcotics Control Bureau, and the Central Bureau of Investigation (CBI), are responsible for investigating forest and wildlife offences.[8]

While the Federal Government has power to formulate policy and legislation, State Governments have exclusive administrative control over the forest area within the Western Ghats and are responsible for implementing law and policy established by the Federal government. In general, the MOEF has limited direct power over state governments, except for some activities. Under the Forest Conservation Act[9] and the Environment (Protection) Act,[10] activities such as diverting forest lands for non-forestry practices, working plans for commercial logging, and assessment of environmental impact for establishing industries, can be conducted by State Forest Departments if approved by MOEF.[11] Under the Environment (Protection) Act, the Union Ministry of Environment and Forests has the power to take all measures necessary for protecting and improving the quality of the environment. The Central

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[3]S. Molur et al, 'The Status and Distribution of Freshwater Biodiversity in the Western Ghats, India' (Cambridge, UK and Gland, Switzerland: IUCN, and Coimbatore, India: Zoo Outreach Organisation, 2011), **1**.; Mohan Raj K., *Western Ghats* (2012) OSAI <http://www.greenosai.org/environment/diversity/26-western-ghats.html>.
[4] Western Ghats Ecology Expert Panel, above n 2, **49**.
[5]Kamal S. Bawa et al, 'Western Ghats and Sri Lanka biodiversity hotspot: Western Ghats Region' (Final Version, The Critical Ecosystem Partnership Fund (CEPF), 2007), **31-33**.
[6]Ibid, **31**.;Government of India Ministry of Environment and Forests, 'Report to the People on Environment and Forests 2010-2011' (Ministry of Environment and Forests, Government of India, , 2011), **5**.
[7] Bawa, Kamal S. et al, above n 5, **31**.
[8] Ibid.
[9]Ibid.
[10] Western Ghats Ecology Expert Panel, above n 2, **19**.
[11] Bawa, Kamal S. et al, above n 5, **31**.

Government can impose restrictions or limitations on any operations or processes undertaken in or near Protected Areas.[12] These restrictions and limitations can affect the role of state government, including forest management in the Western Ghats.[13]

The protection of forests and biodiversity comes under highly complex administrative controls shared by those six states. The six State Forest Departments are vested with the power of administration and implementation of forest-related law and policy for conservation of forests, protected areas, wildlife and biodiversity in the Western Ghats.[14] The powers of State Forest Departments also include the detection, investigation, and prosecution of all forest and wildlife offences.[15]

The Western Ghats Ecology Expert Panel (WGEEP) plays a key role in forest management. It has power to designate the Western Ghats as an Ecologically Sensitive Area (ESA) with three Ecologically Sensitive Zones (ESZ 1 to 3) for the conservation of forests, protected areas, wildlife and biodiversity.

The Western Ghats Ecology Authority (WGEA) is appointed by the MOEF, in consultation with the six state governments of the Western Ghats.[16] 'State Western Ghats Ecology Authorities' are then established by the Central Government of India in consultation with the state governments and the apex Western Ghats Ecology Authority.[17]

The State Planning Departments also participate in forest management administering the Development Programmes funded through Five-Year Plans by the Planning Commission.[18]

Other agencies at the state government level, such as the Revenue Department, the Police Department, the Irrigation/Water Resources Department, and the Public Works Department, have administrative roles. These roles include controlling public lands not designated as forest lands, dealing with the illegal forest-related activities, managing dams and barrages, maintaining all state highways and roads.[19]

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[12] Western Ghats Ecology Expert Panel, above n 2, **16**.
[13] Ibid, **1-4**.
[14] Bawa, Kamal S. et al, above n 5, **32**.
[15] Ibid.
[16] Western Ghats Ecology Expert Panel, above n 2, **52-55**.
[17] Ibid, **55-56**.
[18] Ibid, **49**.
[19] Bawa, Kamal S. et al, above n 5, **32**.

Under federal and state governments, several bodies have also been established to enforce, to advise, and to monitor protection of forests, wildlife and biodiversity. These bodies comprise the National Board for Wildlife, the State Boards for Wildlife, the National Biodiversity Authority, the Central and State Pollution Control Boards, and the Central Empowered Committee.[20]

At the local government level, the Panchayati Raj comprising the Gram Panchayats at village level, the Taluk Panchayats at Taluk level, and the Zilla Panchayats at the district level, form a three-tier system of decentralised, democratic local self-governance. State legislatures devolve certain powers to the Panchayats under the Panchayats Act on activities relevant to agriculture, animal husbandry, fisheries, rural housing, electrification, roads and water management as well as social welfare, which can affect forest management.[21]

At every Western Ghats District, there is the District Ecology Committee (DEC) established by the State Western Ghats Ecology Authorities in consultation with the state Governments and the WGEA. The DEC is responsible for initiating the forest management plan at the district level for incorporation into the Western Ghats Master Plan. It is also responsible as the lead agency for scrutinizing and verifying any dispute regarding ecologically sensitive zones within its jurisdiction, before it is brought to the state authority.[22]

Other institutions that influence the protection of forests, wildlife and biodiversity include NGOs, businesses, cooperative societies, scientific research institutions, and media. NGOs are involved in researching, conserving, educating, and activism. The scientific research institutions conduct scientific research and training. The activities conducted by regional private tourism also impact the protection of forests, wildlife and biodiversity. Cooperative societies such as the Large Area Multi-Purpose Societies also are involved in extracting and marketing of timber and non-timber forest products in the Western Ghats. Mining businesses also affect the Western Ghats. As well, the media broadcasts information relating to the conservation of forests and biodiversity in the Western Ghats.[23]

The key legal frameworks include laws from federal and six state governments. These include, the Wildlife Protection Act (WPA), 1972 (amended by WPA 2002); the Indian Forest Act, 1927 and the Forest Acts of States within the Western Ghats; the Forest

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[20]Ibid, **33.**
[21] Ibid.
[22] Western Ghats Ecology Expert Panel, above n 2, **56-57.**
[23] Bawa, Kamal S. et al, above n 5, **34-35.**

(Conservation) Act,1980; the Environment (Protection Act), 1986; the Biological Diversity Act, 2002;[24] the Forest Rights Act (FRA),2006[25]; the Kerala Private Forests (Vesting and Assignment) Act, 1971; the Kerala Preservation of Trees Act, 1986[26]; the Kerala Grants and Leases (modification of Rights) Act, 1980[27]; the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 (amended by the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2009);[28] Kerala Restriction on cutting and destruction of Valuable Trees Act, 1974; the Kannan Devan Hills (Resumption of lands) Act, 1971; and the Kerala Forest Act, 1961.[29]

Despite, substantial institutions and legislation, encroachment into and the destruction of forest lands and biodiversity still occur in this area. This suggests that implementation of effective governance is failing at least to some degree. The next section discusses the sources of governance failures that may be implied from the current forest governance in this important ecosystem.

III.   Discussion of the sources of governance failures

The sources of governance failures that may be identified from the current forest governance in the Western Ghats are likely to be:

Conflicts between relevant institutions

An instance is the conflict of roles between federal and state government. The state governments focus on collecting revenue through issuing permits for forest product extraction, while the central government aims to conserve forests and biodiversity.[30]

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[24]Ibid, **35-37**.
[25]Jyothis Sathyapalan and M Gopinath Reddy, 'Recognition of Forest Rights and Livelihoods of Tribal Communities: A Study of Western Ghats Region, Kerala State' (Centre for Economic and Social Studies Monograph Series No.15, Research Unit Livelihoods and Natural Resources (RULNR) and Centre for Economic and Social Studies (CESS), 2010), **1**.; Western Ghats Ecology Expert Panel, 'Report of the Western Ghats Ecology Expert Panel: Part II' (Report of the WGEEP 2011 Submitted to the Ministry of Environment and Forests, Government of India, Western Ghats Ecology Expert Panel, 2011), **99-100**.
[26] Sathyapalan, and M Gopinath Reddy, above n 25, **41** and **43**.
[27]The state of Kerala Forests and Wildlife Department, India 'Forest land leased out to Shernelly Estate, Nelliyampathy - Violation of lease conditions and Forest (Conservation) Act, 1980 – Termination of lease and resumption of estate - Orders issued' (Forests and Wildlife Department, The state of Kerala, India 2012), **1**.
[28]FAO, IUCN and UNEP, *The gateway to environmental Law* (2009) ECOLEX <http://www.iucn.org/knowledge/focus/ipbes_focus/ecolex/>.
[29]The state of Kerala Forests and Wildlife Department, India *Acts and Rules* (2009) Forests and Wildlife Department, The state of Kerala, India <http://keralaforest.gov.in/index.php?option=com_content&view=article&id=199:actarules&catid=59:policy-act-and-rules->.
[30] Bawa, Kamal S. et al, above n 5, **32.**

To illustrate this lack of effective coordination, the Forest Department has wildlife wings, territorial wings, and forest development corporations all aiming to protect forests and biodiversity in the Western Ghats. With inadequate coordination among those three entities, the degradation of forest and biodiversity in this area continues.[31]

Implementation of the Forest Right Act (FRA), 2006 involves the State Forest Departments, the Department of Tribal Affairs, the federal Government of India, the Scheduled Tribe and Scheduled Caste Development Department at the state level, the Revenue Department, the Local Administration Department, as well as the tribal communities.[32] However, a lack of effective coordination, particularly between Forest Departments and the Department of Tribal Affairs, has slowed implementation of the FRA.[33]

In 2011it was reported by the WGEEP that there is inadequate coordination between the Forest and Tribal Affairs Department in the implementation of FRA. For example, in the case of filling the FRA forms and claiming forestry rights under the FRA, the Forest Departments claims that it is their role to protect forest resources and deal with micro-plans and details of land for the settlement of tribes. However, they are not involved in filling the FRA forms and properly claiming those forest lands.[34]

The lack of a clear delineation of roles in the Forest Rights Act between Forest Departments and the Department of Tribal Affairs contributes to the conflict.[35]

 In addition, the lack of clear roles between local government- the gram sabha and the Forest Departments- also impedes success in the implementation of the FRA.[36]

Unclear and contradictory provisions

There is a number of unclear and contradictory pieces of legislation.[37] To illustrate this, the implementation of community rights for extraction of non-timber forest products (NTFPs) aims to secure the livelihood of forest-dependent people, but the rights of community – in

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[31] Ibid, **46.**
[32] Sathyapalan, and M Gopinath Reddy, above n 25, **17**.
[33] Ibid, **22** and **38.**
[34] Western Ghats Ecology Expert Panel, above n 25, **62**.
[35] Sathyapalan, and M Gopinath Reddy, above n 25, **26** and **38.**
[36] Western Ghats Ecology Expert Panel, above n 25, **64.**
[37] Jyothis Sathyapalan, 'Implementation of the Forest Rights Act in the Western Ghats Region of Kerala' (2010) XLV(30) *Economic and Political Weekly* 65, **70-71**.; Ashish Aggarwal, 'Implementation of Forest Rights Act, changing forest landscape, and "politics of REDD+" in India' (2012) 8(2) *Resources, Energy, and Development* 131, **135** and **139 and 141**. Sathyapalan, Jyothis and M Gopinath Reddy, above n 25, **26-27** and **29-30.**

terms of the ownership of forest products - remains unclear and incomplete. This results in numerous community claims being submitted to the government without recognition.[38]

In the same vein, even though section 13 begins by apparently supporting section 4.1, it goes on to provide the whole Act is 'in addition to and not in derogation of any other law in force'. This has created vagueness and left room for discretion.[39]

Contradictory laws also inhibit effective protection of forests, wildlife, and the biodiversity in the Western Ghats.[40] The implementation of the Forest Rights Act has proved problematic.[41] One key issue is the conflict with other legislation.[42] Even though section 13 of the Forest Rights Act stipulates that the act is 'in addition to and not in derogation of any other law in force' to ensure consistency with other existing forest-related laws, it contradicts the provisions of Forest Act and the Forest Conservation Act. The conflicts include the rights to pasture and forest products, shifting cultivation, and diversion of forest land for non-forestry purposes. These result in chronic conflicts between government and the community.[43]

The National Forest Commission in its report of 2006 pointed out potential conflicts of laws:

> "The proposed Scheduled Tribes Recognition of Forest Rights Act would be harmful to the interest of Forests and to the ecological security of the country. It would be bad in law and would open conflict with the rulings of Supreme Court and Legislation, therefore, needs to be framed providing forest dwelling communities a right to share from the forest products on an ecologically sustainable basis".[44]

A lack of sufficient attention to building trust

A lack of trust between government and communities can inhibit progress towards effective decentralization of forest governance and constrains innovation to find locally appropriate solutions to deforestation.[45]

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[38] Sathyapalan, Jyothis and M Gopinath Reddy, above n 25, **26-27**.

[39] Madhu Sarin and Oliver Springate-Baginski, 'India's Forest Rights Act -The anatomy of a necessary but not sufficient institutional reform' (Discussion Paper Series No. 45, IPPG Programme Office, IDPM, School of Environment & Development, University of Manchester, 2010), **17**.

[40] Juergen Blaser et al, 'Status of tropical forest management 2011' (ITTO Technical Series No 38, The International Tropical Timber Organization (ITTO), 2011), **173**.

[41] Ibid, **33**.

[42] Ibid, **173**.

[43] Sarin, and Springate-Baginski, above n 39, **25**.

[44] D. K. Giri, 'Session 13.2 – Institutional Settings and Good Governance: Forest Rights Act: Combining Conservation with Human Development' (Paper presented at the 18th Commonwealth Forestry Conference, Edinburgh, 28 June - 2 July 2010), **14**.

[45] Doris Capistrano, 'Decentralization and forest governance in Asia and the Pacific: Trends, lessons and continuing challenges' in Carol J. Pierce Colfer, Ganga Ram Dahal and Doris Capistrano (eds), *Lessons from forest decentralization: money, justice and the quest for good governance in Asia-Pacific* (Earthscan, 2008) 211, **215**.

The literature supports that higher-level government mistrusts the ability of local government and the community to sustainably manage forests. It was reported in 2011 that one constraint to successfully transferring rights to forest resources to community is resistance by the state. The government believes that communities do not have the capacity to manage forests and that their activities in how they use forest resources are contributing to forest degradation.[46]

The literature provides examples that demonstrate that customary forest practices from community are important for conservation. For example, suppression of forest burning practices traditionally conducted by the Soligas has allowed the invasive species *Lantana camara* to proliferate. The Soligas have claimed that they have traditionally used fire to promote the growth of tubers and control the understory. Fires were set early in the season to maintain the change of forests. Invasive species were, as a result, kept in check. As a result of scientific forest management and the ban on customary fires, lantana has become widespread. It is important for government to be open to recognising traditional forest-related knowledge as part of national forest management.[47]

Laws have been focused on forests and biodiversity conservation rather than addressing the needs of people whose lives rely on forests. Implementation of the Wildlife Protection Act often displaces those whose livelihoods depend on the forest.[48] Displacement of a community from forests reflects that the government under estimates the social spillover risks when implementing its policies.[49] This contributes to the chronic conflicts among stakeholders, particularly between government and community whose livelihoods rely on forests.[50]

The lack of effective information sharing

The FRA grants rights to individual and community in the Western Ghats. These include rights to hold and live on the forest land, community tenure, ownership and rights to collect non-timber forest produce.[51]

Even though people are empowered by law to have rights to forest management, they cannot take advantage of those rights effectively unless they understand those rights.

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[46] Western Ghats Ecology Expert Panel, above n 25, **64.**
[47] Ibid, **65.**
[48] Sarin, and Springate-Baginski, above n 39, **17.**; Sathyapalan, Jyothis and M Gopinath Reddy, above n 25, **30.**; Asmita Kabra, 'Conservation-induced displacement: A comparative study of two Indian protected areas' (2009) 7(4) *Conservation and Society* 249, **249**.
[49] Paul Martin and Jacqueline Williams, 'Policy Risk Assessment' (CRC for Irrigation Futures Technical Report 03/10, The Cooperative Research Centres (CRC) for Irrigation Futures 2010), **10** and **15.**
[50] Sarin, and Springate-Baginski, above n 39, **29.**; Western Ghats Ecology Expert Panel, above n 2, **99.**
[51] Aggarwal, above n 37, **140.**

A lack of information sharing in forest governance occurs at all levels of governance: the community level, local government, and also the national level.

A study of the implementation of the FRA published in 2010 showed that almost 18 per cent (6000) of the total claimants had been granted lands under the FRA, but they were not aware of what they had been granted such lands.[52] To sensitize the communities to the FRA implementation programme, tribal promoters were recruited and trained. Unfortunately, many people were still unaware of their potential benefits under the FRA. Only 7.11 per cent of the sample tribal households obtained information from the tribal promoters. The tribal communities also faced difficulties in sharing FRA information. No interpersonal communication regarding the provisions of the FRA was found among primitive tribes.[53]

A focus group discussion revealed that one primitive tribe, the Kadar, were excluded from claiming forest rights under the FRA because they did not hear about the FRA and forest rights.[54] Surveys of 20 communities in the district of Kodagu, State of Karnataka within the Western Ghats conducted between November 2008 and April 2010 revealed that people had a low average knowledge about the FRA.[55]

Lack of effective information sharing also occurs at the local government level. One issue is the lack of knowledge and skills at the Panchayat or Gramsabha level for forest resource management. According to the literature, the Gram Sabhas have never played any role in forest resource management except recording the occasional attendance by the Panchayat ward member in general body meetings of the Forest Protection Committees and Eco Development Committees. It is necessary to improve knowledge and skills for the local government in forest management, if the forest governance is to be improved.[56]

There is no common understanding amongst the relevant authorities on the operation of the FRA. The Department for Tribal Affairs, Forest and Revenue Departments have interpreted the provisions of FRA in terms of their own objectives. For example, it was highlighted by the officials of the Tribal Affairs Department that the FRA was an exclusive programme for the welfare of the communities. The FRA was expected to be implemented like any other tribal welfare programme of the country. On this view, the Forest Department should

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[52] Sathyapalan, Jyothis and M Gopinath Reddy, above n 25, **26.**
[53] Ibid, **39.**
[54] Ibid.
[55] Biljana Macura et al, 'Local Community Attitudes toward Forests Outside Protected Areas in India. Impact of Legal Awareness, Trust, and Participation' (2011) 16(3) *Ecology and Society* Article 10, **7.**
[56] Sathyapalan, Jyothis and M Gopinath Reddy, above n 25, **27.**

facilitate the implementation of the FRA. In contrast, the staff of the Revenue Department claimed that the Forest Department's role as the facilitator in the implementation of the FRA should be limited.[57] Thus, effective information sharing is needed to enhance understanding about FRA implementation among relevant authorities.

Achieving genuine stakeholder participation

The literature reveals that the protection of forests, wildlife, and biodiversity in the Western Ghats suffers as a result of inadequate genuine public participation. Participation by civil society such as Non-Government Organisations (NGOs) in the Participatory Forest Management Programme (PFM) within the Western Ghats was found to be very limited. The NGOs play a crucial role in campaigning, raising awareness and capacity building. However, only a few activities launched by NGOs remain active. The PFM programme is exclusively managed by the Forest Department.[58]

Lack of genuine public participation also occurs in the Environmental Impact Assessment (EIA) process. It was found that for the public hearing process – a part of EIA - the EIA consultant did not visit the field nor conduct appropriate surveys and studies of the impact.[59]

In addition, the Environmental Appraisal Committee (EAC) for overseeing the EIA often has no representatives from the region in which the project is to be located. The EAC mostly operates from centres far away from the Western Ghats, and mostly without visiting the project site to understand the local-level concerns. This can result in the EAC not having sufficient understanding about the project areas. As a result they cannot adequately identify the potential activities and impacts within the project areas. In consequence, the EIA is often deficient and results in a failure of the regulatory process.[60]

The lack of effective monitoring and assessment

Insufficient effective monitoring and assessment of legal compliance is also another key issue of forest governance in the Western Ghats.

A reported on the ecological and environmental status (including forest resources) of the Western Ghats published in 2011 highlighted that the top-down governance of environmental management in this area has not worked well. There is inadequate monitoring of law

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[57] Ibid, **37.**
[58] Ibid, **45.**
[59] Western Ghats Ecology Expert Panel, above n 25, **97**
[60] Ibid.

enforcement which eventually results in environmental degradation.[61] There is insufficient monitoring and assessment of legal compliance for many mining projects. The conditions of Environmental Clearance are not monitored for the mining projects. Miners continue mining beyond legal limitations. There is inadequate understanding and monitoring of the impact of gases (sulfur dioxide: SO_2 and nitrogen oxides: NOx) on plantations and forests.[62]

IV. Comparative jurisdictions and lessons

Effective coordination among relevant authorities

Forest management involves a number of organizations and authorities at different levels.[63] It may be linked to the management of other natural resources such as land, water,[64] transport, mining, and agriculture.[65]

Inconsistency in actions can constrain effective forest management.[66] The complexity, overlap and contradictions of responsibility among forest-related agencies also increase transaction costs[67] and confuse the community and reduce the community's trust in government.[68]

Forest Management in 20 states of the Northern region in the United States is a good example for dealing with complexity `and lack of coordination among forest-related authorities. In 2000, an assessment of how all forest-related agencies in the Northern region of the United States were responsible for and influence forests management and the degree to which these authorities coordinate their activities, was carried out.[69]

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[61]Ibid, **96**
[62]Ibid, **98**
[63]Lawrence C. Christy, *Forest Law and Sustainable Development : Addressing Contemporary Challenges Through Legal Reform* (The World Bank, 2007),**77.**;FAO, 'Reforming forest tenure: Issues, principles and process' (FAO Forestry Paper 165, FAO, 2011), **11-13.**
[64] FAO, above n 63,**11 and 81.**
[65]FAO and ITTO, 'Best practices for improving law compliance in the forest sector' (FAO Forestry Paper No. 145, 2005), **44-46.**
[66] Ibid, **27.**;The World Bank, *Forests Sourcebook : Practical Guidance for Sustaining Forests in Development Cooperation* (The World Bank, 2008), **4.**;Peter Vandergeest, 'Property rights in protected areas: obstacles to community involvement as a solution in Thailand' (1996) 23(03) *Environmental Conservation* 259, **264**.
[67]P.V. Martin and J. Shortle, 'Transactions costs, Risks and Policy Failure (2009)' in Claudia Dias Soares et al (eds), *Critical Issues in Environmental Taxation: International and Comparative Perspectives* (Oxford University Press, 2010) vol 8, 705, **717**.
[68]Chris Lang, 'The fast-growing pulp and paper industry: Thailand' in Chris Lang (ed), *The Pulp Invasion: The international pulp and paper industry in the Mekong Region* (World Rainforest Movement, 2002) vol 2013, 42, **44**.
[69]Paul V. Ellefson and Michael A. Kilgore, 'State Government Agencies And Authorities Affecting the Use and Management of forests in Northern United States' (Staff Paper Series Number 179, College of Natural Resources and the Agricultural Experiment Station, University of Minnesota, 2005), **1.**

The assessment was conducted based on the information from government directories, web sites, and reports. A questionnaire was sent to state foresters, who were asked to provide insights about the influence of state agencies over forests in their state.[70]

The assessment revealed that coordination among relevant agencies can be achieved in a number of ways. These consist of informal communication (such as meetings of the leaders and the staff of authorities); memorandums of agreement (to jointly establish their mission statement; declarations; plans; and policies); related authorities can jointly review their policies and law implementation; agencies can have the joint budgetary commitments; and may also share common data bases (for example forestry inventories and maps); as well as promoting formal coordination (such as by committee, board, council, and commission).[71]

The assessment also highlighted factors that contribute to coordination. The most important factor is legal requirements to coordinate.[72]

The United Sates has forest governance through a federal system as same as India.[73] It may be possible for India to apply similar mechanisms for successful coordination.

Clear and consistent laws

Unclear and inconsistent laws can have adverse effects on the forestry governance. These include transaction costs,[74] such as costs of law enforcement (viz, investigating and providing the information required to ensure compliance) and the time consumed for implementation.[75]

Unclear and inconsistent of forest laws can influence people to circumvent the laws[76] or discourage people from investing in forest practices[77] and creates opportunities for corruption.[78]

The minimum standard approach can be a potential solution. This requires a few rules about what cannot be done rather than lengthy prescriptions about what must be done. The

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[70]Ibid, **2.**

[71] Ibid, **11** and **13-14.**

[72]Ibid, **15**.

[73]Hans Gregersen et al, 'Forest Governance in Federal Systems: An Overview of Experiences and implications for Decentralization: Work in Progress ' (Center for International Forestry Research, 2004), **vii**.

[74] Capistrano, above n 45, **217**; FAO and ITTO, above n 65, **10**; FAO- Asia-Pacific Forestry Commission (ed), *Forest law enforcement and governance: Progress in Asia and the Pacific* (RAP Publication 2010), **107**.

[75]Paul Martin and Miriam Verbeek, *Sustainability Strategy* (The Federation Press, 2006),**45-47.**; Martin, and Williams, above n 49, **9**; Asia-Pacific Forestry Commission, above n 74, **14**.

[76] FAO and ITTO, above n 65, **23**.

[77] World Bank, 'Roots for Good Forest Outcomes: An Analytical Framework for Governance Reforms' (Report No. 49572-GLB, World Bank, 2009),**28**.

[78]FAO and ITTO, above n 65,**8**.; Dinesh Paudel, Dil Raj Khanal and Peter Ban ney, 'Transparency in Nepal's Forest Sector: A Baseline Assessment of Legal Indicators, Provisions, and Practices ' (Livelihoods and Forestry Programme, 2011),**331**.

minimum standard approach leaves as much decision-making about forest management as possible to local people.[79] The legal framework for community forestry in the **Gambia** is an example. The community forest management plans in the Gambia are explicitly simplified. They are based on qualitative rather than quantitative assessment. The harvesting guideline is set based on canopy cover rather than calculation of allowable amounts for annual cuts. The forest management plan are determined by simple means, such as, participatory mapping and transect walks rather than by a detailed technical inventory.[80]

Honduras, which has complex forest laws, has launched a comprehensive review of its forest sector, including forest law and policy. This review involves a broad range of stakeholders from government to indigenous people. It provides the opportunity for dialogue and coordination, with an express intention to alleviate poverty, for all stakeholders, particularly communities and small forestry enterprises. The issues from this review were incorporated into the Honduran forest law, for submission to the national Congress.[81]

Bhutan also has legislation that supports the simpler forest management plans. It embodies agreed responsibilities for implementation and procedures which can be followed. It also uses understandable language- written in local language which is easily understandable; short and containing minimal requirements.[82]

Bolivia and **Guatemala** also have legal frameworks to reduce unnecessary requirements. Small forest owners (for areas of three to five hectares), both in Bolivia and Guatemala, do not require forest management plans.[83]

Effective conflict management and participation

There is a number of stakeholders involved in forest management. Different people have different ideas, based on their knowledge and beliefs.[84] Conflict between the interests of stakeholders can be a significant obstacle to sustainable forest management.[85]

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[79] FAO, above n 63, **59**.
[80] Ibid, **49.**
[81] World Bank, *above n 66,* **58**.
[82] FAO, 'Simpler Forest Management Plans for Participatory Forestry' (FAO, 2004), **14** and **21**.
[83] FAO and ITTO, above n 65, **40**.
[84] Ravi Prabhu, Cynthia McDougall and Robert Fisher, 'Adaptive Collaborative Management: A Conceptual Model' in Robert Fisher, Ravi Prabhu and Cynthia McDougall (eds), Adaptive Collaborative Management of Community Forests in Asia: Experiences from Nepal, Indonesia and the Philippines (Center for International Forestry Research (CIFOR), 2007) 16**, 27-28**.;Ram Pandit and Eddie Bevilacqua, 'Social Heterogeneity and Community Forestry Processes: Reflections from Forest Users of Dhading District, Nepal' (2011) 10 Small-scale Forestry 97, **99**.;D.A. Gilmour, P.B. Durst and K. Shono, 'Reaching consensus- Multi-stakeholder processes in forestry: experiences from the Asia-Pacific region' (RAP Publication 2007/31, Food and Agriculture Organization of the United Nations (FAO), 2007), **8** and **14-15**.

Trust in forest management is also necessary to manage forest resources through collaborative efforts.[86] When people do not trust each other, this can intensify a conflict by heightening tensions and making the situation more difficult to resolve.[87]

Ensuring stakeholder participation is a key factor for success in forest governance and forest law compliance, particularly in conflict management.[88] It provides the basis for people to exchange information, ideas, and knowledge and helps to identify interests and needs. Failing to involve all stakeholders can lead to conflict.

Consensual communication or negotiation helps the parties to share and to learn about the perspectives of other stakeholders which are useful for identifying the instruments that are mutually acceptable among them.

Conflict in forest management in the **Democratic Republic of Congo** is addressed by incorporating stakeholders into the process of law making and encouraging active participation by community in forest management. The country has implemented participatory land-use planning enabling the community to have greater voice in the forest sector, in the allocation of land and forests to users and in their subsequent management. These initiatives have resulted in the renegotiation of the extent and boundaries of protected areas and concessions (for timber, mining and agroindustry). This has led to significant reduction in conflict between the various stakeholders.[89]

Tanzania, where a policy of participatory forest management has been pursued for the last 15 years, has devolved the rights to forests to its local communities. Approximately 3 million hectares of forest in Tanzania was under some form of decentralised management by 2006.[90] This reform has benefited communities, government, and forests. The forest authorities also increasingly collect revenues from forest management. Forest resources have also been restored, since there are better management practices and greater control of forest use jointly

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[85] Ruben de Koning et al, 'Forest-Related Conflict: Impact, Links, and Measures to Mitigate' (Rights and Resources Initiative (RRI), 2008), **1-5**.;FAO, 'Forests and Conflict' (FAO, 2009), **2**.

[86] Marcus Colchester, 'The role of trust in REDD+' (2010) (2) REDD-Net Asia-Pacific Bulletin 1, **1-8**.

[87]The National Centre of Competence in Research (NCCR) North-South, 'Mediated policy dialogues to address conflict over natural resource governance' (Regional Edition South Asia No. 2: South Asia Research Evidence for Policy The National Centre of Competence in Research (NCCR) North-South, 2011), **1-2**.;Craig Johnson and Timothy Forsyth, 'In the Eyes of the State: Negotiating a ''Rights-Based Approach'' to Forest Conservation in Thailand' (2002) 30(9) World development 1591, **1595-1596**.

[88]Ruben de Koning et al, above n 85, **24** and **29-30**.

[89]Alison L. Hoare, 'Community -Based Forest Management in the Democratic Republic of Congo: A Fairytale or a viable REDD Strategy?' (Forests Monitor: Rights, Research, Policies, People, 2010), **3**.

[90] Ibid, **4**.

by community and government. Conflicts among villagers and government have been reduced.[91]

Nepal has implemented participatory forest management. Forest governance in Nepal has been reformed by handing over approximately a quarter of the national forests to its communities in the form of Community Forest User Groups (CFUGs). Similar to Tanzania, this reform has resulted in the improvement of forest condition, increasing opportunities for communities to earn more income for collecting forest products, as well as, reducing in conflict between CFUGs and the government.[92]

Effective information sharing

People can make decisions effectively only if they have sufficient knowledge about forest management. A lack of information inhibits the public from effectively acting as a monitor, as well as undermining its advocacy, such as advocacy for their rights.

Several countries have made crucial efforts to communicate their new forest policies, for example, through meetings in villages, radio and easy-to-read colour brochures of the major changes, in local languages.

Vietnam conducted a massive campaign to make people aware of the opportunities or benefits available to them as a result of the revised forest policy. This is to ensure that everyone hears the same message, the same mission and the same objectives. People are attracted to the communications by emphasising how they can benefit from listening to the communication and how they can access information.[93]

Several countries in **Africa** use community radio' to help people, (particularly, women and marginalized groups) build networks and to gain access to information on political and religious issues.

Malawi has established 'the Development Communications Trust (DCT)'. The DCT send out "village voice" recordings from a network of radio clubs. These clubs report on corruption, including forest-related issues. The problems of corruption are broadcast on national radio. All stakeholders are invited to reply on the air in a non-biased conversation with community

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[91]Ibid, **4.**, Razack B Lokina and Elizabeth J Z Robinson, 'Determinants of Successful Participatory Forest Management in Tanzania' (Policy Brief, Environment for Development (Tanzania), 2009), **4-5.**
[92] Hoare, above n 89, **4.**
[93]FAO, 'Developing effective forest policy: A guide' (FAO Forestry Paper 161, FAO, 2010), **57.**

members. 70 percent of broadcasted problems are resolved satisfactorily after they have been aired around the country.[94]

More advanced, the community media centers piloted by UNESCO in Sri Lanka, Bhutan, and Nepal combine community radio with other media such as internet or mobile phone. Radio programs can use Internet browsing to bring the latest news to listeners, as well as to discuss with people in the communities. Radio browsing combines the power of the Internet with the reach of radio. The presenter works in collaboration with key local informants, such as a forestry or agriculture extension officials, or a community development expert. This program has been successfully piloted in **Sri Lanka, Bhutan, and Nepal**. Mobile phone use is also combined with radio, so listeners can call or text directly to the program.[95]

Effective monitoring and assessment of compliance

To ensure that implementation of forest law monitoring and assessment of compliance should be continuously conducted.[96] Monitoring and assessment is useful to improve and develop to meet the desired objectives.[97]

The State of Ontario, **Canada**, has a forest compliance monitoring program. The program takes into account the long-term management of forests and the relationship among stakeholders. It ensures that forest management is conducted in conformity with the regulatory framework.[98] It also ensures the sustainable management of forests through continued improvement and adaptive management, the credibility and trust to all stakeholders, as well as their cooperation.[99]

The forest compliance monitoring program in Ontario is carried out through a partnership with a clear responsibility between forest industry and the Ministry of Natural Resources (MNR). The activities conducted under this program include planning, monitoring, inspection, reporting, training and educating.[100]

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[94]Tuukka Castrén and Madhavi Pillai, 'Forest Governance 2.0: A primer on ICTs and governance' (Program on Forests (PROFOR), 2011), **38.**
[95] Ibid, **37.**
[96]FAO and ITTO, above n 65, **73.**
[97] FAO, above n 93, **52.**
[98]Canada Ministry of Natural Resources (Ontario), 'Forest Compliance Handbook' (Ministry of Natural Resources (Ontario), Canada, 2010), **22** and **32.**
[99]The Ontario Ministry of Natural Resources (Canada), *Forest Compliance Monitoring* (2012) The Ontario Ministry of Natural Resources (Canada) <http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_167022.html>.
[100]The Ontario Ministry of Natural Resources (Canada), 'Annual Report on Forest Management - 2008/09' (The Ontario Ministry of Natural Resources (Canada), 2010), **74.**

The Forest industry plays a role as the Sustainable Forest Licence (SFL) holder to monitor and report on compliance and any infractions of forest-related laws, plans and operational standards. MNR is responsible for monitoring, auditing, and verifying non-compliance reported by the forest industry, and for investigating, and determining potential appropriate remedies.[101]

Certified forest operation inspectors play a key role in compliance monitoring. They conduct inspections[102] on behalf of MNR, the forest industry, or a company providing compliance inspection services. Those inspectors are trained to ensure their suitability and are required to renew their certification every five-year circle.[103]

All inspections are incorporated into an inspection report which is stored in the provincial web-based database, the Forest Operations Information Program (FOIP). This database is accessible to the public.[104]

At the provincial level, there is forest compliance monitoring conducted by the Independent Forest Audit (IFA). This audit is required by law.[105] It is a systematic and documented verification assessment carried out every five years. It aims to assure that forestry practices conducted in Ontario comply with forest-related laws, management plans, criteria and management objectives, terms and conditions of the Sustainable Forest License, and to compare planned and actual forest management.[106]

The audit is conducted by an auditing team, after consultation with the MNR and the auditees.[107] The lead auditor is a Registered Professional Forester or is an associate member of the Ontario Professional Forester's Association. The lead auditor is supported by a team and one member of it must also be a Registered Professional Forester.[108] The audit team must have experience in forest-related management including wildlife, biodiversity, socio-

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[101] The Ontario Ministry of Natural Resources (Canada), above n 99.
[102] The Ontario Ministry of Natural Resources (Canada), 'Forest Compliance inspectors- Certification and Maintenance' (Forest Management Directives and Procedures, Forest Evaluation and Standards Section, Forests Branch – Policy Division, The Ontario Ministry of Natural Resources (Canada), 2012), **1**-2.
[103] The Ontario Ministry of Natural Resources (Canada), above n 100, **75**.
[104] The Ontario Ministry of Natural Resources (Canada), above n 99.
[105] The Ontario Ministry of Natural Resources (Canada), *Independent Forest Audits* (2012) The Ontario Ministry of Natural Resources (Canada) <http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_167046.html>.
[106] Ibid.
[107] The Ontario Ministry of Natural Resources (Canada), 'Independent Forest Audit Process and Protocol 2012' (The Ontario Ministry of Natural Resources (Canada), 2012), **8**.
[108] The Ontario Ministry of Natural Resources (Canada), above n 105.

economics, and public consultation. The team has to also be independent and free from conflicts of interest.[109]

An Independent Forest Audit Process and Protocol is established. It consists of a set of eight guiding principles which are typically common elements found in the sustainable forest management standard.[110]

After audit, the SFL holder and the MNR are required to jointly develop an action plan. The action plan must indicate the activities for each recommendation in the audit including responsibilities, the timeline, and the method of recording progress of the action plan.[111] A two year progress status report on the action plan is required.[112]

The IFA is reviewed every five year to ensure that it continues to be efficient and effective. The results of the IFA also need to be reported to the Legislature.[113]

Under the IFA, forest companies operating in Ontario are also required to develop long-term forest management plans. Forest plan standards have been developed to reflect certain environmental, economic and social values. To avoid potential bias and conflict of interests, the standards are certified by independent third- party certifiers. The forest companies that are meeting the standards are granted 'forest certification' demonstrating that their performance is accredited. The forest certification helps ensure that the Ontario forest industry is given preference in markets.[114] The MNR also provides technical and policy advice to encourage forest industries to pursue forest certification.[115]

V.   Potential directions for forest governance in the Western Ghats

Based upon documentation of both the issues in the Western Ghats and international developments, this section suggests some possible directions for forest governance.

Administrative reform is needed

[109] Ibid.
[110] Ibid.
[111] Ibid.
[112] Ibid.
[113] Ibid.
[114] The Ontario Ministry of Natural Resources (Canada), above n 100, 87.;The Ontario Ministry of Natural Resources (Canada), *Forest Certification* (2012) The Ontario Ministry of Natural Resources (Canada) <http://www.mnr.gov.on.ca/en/Business/Forests/2ColumnSubPage/STEL02_167417.html>.
[115] Ibid.

The first reform step would be to review overlaps and inconsistent responsibilities of each authority and remove unnecessary responsibilities, to simplify the processes of administration and approval. This would require analysis to identify the sectoral linkage between agencies (as occurred with agencies in the Northern the United States). The aim would be to enhance and promote cooperation between them.[116] All relevant agencies should be involved in the process.

Introduction of reform would be incorporated training programs for relevant authorities on their separate and shared responsibilities.[117]

It is necessary for authorities related to forest management in the Western Ghats to clarity their understanding of forest management role, objectives and principles.[118] This can be done in the form of memorandums of agreement.

The relevant agencies should be given joint budgetary commitments and share common data bases (for example forestry inventories and maps) as occurred in Northern United States.

Regular evaluation and co-ordination meetings between forestry authorities should be established.

It would reinforce coordination between agencies, if they were required by law to coordinate.

Reducing complexity, overlap, and contradiction

Forest-related obligations should be reviewed to address overlaps, contradictions, and complexity. Periodic review of forest-related obligations could be used to address wasteful complexity.[119]

A clear and coherent forest-related policy should be established as the basis for review of regulations.[120] Forest law makers should take into account the management of other areas, such as land, water,[121] transport, mining, agriculture, and energy.[122]

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[116] FAO and ITTO, above n 65, **44**.

[117] Sophie Higman et al, *The Sustainable Forestry Handbook : A Practical Guide for Tropical Forest Managers on Implementing New Standards* (Earthscan 2012), **10.**

[118] Transparency International, 'Analysing Corruption in the Forestry Sector ' (Forest Governance Integrity Programme, Transparency International, 2010), World Bank , above n 77, **9.**;, **23.**; FAO and ITTO, above n 65, **31.**

[119] FAO, above n 63, **66** and **70.**; FAO, above n 93, **9** and **20**.

[120] FAO, above n 93, **5-6** and **9**; FAO and ITTO, above n 65, **26**;Alastair I. Fraser, *Making forest policy work,* Forestry Sciences (Springer Netherlands, 2002), **185**.

[121] FAO, above n 63, **11** and **81.**

[122] Ibid, **44-46**.

The law and administrative reforms could be developed by involving stakeholders to negotiate agreements on forest management (as shown in the Honduras and Bhutan). This may result in forest policy and laws that better meet the needs of the wider society and create governance which is realistic[123] (as in the case of Bhutan). It is likely that a simplified regulatory approach would be preferred, similar to the law in Gambia that set only a minimum and simplified standard for forest management.[124] Legislation with minimal discretionary powers may also help to reduce complexity[125] and corruption.[126]

Laws or policies written in the local languages could be another way of reducing complexity (as in Bhutan, Bolivia and Guatemala).

Involving the community

This requires identifying the needs and interests of stakeholders in forest management agenda and implementation. Public participation and consultation are essential to build trust and ensure inclusive solutions (as in the Democratic Republic of Congo, Tanzania, and Nepal).

Sufficient information needs to be obtained ensure transparency, good decisions, and collaboration. Proposed decisions and actions should be communicated. Feedback from consultation should be published to show how ideas have been considered.

A network for information sharing between community members may be established[127] as part of capacity building program.

Visits to forestry sites and forestry consultation by officials may also be needed for trust between officials and communities.

Strong relationships are an important factor for sustainable forest management. Relevant relationships include between leaders people in the community, relationships within the community and between people and their culture or religion.

Causes of noncompliance should be regularly evaluated and the policy and legal framework governing the forest sector should be modified accordingly.

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[123]FAO above n 93, **5-6, 9** and **17-18**; FAO and ITTO, above n 65, **27-29.**
[124] FAO, above n 63, **59**.
[125]FAO and ITTO, above n 65, **xiv**.
[126] World Bank, above n 66, **174**.
[127]Naya S. Paudel, Lliana Monterroso and Peter Cronkleton, 'Community Networks, Collective Action and Forest Management Benefits' in Anne M. Larson, Deborah Barry and Ganga Ram Dahal (eds), *Forests for People : Community Rights and Forest Tenure Reform* (Earthscan, 2010) 116, **116-117**.

Information reforms

The government should provide documents in easily understandable language. Access by the community to experts on forest management and other relevant management, should be provided as part of this information flow. Sufficient time and support should be allowed for interpretation by communities for whom concepts and data may be unfamiliar. Forestry officials should be well trained in communication skills.

Coercive communication should be avoided. Informal face-to-face conversation, with local people can help them to better absorb the information.

Naturally, the information needs to be accurate, verified and then updated. As in Vietnam, attention should be paid to the management of community information flow.

Information can be shared through the media and technology, as has been in Malawi, or as by UNESCO in Sri Lanka, Bhutan, and Nepal which combine community radio with other media such as internet or mobile phone.

Effective monitoring and assessment

A forest compliance monitoring should be required by law. Explicit objectives of the forest compliance monitoring program should be established. To ensure that the monitoring program is impartially carried out, it might be conducted based on a partnership model between stakeholders.

Third parties or the private sector can be involved as independent monitors, for example, as certified inspectors, certifiers, or independent auditors. Involvement of independent third parties helps to minimise the chance for corruption and conflict of interest.

Independent monitors should be continuously trained. The details and results of the monitoring should be easily available to the public.

VI. Conclusion

Legal and institutional arrangements are a cornerstone of good governance. Complexity and inconsistency of forestry laws and administration can impede forest governance. This can be exacerbated by a lack of sufficient attention to the challenges of building trust and effective management of the potential tensions among stakeholders; the lack of effective information sharing, particularly regarding forestry rights or failure to meet the institutional challenges of

achieving genuine stakeholder participation, particularly at the local level; and the lack of effective monitoring and assessment of legal compliance.

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	Author's Name (please print clearly)	% of contribution
Candidate	Wanida Phromlah	100

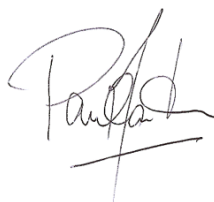Name of Candidate: Wanida Phromlah

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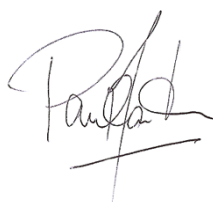
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7.3. Evaluation Thailand's forest governance through REDD+

International expectations have a significant influence on Thailand's forest governance system. The nature of this influence was discussed in Chapter 3, Section 3.3.4.3. Although Conventions and Protocols have impacted legal arrangements and strategies, the REDD+ initiative, with its offer of significant incentives to improve forest governance systems, has the potential to drive major changes to Thailand's forest governance system. The Phromlah and Martin paper, reproduced in full below, explores the challenges faced by Thailand in implementing REDD+ and possible ways that the country may meet challenges.

7.3.1. Challenges posed by REDD+

Wanida Phromlah and Paul Martin, *REDD+ implementation in Thailand – legal and institutional challenges'*

Presented at 11th IUCN Academy of Environmental Law Colloquium 2013, the University of Waikato, New Zealand between 26 and 28 June 2013. The paper is accepted for publication as part of the the IUCN Academy of Environmental Law book series

REDD+ Implementation in Thailand – Legal and Institutional Challenges[1]

Phromlah, Wanida and Martin, Paul

Abstract

Environmental justice is an emphasis on equitable and fair distribution of opportunities, benefits and risks over natural resources in society as well as public participation in decision making and management which requires effective legal and institutional arrangements. Ineffective legal and institutional structures inhibit the environmental justice in natural resource management.

REDD+ requires various legal and institutional arrangements. It is a mechanism for reducing emissions from deforestation and forest degradation, and for strengthening the role of conservation and sustainable management of forests for carbon stocks and other values in developing countries. A key aspect is the intention that carbon units accredited to a developing country will be 'traded' to offset emissions from developed country sources.

REDD+ is, however, not only aimed at providing emissions offsets. It is also intended to enhance the environmental justice- enhancing social justice, economic opportunity and inclusion for, particularly, forestry communities and indigenous people in developing countries. At the heart of the achievement of such an ambitious set of goals is the necessity of having effective forest legal and institutional arrangements.

This paper argues that existing Thai laws and institutions of forest management are insufficient mechanisms for securing environmental justice in REDD+ implementation in the country.

The paper diagnoses legal and institutional challenges for Thailand in preparing for securing environmental justice in REDD+ implementation. These include: (1) insufficient incentives for investing in forest preservation; (2) mistrust and potential tensions; (3) weak and competing forestry rights; (4) a lack of effective coordination among relevant authorities; and (5) deficiencies in fundamental legal and institutional structures.

This paper will suggest potential directions for legal and institutional reform securing environmental justice in implementation of REDD+ for Thailand, but will pay particular attention to addressing issues of forest property rights (including absolute and partial ownership by communities).

1. INTRODUCTION

Environmental justice is an emphasis on equitable and fair distribution of opportunities, benefits and risks over natural resources in society, as well as public participation in decision making and management. The distribution of benefits is to be without discrimination on the basis caste, gender, religion or economic status and all citizens are able to exercise their rights to natural resources on which their livelihoods depend on. These significantly require effective legal and institutional arrangements.[2]

REDD+ is a mechanism for reducing emissions from deforestation and forest degradation, and for conservation and sustainable management of forests for carbon stocks and other values in developing countries. A key aspect is the intention that carbon units accredited to a developing country will be 'traded' to offset emissions from developed country sources. [3]

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[2]   Patrecia Moore and Firuza Pastakia (ed) (2007) xiii-xviii.
[3]   Randy Bluffstone, Elizabeth Robinson, and Paul Guthiga (2012). See also Anne M. Larson (2011) 540.

REDD+ is not only intended to provide emissions offsets. It is also aimed to support the achievement of environmental justice- enhancing social justice, economic opportunity and inclusion for, particularly, forestry communities and indigenous people in developing countries.[4] At the heart of the achievement of such an ambitious set of goals is the necessity of having an effective forest law and institution system.

This paper diagnoses legal and institutional challenges for Thailand in preparing for securing environmental justice in REDD+ implementation. The paper begins with a discussion of these challenges. The paper then suggests directions for securing environmental justice in implementation of REDD+ for Thailand with particular attention to addressing issues of forest property rights, including absolute and partial ownership by communities.

2. Governance, institutional and legal challenges[5]

Thailand has substantial forest-related institutions and legislation that ought to support the achievement of emissions offsets obligations under the REDD+ scheme, such as the six forest-related acts aiming to conserve forests, the section 66 and 67 of the Constitution enabling participation of public and community in natural resource management.[6] It is clear that Thailand has no lack of constitutional support, formalised rules and institutional structures which might form the backbone of the REDD+ implementation system.[7] What is questionable, given the numbers of rules, actors and administrative structures, is whether such a system can be made efficient and effective, or whether internal co-ordination

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[4] Randy Bluffstone, Elizabeth Robinson, and Paul Guthiga (2012). See also Anne M. Larson (2011) 540.

[5] Kaisa Korhonen-Kurki et al (2012) 91, 94-95. See also Tim Forsyth (2009) 113, 115-116 and Sheila Wertz-Kanounnikoff and Arild Angelsen (2009) 13, 24.

[6] The six forest-related acts include: the Forest Act B.E. 2484, the National Reserved Forest Act B.E. 2507, the Wildlife Conservation and Protection Act, B.E. 2535, the National Park Act B.E. 2504, the Forest Plantation Act B.E. 2535, and the Chainsaw Act B.E. 2545 see Jannie Lasimbang and Chingya Luithui (2006) 15-31. See also FAO- Regional Office for Asia and the Pacific (2009) 75-88.

[7] Asia Indeginous Peoples CCMIN, *REDD+ implementation in Asia and the concerns of Indigenous Peoples* (2011) Asia Indeginous Peoples CCMIN <http://ccmin.aippnet.org/ourpublications/article/236/REDD+%20Implementation%20of%20Indigenous%20People s%20in%20Asia%20and%20the%20Concerns_web.pdf>. See also Theerapat Praurasiddhi et al (2013) 8-12.

challenges will frustrate the achievement of effective and equitable governance of the type required by REDD+.

As REDD+ aims to support the environmental justice- enhancing social justice, economic opportunity and inclusion, particularly for forestry communities and indigenous people[8] – it will be necessary to integrate the work of social as well as forestry agencies to deliver an integrated, multi-dimensional solution to a number of long running problems.

This section provides detailed discussion of governance challenges for Thailand in preparing for securing environmental justice in REDD+ implementation.

Insufficient incentives for investing in forest preservation

Successful implementation of REDD+ requires sufficient incentives for stakeholders, particularly forestry dependants, to invest in REDD+ activities.[9] Arguably, this requires granting secure rights to communities, providing opportunities to generate income from forest management or adapting forests to provide commercial benefits in order to offer communities the incentives to invest in long-term REDD+ activities.[10]

National aspirations for community participation in managing and using forests as a means to economic and social welfare are apparent from the Thai Constitution. Section 66 and 67 of the Constitution recognise the rights of the community to participate in (and benefit from) forest management, but there has been no revision of forestry laws to implement the Constitution.[11] The government enforces restrictive laws which largely overlook community

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[8]   Anne M. Larson (2011) 540. See also Randy Bluffstone, Elizabeth Robinson, and Paul Guthiga (2012) 47-49.

[9]   Sheila Wertz-Kanounnikoff and Arild Angelsen (2009) 13, 24. See also Luca Tacconi , 'Decentralization, forests and livelihoods: Theory and narrative' [2007] 338, 338.

[10]   Anne M. Larson (2011) 542. See also Randy Bluffstone, Elizabeth Robinson, and Paul Guthiga (2012) 48.

[11]   FAO (2011) 39. See also Constitution 2007 s 66-67 (Thailand).

interests, and decision-making power for forest management remains with state agencies.[12] This limits the security of interests of the community in forest management, as decisions can be readily changed by the state officers. The lack of assurance on rights to forests may make forest users reluctant to dedicate themselves to investing in forest management under REDD+. Insecurity can cause forest users to exploit as much forest as possible as quickly as possible, to maximise their short-term insecure interests,[13] and this is likely to undermine REDD+ commitments.

Mistrust and potential tensions

Stakeholder participation is a key factor in managing conflict and building trust.[14] It provides the basis for people to exchange information and ideas which helps to identify more thoroughly their interests and needs and to build trust. A lack of inclusiveness means a lack of representation of interests which results in insufficient diversity of views reflected in forestry policy and laws. This is a particularly important consideration in the context of the purposes and rules of REDD+. If REDD+ does not lead to a rebalancing of economic and power interests in favour of the less privileged, it will, by definition, have failed to achieve its core purposes.

Thailand has laws and institutions intended to increase involvement of all stakeholders in forest management. The section 66 and 67 of the current Constitution do recognise the rights of native communities to participate in natural resource management, maintenance and exploitation 'in a sustainable manner' and for this right to be protected 'as appropriate'.[15] This suggests a policy vision of community rights in forests management and resources. However,

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[12]   Eliana Fischman K. (2012) 8-9. See also The Community Forest Management Bureau (2011) and Fujita Wataru, 'Dealing with Contradictions: Examining National Forest Reserves in Thailand' [2003] 206, 213 -214.

[13]   Claudio Araujo et al. 'Property rights and deforestation in the Brazilian Amazon' [2009] 2461, 2464.

[14]   Antonia Engel and Benedikt Korf (2005) 24. See also Alison L. Hoare (2010) 3.

[15]   Constitution 2007 s 66-67 (Thailand).

the terms 'sustainable manner' and 'as appropriate' are not specific. There have been no revisions of laws to implement and to clarify these terms. The government continues the enforcement of restrictive laws.[16]

A similar concern is the implementation of community forest projects. These projects are intended to involve the community in maintaining and protecting forest land in partnership with government, led by the Community Forest Management Bureau under the Royal Forest Department (RFD). Community forest projects were started in 2000 and there are currently 8,640 forestry communities involved.[17] However, to implement this project, the government has relied on section 17 of the Forest Act, B.E. 2484 (1941) and section 19 of the National Reserved Forest Act, B.E. 2507 (1964).[18] These laws strengthen state ownership over forest lands and limit the practices people can conduct in forest areas. The result is a tightly controlled and restricted version of community involvement, falling well short of the constitutional intent.

It is likely to be difficult to reconcile these practices with the aims and the governance arrangements intended for REDD+. For Thailand, this may trigger a choice to either reform forestry laws to reflect constitutional (and REDD+) objectives, or to forego the potential benefits of REDD+.

Weak and competing forestry rights

REDD+ implementation in Thailand could involve a variety of stakeholders with different interests in forest governance. They include government agencies, commercial foresters, users of the non-harvest values of the forests such as hunters and collectors of plants, those

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[16] Eliana Fischman K. (2012) 8-9. See also The Community Forest Management Bureau (2011) and Fujita Wataru, 'Dealing with Contradictions: Examining National Forest Reserves in Thailand' [2003] 206, 213 -214.
[17] The Community Forest management Bureau (Thailand), *Community Forest* (2013) The Community Forest management Bureau (Thailand) <http://www.forest.go.th/community_forest/index.php?lang=th>.
[18] Eliana Fischman K. (2012) 8-9. See also The Community Forest Management Bureau (2011).

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. This raises a number of questions, such as: Who can have rights to carbon stocks (government or community)? Can the private sector and NGOs have a share in the benefits of these carbon stocks? Who is going to pay for REDD+ implementation?

To achieve effective REDD+ implementation, it is important that consensus among stakeholders is ensured. The case of drafting and ratification of the *Community Forest Bill* in Thailand is a good example of why this is so. This Bill was passed by the Parliament on 21 November 2007,[19] but has not come into effect as it has been opposed by some stakeholders on constitutional grounds.[20] The conflict highlights that many forest stakeholders in Thailand have significantly different views on forestry issues. Such differences include diverse attitudes to the issue of what the rights to forest are (or should be), what is common property within forests, the definition of a forest community, concerns about whether the community ought to have the right to live within protected forest lands, and whether people can live in harmony with forests being managed for different values.[21]

The history of the *Community Forest Bill* in Thailand, suggests that for REDD+ implementation, negotiating consensus among stakeholders who have different perspectives and interests is essential. Without the agreement, REDD+ implementation would be more difficult.

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[19] Rights and Resources Initiative (RRI), 'The Thailand Community Forest Bill', *Rights and Resources Initiative* January 03, 2008 <http://www.rightsandresources.org/blog.php?id=34>.
[20] FAO (2011) 39.
[21] R.J. Fisher (2011) 69, 75-78.

A lack of effective coordination among relevant authorities

REDD+ is complex. It involves many complex issues which include the maintenance of biodiversity; conservation of forests; the measurement, verification and trading of carbon stocks; advancing social justice; social inclusion for forest people; and land use management.[22] Confusion by agencies over who has responsibility can occur. This could create, such as, transaction costs and lead to inaccuracies in relevant database which is very important for forestry policy analysis[23], thereby adding further to the risk of failure of REDD+ implementation. Poor institutional design cannot be compensated for by political appeals to cooperate.

Thai forest governance involves a number of organisations and authorities at different levels.[24] Lack of effective coordination and competing roles are in evidence.

Of concern, apart from the inconsistent roles of the land-related departments as well as the Royal Forest Department (RFD) and the Department of National Parks, Wildlife, and Plant Conservation (DNWPC),[25] there is also a lack of coordination among central and local government.

The RFD, at central government, supports the establishment of Eucalyptus plantations as the way to enable the government to regain land from the villagers, and to increase forest lands. In contrast, the local authorities, including forestry staff who has been working with the communities, argue that a number of the villagers would resist the plantations.[26]

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[22] Kaisa Korhonen-Kurki et al (2012) 91, 94-95. See also Tim Forsyth (2009) 113, 115-116.
[23] Leo Peskett and Maria Brockhaus (2009) 25, 32-35. See also Kaisa Korhonen-Kurki et al (2012) 91, 99.
[24] Jannie Lasimbang and Chingya Luithui (2006) 15-31. See also FAO- Regional Office for Asia and the Pacific (2009) 75-88.
[25] Xavier Gine (2005) 5.
[26] Sureeratna Lakanavichian (2007) 325, 343.

The current authorities very often pursue their own agendas without consideration of previous policies or consultation with the agencies who previously implemented forest governance. As a result the outcomes of previous practices are ignored. This is a key source of confusing and inconsistency between previous and current forest related law and policy.[27]

Different interests of different parts of government seem likely to exacerbate a lack of coordination among agencies and could lead to tension in REDD+ implementation.

Deficiencies in fundamental legal and institutional structures

Effectively implementing REDD+ requires an integrated approach involving multilevel governance ranging from international to local governance levels.[28]

As has been discussed, Thai forest law is complex and internally inconsistent. The interests of many people are unclear and insecure. These are not conditions conducive to successful implementation of REDD+. The authority charged with managing climate sustainability, the Thailand Greenhouse Gas Management Organization (TGO), is unrelated to forest authorities such as RFD and DNWPC. The TGO has a role in greenhouse gas (GHG) emission reduction in Thailand through promoting low carbon activities, providing GHG reduction information, approval of carbon sequestration projects, and taking a role as the Designated National Authority for the Clean Development Mechanism (DNA-CDM) office in Thailand.[29] However, effectively implementing REDD+ needs far more than GHG emissions reduction. It requires effective land use, maintaining forest areas, advancing economic opportunity for less powerful stakeholders, and ensuring social equity for indigenous and local people. At the very least a powerful central agency with a mandate to deliver significant administrative

[27] Fujita Wataru, 'Dealing with Contradictions: Examining National Forest Reserves in Thailand' [2003] 206, 219.
[28] Kaisa Korhonen-Kurki et al (2012) 91, 92 and 94-95. See also Tim Forsyth (2009) 113, 115-116 and Lisa Westholm et al (2011) 8 and 16.
[29] Office of Natural Resources and Environmental Policy and Planning: Thailand (ONEP) (2010) 10-11.

reform of forest governance seems to be required to overcome the structural impediment we have highlighted.

3. Directions for effective implementation of REDD+

The above discussion has identified major challenges of forest governance for REDD+ implementation in Thailand. This section suggests potential reform directions for more secure environmental justice in implementation of REDD+. The suggestions pay particular attention to forest property rights (including absolute and partial ownership by communities). Tenure reform is one key component (or a prerequisite) for successful REDD+ implementation.[30] This is not intended to under-emphasise the other institutional reforms that are clearly needed, including reconciliation of the competing aims of the many agencies which will be involved, streamlining the many laws and administrative systems, tackling corruption, and creating legal arrangements that do more than lip-service to the Constitution. However, while all of these reforms are necessary, they will not be sufficient unless the fundamental power imbalances in forest governance are addressed. As well as, given the elements of environmental justice as mentioned above, property rights[31] can considerably secure environmental justice in REDD+ implementation, particularly the mean of equitable sharing benefits and opportunities over natural resources in society. It is in this context that we stress that forest governance property rights are an essential area for reform.

Granting rights over forest resources

Property rights help organise how forest resources can be utilised and provide strong incentive for effective forest management. The right holder can be ensured of earning the future benefits of investment in forest management. Without having the rights to manage

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[30]   Anne M. Larson (2011) 542. See also Lisa Westholm et al (2011) 8 and Ganga Ram Dahal, Anne M. Larson and Pablo Pacheco (2010) 183, 207.

[31]   Ruth Meinzen-Dick and Anna Knox (2001) 41, 49. See also Lynn Ellsworth and Andy White (2004) 6.

forest, communities cannot manage forest resources as assets. One meta-analysis of 69 cases conducted worldwide in 2006 revealed that the two most significant attributes for successful community forestry are tenure security and clear ownership of forest resources.[32]

If forest users have rights to forests, but no assurance that these rights will be long lasting, they may be reluctant to invest in forest management. [33] Insecure rights can encourage forest users to exploit the forest for their short-term profit – a situation which can lead to forest degradation. An example of this occurred in the Brazilian Amazon, where insecure land rights resulted in significant deforestation.[34] Similarly, a study of patterns of loss and regeneration of tropical dry forest in Madagascar found that deforestation occurred mainly in areas where property rights were insecure, whereas areas with well-defined property rights showed either regenerating or stable forest cover.[35] This is consistent with the study of the Centre for International Forestry Research (CIFOR) conducted in 2009 which revealed that a full-scale implementation of REDD+ in many countries encounters a number of challenges including unclear forestry rights. In most deforestation hotspots, land rights are unclear, overlapping and contested.[36]

In contrast, the community forest user groups (CFUGs) in Nepal, who have been granted secure rights from government, have effectively restored forest lands. In 2009, the deforestation rates in forest lands managed by the CFUGs were less than the deforestation rates in forest lands administered by the government. The deforestation rate in forest land

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[32] Adcharapom Pagdee, Yeon-su Kim and P. J. Daugherty, 'What Makes Community Forest Management Successful: A Meta-Study from Community Forests Throughout the World' [2006] 33, 33.
[33] Brian E. Robinson, Margaret B. Holland and Lisa Naughton-Treves (2011) 30. See also John W. Bruce, Kelly J. Wendland and Lisa Naughton-Treves, 'Whom to pay? Key Concepts and Terms Regarding Tenure and Property Rights in Payment-based Forest Ecosystem Conservation' [2010] 7.
[34] Claudio Araujo et al. 'Property rights and deforestation in the Brazilian Amazon' [2009] 2461, 2464.
[35] Thomas Elmqvist et al (2007) 1 and 9.
[36] Arild Angelsen (2009) 125, 125 and 135.

managed by CFUGs was 0.88 per cent, but the rate in forests administered by the government was approximately 1.5 per cent.[37]

The evidence suggests that granting rights to disadvantaged groups, such as indigenous people, particularly women and the poor, would help to ensure social justice[38] from REDD+ implementation. The content of property rights determines who benefits from forests and who is excluded from benefits. Thus, property rights are one way to ensure that stakeholders, particularly the poor, benefit from REDD+ implementation.[39]

Having rights over natural resources is an important source of power. Granting secure rights to forest resources for a particular group, such as the community or women, empowers them by granting control over resources, reducing the ability of government to control the way in which forest resources are exploited.[40]

Such changes can have systematic effects on social equity. For example, the community forest projects conducted in Banke District of Nepal in 2007 governance literacy classes community forestry, as well as gender equality and women's rights, were conducted, with special attention given to women members. Over time, the women became more confident and able to express their opinions in public. They discovered that there were legal provisions for the user groups to set aside funds for implementing income-generating activities for poor and marginalised households, and they requested that funds be provided to ten households. Some of the women subsequently ran for executive office in the community forest user group.[41] Empowerment through forest property rights can be transformative.

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[37] Jeffrey Hatcher (2009) 2.
[38] FAO (2011) 56.
[39] John W. Bruce, Kelly J. Wendland and Lisa Naughton-Treves, 'Whom to pay? Key Concepts and Terms Regarding Tenure and Property Rights in Payment-based Forest Ecosystem Conservation' [2010] 1-2.
[40] Steve Harrison, 'Property Rights Issues in Small-scale Forestry in the Philippines' [2003] 77, 78.
[41] FAO (2011) 57.

Property ensures people are able to secure and negotiate benefits associated with forest products.[42] Rights to forests can also be used as the collateral for funding sources for communities and indigenous people who have limited opportunities for getting a loan from a bank. In China, forest tenure reform has enabled farmers to broaden their funding options, and this has relieved the shortage of funding in forestry. The farmers and forestry enterprises use the documents identifying their rights (such as the Certificate of Forest and Woodland Tenure Right issued by the local government) as high-quality collateral to secure a loan. To get this certificate, communities and forestry companies list on the application document the forest resources to which they have rights. This is assessed by the local government and, if approved, the local government will issue the Certificate.[43]

Incentives for investing in REDD+

Rights should be secured by high-level national law (Constitution or statute) which is resistant to being easily changed. However, absolute certainty could entrench corruption and unfairness by not allowing checks and balances for other stakeholders. Thus, rights need to be conditional, and subject to regular monitoring or assessment. When there is a breach of conditions, the authority might extinguish the rights subject to requirements of due process for cancellation, or compensation where justified on public policy grounds, or apply other sanctions.[44]

Secure rights can enable clear incentives including compensation, income from forest products, and payments as the forest stewards. Incentives should not be less than the compensation, income, or the rewards from alternative uses of the same asset, particularly the commercial forest plantation. This is important for the sustainability of REDD+ security, but

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[42] Anthony B. Cunningham et al (2008) 10-11.
[43] ZHU Biyun, ZHANG Yanlin and PENG Fei, 'Research on Forestry Credit Innovation Mode Based on Collateral Mechanism of Extension and Substitution' [2011] 152, 154-155.
[44] RRI (2012) 22 and 31.

also to ensure that the communities who are meant to benefit from management of their forests are not locked into a 'second-best' economic model.

Recognising by law the non-timber forest products (NTFPs) and uses including subsistence, local trade, commercial trade and recreation, might highlight economic benefits from forest resources which could attract people to invest in REDD+ programs. The recognition of NTFPs must be sensitive to the scale of activities. For example, subsistence use should not be tightly regulated unless there are clear risks of overharvesting, but greater attention should be paid to traded industrial-scale NTFPs.[45] The risks of harm from international-scale industrial exploitation is naturally far greater than from local-scale, community uses.

Traditional forest-related knowledge reflects the long-term interdependence between community and forest. Local communities have long settled in forest areas and have practical forest-management skills that allow them to exploit forests for subsistence.[46] Legally recognising the traditional forest-related knowledge for forest management would seem the most likely way to ensure social justice and social inclusion for disadvantaged (particularly forestry community) people targeted by REDD+, whilst protecting carbon and biodiversity values.

Protecting traditional forest-related knowledge as intellectual property (IP) is an assurance of its recognition and may strengthen the incentive for people to protect forests.

Poorly designed land tenure strategies may also lead to deforestation, unless there are changes in other incentive structures, such as the financial incentives.[47] In the Amazon, forest conversion, under both customary and statutory law, often establishes or strengthens existing

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[45]   Sarah A. Laird, Rachel P. Wynberg and Rebecca J. McLain (2010) 367, 367.
[46]   Forest People Programme (2011) 21.
[47]   Luca Tacconi , 'Decentralization, forests and livelihoods: Theory and narrative' [2007] 338, 338.

land rights to deforested lands. Deforestation therefore becomes a way to establish property rights. [48]

The availability of sufficient incentive is a key to successful REDD+ implementation. However, perverse incentives – such as the direct payment of subsidies and concessions that serve selective economic interests and stimulate deforestation and forest degradation – are always a governance concern. To illustrate the risk, subsidies for developing plantations in Indonesia encouraged overharvesting of logging concessions and clearing of 'degraded' natural forests.[49]

The need for safeguards

Even though secure rights are important to sustainable forest management, absolute security could lead to corruption. This is particularly a risk where there are deeply entrenched power imbalances, and where safeguards against corruption are weak. An example of this can be found in Nepal where the Community Forest User Group (CFUG) program provides communities secure rights to forests, particularly in the Terai (Jungle area). Based on an initial survey of implementing this program, the Dhankheti CFUG was one of the worst performing CFUGs in the country. Its Executive Committee members were involved in a well-organised illegal timber trade network.[50]

Corruption is also a risk if absolute secure rights mean that other people are prevented from benefitting from forest resources. These people may then attempt to benefit or make short-term profits from forest resources in whatever way – illegal or corrupt – they can.

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[48] Arild Angelsen (2009) 125, 134.
[49] William D. Sunderlin and Stibniati Atmadja (2009) 45, 48.
[50] Bishwa N. Paudyal, 'Curbing Corruption in Forestry Management through User Groups in Nepal' [2010-2011] 1, 1.

For this reason we propose that, at least in the early years until forest communities do become more powerful and sophisticated in protecting and using these rights, forest tenure arrangements need to be conditional and subject to independent oversight to ensure that environmental, social and economic policy objectives are being met. The in-bulk governance requirement of REDD+ provides a unique opportunity to establish independent scrutiny backed by some degrees of sanction power should abuses be identified.

A number of possible models of conditional but secure forestry rights can be envisaged. Nepal has designed two types of forestry rights – primary and secondary. The members of a village have primary use rights to forests, while non-village members have specific secondary rights. Non-village members are allowed to extract grass and some fruits which should be common to everyone, but they are never permitted to collect firewood.[51]

Effective management of tensions and trust

To minimise conflict, sustainable forest management should reflect an understanding of the needs and interests of all affected or interested parties. In pursuing this, public participation and consultation with stakeholders are essential. These processes can build trust between the forest agencies and stakeholders, promote transparency, and ensure inclusive solutions that incorporate stakeholders' views and needs.[52]

To ensure genuine public participation, decisions and proposed actions should be widely communicated. Feedback from consultation should also be published to show how ideas discussed have been considered. These are not merely matters of general principle. Ensuring transparency and participation requires strong institutional structures rather than vague

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[51] FAO (2011) 24-25.
[52] Nalin Kishor and Kenneth Rosenbaum (2012) 48.

policies or generalised administrative instructions. This is particularly the case in Thailand where a top-down and non-inclusive approach is deeply embedded.

Sufficient information needs to be obtained from community engagement for formulation of forestry policy and for law-making to ensure transparency, good decisions, and collaboration.

Reform to deal with weak and competing forestry rights

A clear delineation of rights to forests is needed to ensure mutual understanding and to reduce competing claims. [53]

Right holders can be individuals (private property) or a group of people (common property).[54] Granting rights to individuals (private property) is likely to be more secure than common property. However, private property approaches could also entrench corruption and unfairness by limiting checks and balance. Effective common property regimes reinforced by strong social self-sanctions[55] have been an effective means for sustainable forest management in some situations.[56] For these reasons, when granting rights, whether to individuals or groups of people, conditions (safeguards) need to be established so that the rights holders have sufficient capacity to effectively protect and use these rights.

Property rights to forests can be separated from property rights to land.[57] Property rights to forests are in the sense of holding rights to resources, [58] concerned with whom is entitled to use, manage, and make decisions about forest resources, and in what way, for how long, and under what conditions.[59] Accordingly, people should not have rights to forest lands, such as

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[53] RRI (2012) 12.
[54] Daniel W. Bromley (1991) 24-25.
[55] Paul Martin and Miriam Verbeek (2006) 136.
[56] Elinor Ostrom (1999) 3-7.
[57] John W. Bruce, 'Review of tenure terminology' [1998] 1, 1.
[58] John W. Bruce, 'Review of tenure terminology' [1998] 1, 1.
[59] Anne M. Larson, Deborah Barry and Ganga Ram Dahal (2010) 3, 12.

the land that used to be forests or degraded forests. This will encourage the practice of clearing forest areas in order to claim property rights.

Coordination and mutual understanding between key roles

A starting point for reform would be to review overlaps and inconsistent responsibilities of authorities and remove unnecessary roles to simplify the processes of administration and approval. This would require identification of the sectoral linkages between agencies, and the enhancement and promotion of cooperation so as to limit competitive actions, and maximise synergies and collaboration. [60] All relevant agencies should be involved in the process of reviewing and reforming their responsibilities.

Authorities responsible for, or participating in, forest management in Thailand should jointly clarify their mutual understanding about forest-related management. This might be documented in the form of memoranda or agreements. Relevant agencies could make joint budgetary commitments or share common databases of information (for example, forestry inventories and maps).

Regular meetings between the relevant forestry authorities should be established to evaluate and to improve performance. The meetings might be informal (such as meeting of leaders, staff or related authorities), or formal arrangements (such as a committees, boards, councils, or commissions). The argument for greater formality is the volume of external oversight, but the risk is of 'bureaucratic proceduralism'.

Reform fundamental legal and institutional structures

Seeking to improve inefficient of ineffective laws and institutions by establishing new ones can lead to further contradictions, overlaps, and complexity. Systematic analysis[61] should be

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[60] FAO and ITTO (2005) 44.
[61] Paul Martin and Miriam Verbeek (2006) 28-35.

employed to reform fundamental legal and institutional structures. A possible approach could be as follows:

All key transactions and actors relevant to REDD+ implementation, (particularly relating to interests or rights that people can gain from REDD+) should be identified. Existing laws and institutions should be analysed to identify the supports and constraints Thailand has for transactions required for REDD+ implementation. Supports should be retained and developed, while constraints should be eliminated or reduced. Two things should be considered: the feasibility of implementation and the context consistency. The feasibility of implementation is the availability of resources, and the context consistency refers to alignment with the belief and values of people.[62] One important consideration is the alignment of the desirable changes with Thai social structures and culture. Modifications to rights and reform proposals may be needed to ensure that REDD+ implementation does suit the national context and needs.

Conclusion

Environmental justice is an emphasis on equitable and fair distribution of opportunities, benefits and risks over natural resources in society as well as public participation in decision making and management which requires effective legal and institutional arrangements. Ineffective legal and institutional structures inhibit the environmental justice in natural resource management.

REDD+ is intended to do much more than provide emissions offsets. It is intended to enhance environmental justice – enhancing social justice, economic opportunity, and inclusion, particularly for forestry communities and indigenous people in developing countries.

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[62]   Paul Martin et al (2007) 23-24.

At the heart of the achievement of such an ambitious set of REDD+ goals is the necessity of having an effective forest governance system. There are five key challenges that Thailand must meet if it is to secure environmental justice in REDD+ implementation. These include: (1) insufficient incentives for investing in forest preservation; (2) mistrust and potential tensions; (3) weak and competing forestry rights; (4) a lack of effective coordination among relevant authorities; and (5) deficiencies in fundamental legal and institutional structures.

This paper points out some of the aspects of legal and institutional reform. These are likely to be necessary to ensure more secure environmental justice in implementation of REDD+ for Thailand, particularly addressing the issues of forest property rights, such as granting secure right over forest resources, providing incentives for investing in REDD+. However, rights granted should not be absolute security, as this could lead to corruption. For this reason we propose that, forest tenure arrangements need to be conditional and subject to independent oversight to ensure that environmental, social and economic policy objectives are being met. Additional arrangements are also needed for REDD+ implementation in Thailand including: effective management of tensions and trust, reform to deal with weak and competing forest rights by having a clear delineation of rights to forests to ensure mutual understanding and to reduce competing claims, coordination and mutual understanding between key roles, and reform fundamental legal and institutional structures.

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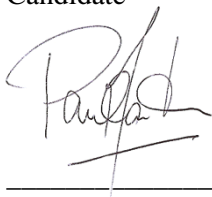
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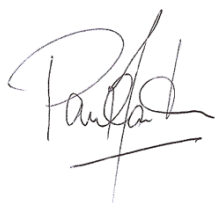
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7.4. Conclusion

This Chapter discusses forest governance issues from two different perspectives to provide further insights into Thailand's forest governance challenges. Both these discussions are in the form of published papers, reproduced in their entirety. The first paper discusses the forest governance experiences of the Western Ghats in India; this is a jurisdiction with many similar characteristics to those of Thailand. The discussion of the Western Ghats forest governance issues uses the framework developed in Chapters 3 and 4 to derive suggestions of possible suitable reforms of that jurisdiction's forest governance. The second exploration was of the forest governance challenges posed by the implementation of REDD+ in Thailand, especially with regard to securing environmental justice. Again, it uses the framework developed in this thesis to identify the challenges facing forest governance in REDD+ and provides recommendations of how the challenges might be met.

In summary, both case studies (and see Appendix 4) showed that the challenges initially identified (Chapters 3 and 4) for Thailand also exist in other jurisdictions: lack of coordination and consistency among relevant authorities; overlaps of laws and jurisdictions; complexity; conflicts of laws; imbalance of power among stakeholders; and need for public participation to build trusts and minimise conflict. The results provide further evidence of the applicability of the governance framework developed in this thesis and provided the basis for draft recommendations, discussed in Chapter 8, which were discussed with key stakeholders in Thailand.