CHAPTER 4: CRITERIA FOR EVALUATING FOREST GOVERNANCE

4.1. Introduction

The term 'governance' is used in various ways, depending upon the context in which it is applied. In the business context, it is often 'about good decisions being made by the right person'.[360] In politics and the social sciences, governance means the process of collective decision-making and policy implementation, used distinctly from government to reflect broader concern with norms and processes relating to the delivery of public goods.[361]

In law governance often means:

> … the system, including societal, legal, bureaucratic and behavioural components, by and under which government entities are directed, managed and controlled. More narrowly, it is the means by which government ensures that its ministers, agencies and servants act in the interests of the people governed.[362]

In the policy sense, the United Nations Development Programme (UNDP) notes that governance is not strictly in the domain of any one grouping in society, but includes all sectors:

> Governance includes the state, but transcends it by taking in the private sector and civil society. All three are critical for sustaining human development. The state creates a conducive political and legal environment. The private sector generates jobs and income. And civil society facilitates political and social interaction – mobilising groups to participate in economic, social and political activities. Because each has weakness and strengths, a major objective of our support for good governance is to promote constructive interaction among all three.[363]

Thus, Higman et al argue that:

> Governance is often now used in a general sense to mean the process of decision-making and the process by which decisions are implemented (or not implemented).[364]

Referring specifically to forest governance, Highman et al note:

> Forest governance is about the policy, legal and institutional conditions that affect how people treat forests. It generally refers to the quality of decision-making process – their transparency,

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[360] Business.gov.au, *Corporate governance* (Business.gov.au <http://www.business.gov.au/Howtoguides/Startingabusiness/Startinganewbusiness/HowdoIsetupoperations/Pages/Corporategovernance.aspx>.

[361] Iain McLean and Alistair McMillan (eds), *The Concise Oxford of Dictionary of Politics* (Oxford University Press 3ed, 2009).

[362] Trischa Mann and Andrey Blunden (eds), *Australian Law Dictionary* (Oxford University Press, 2010).

[363] Lockwood Michael, Worboys Graeme and Kothari Ashish, *Managing Protected Areas : A Global Guide* (Earthscan, 2006) 116.

[364] Higman et al, above n 95, 6-7.

> accountability and equity-rather than the formal political structures of government. Forest governance spans local to global levels.[365]

The Institute on Governance points out that studying the processes of decision-making and the implementation of decisions requires an understanding of 'who has power, who makes decisions, how other players make their voices heard and how account is rendered'.[366] For this reason, studies involving governance must be concerned with an understanding of the interactions among stakeholders, and the various contexts that affect the governance. The Food and Agriculture Organisation of the United Nations (FAO) and the International Tropical Timber Organisation (ITTO) recognise this aspect of governance in their definition:

> Forest governance refers to the modus operandi by which officials and institutions acquire and exercise authority in the management of forest resources to sustain and improve the welfare and quality of life of those whose livelihoods depend on such resources.[367]

The European Tropical Forest Research Network particularly highlights the link between governance fairness and equity for stakeholders:

> Forest governance refers to the policy, legal, regulatory and institutional framework dealing with forests, and to the processes that shape decisions about forests and the way these are implemented. The practice of governance is based on fundamental democratic principles, such as participation, fairness, accountability, legitimacy, transparency, efficiency, equity and sustainability. Forest governance involves a wide range of actors operating at different levels and with different responsibilities and interests. Governments and governmental bodies are responsible for the regulatory and institutional framework, including the formulation of policies and law enforcement. Governance practices also deal with self-governance by private-sector bodies, civil society groups and other stakeholders, including local organisations, and their linkages with other stakeholders.[368]

The Forest Governance Programme believes that it is the welfare of 'forest-dependent people' who should be a significant focus of forest governance:

> Forest governance is about how decisions related to forests and forest-dependent people are made, who is responsible, how they exercise their authority and how they are held accountable. It

[365] Ibid.
[366] Higman et al, above n 95, 6-7; Arend Jan van Bodegom et al, 'Strengthening Effective Forest Governance Monitoring Practice: An approach for integrating forest governance into national forest-related monitoring systems' (Forestry Policy and Institutions Working Paper, FAO, 2012) 9.
[367] FAO and ITTO, 'Forest law compliance and governance in tropical countries: A region-by-region assessment of the status of forest law compliance and governance in the tropics, and recommendations for improvement' (FAO, ITTO, 2010) 9.
[368] Guido Broekhoven, Herman Savenije and Stefanie von Scheliha (eds), *Moving Forward with Forest Governance* (Tropenbos International, 2012) v.

encompasses decision-making processes and institutions at local, national, regional and global levels.[369]

In this thesis, as noted under section 3.3, 'forest governance' simply refers to the way forest resources are governed. The act of governing involves many actors (stakeholders), from local communities to governments at domestic and international levels. Governance refers to how these actors interact and how these interactions are scrutinised and controlled through formal and informal rules.

Issues related to forest governance have been receiving increasing worldwide attention over the past few decades. Efforts are being made at both the domestic and international levels to develop systems and criteria for good forest governance. Section 4.2 of this chapter outlines the way in which the criteria for good forest governance have developed. The section lays the basis for the derivation of the ten criteria, which are used in this research to examine Thailand's forest governance system. The researcher has drawn on a number of sources to formulate each criterion. In particular, the researcher has examined the operation of each criterion in countries that have some similarities to Thailand (that is, developing countries, which have substantial amounts of intact forests to manage). Each criterion and an explanation of why it is included, including examples of its operation in other countries are listed in section 4.3.

4.2. Emergence of good forest governance measures

Decades of experiencing continued loss and degradation of forests have led to efforts to define and implement 'good governance'. In the 1990s, various organisations, including the UNDP, the World Bank (WB) and the Organisation for Economic Co-operation and Development (OECD), developed general criteria of good governance.[370] This section gives a chronological discussion of the development of criteria and instruments for measuring good forest governance.

The quality of forest governance became one of the key approaches for achieving sustainable forest management (SFM) in the 1992 UN Conference on Environment and Development. The Conference adopted the *Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* ('*NLBI*').[371]The *NLBI* recognises seven thematic elements as a reference framework for SFM. It encourages Member Countries to identify, as appropriate, specific environmental and other forest-related aspects within those elements for consideration as criteria and indicators for SFM. The seven thematic elements are: (1) Extent of forest resources, (2) Biological diversity, (3) Forest health and vitality, (4) Productive

[369]Center for International Forestry Research (CIFOR), *About*(2013) Center for International Forestry Research (CIFOR) <http://www.cifor.org/about-us/how-we-work/forests-and-governance-programme.html>.
[370]Broekhoven, Savenije and Scheliha, above n 368, 56-57.
[371]*Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992) annex III (Non-Legally Binding Authoritative Statement of Principles For a Global Consensus on the Management, Conservation and Sustainable Development of all types of forests)*.

functions of forest resources, (5) Protective functions of forest resources, (6) Socio-economic functions of forests, and (7) Legal, policy and institutional framework.[372]

In 1992, the ITTO adopted a Criteria and Indicators (C&I) concept and terminology. Since then several regional groupings of countries have worked together to generate and test appropriate C&I to suit their own conditions. In 1994, 38 European countries signed on to the *Temperate Forest Helsinki Process*[373] seeking to identify measurable C&I for sustainable forest management and conservation of the biological diversity of European countries. In the same year, 12 European countries formed the Montréal Process Working Group on Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests (MP) aiming to advance the development of internationally agreed C&I for the conservation and sustainable management of temperate and boreal forests, and to monitor, assess and report on forest trends at national and global levels.

In February 1995, the member countries adopted the *Montreal Process Santiago Declaration*[374]affirming their commitment to the conservation and sustainable management of their respective forests. They endorsed the seven thematic elements of SFM C&I as a guideline for policymakers to use in assessing national forest trends and progress toward sustainable forest management. They listed 67 indicators grouped under the seven criteria corresponding to the SFM themes. These include 20 forest governance indicators describing the 'legal, institutional and economic framework for forest conservation and sustainable management', including indicators on property rights, enforcement of laws and regulations, public participation, and supportive economic policies. Most of these indicators are designed to assess the extent to which the legal and institutional framework provides for or has the capacity to undertake specified governance functions. Many MP indicators are quantitative in nature, others are qualitative or descriptive; that is, some indicators can be readily measured, such as the percentage of forest cover, others may require the collection of new or additional data, the establishment of systematic sampling, or even basic research.[375]

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[372]Doris Capistrano, *Forest Governance Indicator Development: Early Lessons and Proposed Indicators for Country Assessments* (2011) FAO <http://foris.fao.org/preview/27997-0856885afba1e5cbb5651bafe1be0b5ee.pdf>; Broekhoven, Savenije and Scheliha, above n 368, 56-57.

[373] The Helsinki Process currently known as the "Pan-European Forest Process", it is overseen by the Ministerial Conferences on the Protection of Forests in Europe. It focuses on the sustainable development and management of forests in Europe, e.g. on the development of Pan-European Criteria and Indicators for Sustainable Forest Management in Europe. It includes boreal, temperate and Mediterranean-type forests, see FAO, *The Pan-European Forest Process on Criteria and Indicators for Sustainable Forest Management* (2001) FAO <http://www.fao.org/docrep/004/ac135e/ac135e09.htm>.

[374] At the 1992 United Nations Conference on the Environment and Development held in Rio de Janeiro, the U.S. committed itself to the concept of sustainable forest management. In 1994, the U.S. participated in the *Working Group on Criteria and Indicators for the Conservation and Sustainable Management*19 of Temperate and Boreal Forests (known as the Montreal Process group). The working group was charged with developing internationally recognised criteria and indicators for the conservation and sustainable management of temperate and boreal forests at the national level. Along with 11 other nations, the United States was a signatory to the *Montreal Process Santiago Declaration* in 1995 see Oregon Department of Forestry, 'The Montreal Process' (2007) April *Forest Facts*< http://www.oregon.gov/odf/pubs/docs/forest/ffmontrealporcess.pdf> .

[375]World Bank, 'Roots for Good Forest Outcomes: An Analytical Framework for Governance Reforms' (Report No. 49572-GLB, World Bank, 2009), 16-17; Doris Capistrano, *Forest Governance Indicator Development: Early Lessons and*

Also, in 1995, eight Amazon countries began on work on the *Tarapoto Process*[376], seeking to identify the C&I for Amazons Forest's sustainability. The process of development of C&I for sustainable forest development in those regions provided useful feedback to ITTO and, as a result, the ITTO issued a new broader set of C&I in 1998.[377]

While different regions of the world were testing and defining C&Is for SFM, in 1994 the Center for International Forestry Research (CIFOR), in an attempt to produce a generic master set of C&I for SFM, compared the different sets of criteria and indicators currently in existence, and tested them. CIFOR found that, at the forest level, the ecological criteria were easier to apply than the social ones. This is due to the social criteria often requiring an in-depth understanding of issues beyond the immediate boundaries of the forest management unit. In addition to social issues, other factors that needed further work included biodiversity assessment, the development of C&I for plantations, and a means of linking information from the local to the national level. The CIFOR's principles and C&I provided a generic starting point, particularly for local forest users, to formulate locally sound SFM C&I. CIFOR recommended the use of nine principles, 24 criteria and 98 indicators. Regarding forest governance, there are four principles and 15 criteria covering policy and social aspects of SFM. The C&I have been field tested at the forest management unit level.[378]

In 2001 the ITTO developed a standardised reporting format to obtain feedback from users of its indicators. Using this feedback, ITTO revised its C&Is in 2005. The criteria comprised: (1) Enabling conditions for sustainable forest management; (2) Extent and condition of forests; (3) Forest ecosystem health; (4) Forest production; (5) Biological diversity; (6) Soil and water protection; and (7) Economic, social, and cultural aspects. Fifty-seven indicators were organised under the seven criteria intended to achieve SFM. Most of the indicators covering policy, legal and governance issues, economic, institutional, and planning framework are included under criterion one.[379]

Even though several organisations have developed a set of C&I, only some of these have been tested and modified, and none have proved ideal as frameworks for guiding good forest governance. In 2002, the International Institute for Environment and Development (IIED) established a diagnostic and planning tool (the Pyramid Diagram) to assess the key enabling elements for good forest

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Proposed Indicators for Country Assessments (2011) FAO <http://foris.fao.org/preview/27997-0856885afba1e5cbb5651bafe1be0b5ee.pdf>.

[376] In 1978, eight countries of Amazon Basin signed the Amazon Cooperation Treaty (ACT), recognising it as the most effective instrument for discussion and agreement on policies for a region so complex and rich in natural resources. An important achievement within the framework of the treaty has been the development of regional criteria and indicators for the sustainability of the Amazonian forests: the Tarapoto Process on Criteria and indicators for the Sustainability of Amazon Forests was signed by those eight Amazon Bain countries in 1995, see E.Elias, 'The Tarapoto Process: establishing criteria and indicators for the sustainable forest management of the Amazon forests' (2004) 55 *Unasylva 218* 47, 47.

[377] Ravi Prabhu, Carol Colfer and Gill Shepherd, 'Criteria and Indicators for Sustainable Forest Management: New Findings from CIFOR's Forest Management Unit Level Research' (network paper 23a, Rural Development Forestry Network, 1998), 2.

[378] Prabhu, Colfer and Shepherd, above n 377, 1; World Bank, above n 375, 17-18; Capistrano, above n 375.

[379] World Bank, above n 375, 15; Capistrano, above n 375.

governance and to close the gap that existed between field-level assessments and international reporting requirements on SFM.[380] The IIED noted that, over the years, a number of international methods for identifying C&I for SFM have been made to improve governance of the sector. All of these initiatives provide building blocks, but there is a long way to go.

Other initiatives, for example *the Forest Certificate Scheme*,[381] have been developed to help assess and plan SFM at the level of the forest enterprise, forest estate, or forest stand. However, those initiatives do little to assess or improve decisions about how forests should be used, who is involved, and whose interests are met. They deal with acknowledged forest managers, especially those who are achieving forest governance objectives, and do not hold other local-level forest users or abusers to account. They do not address the extent and dynamics of the underlying causes of forest problems, or its converse, the quality of enabling conditions for SFM – thus not holding authorities and powers to account. Some, for example *the IPF/IFF Process*,[382] international reporting protocols report on the critical dimensions of forest governance, notably: reports on progress towards ITTO's Objective of achieving SFM. So far, these have rarely been the product of multi-stakeholder assessment. They include very little systematic diagnosis of the underlying priority issues. There is also little real feedback into national policy and institutional change processes. There is little incentive to conduct assessments because national forest authorities know that sustainability is far from being achieved in many countries and, so, they are reluctant to report the real forest-level progress. Consequently, the real concerns may be left unassessed and unresolved. The critical gap left open by both field-level assessments and international reporting needs to be filled. *The Pyramid: a diagnostic and planning tool for good forest governance* is intended to fill these gaps.[383]

The pyramid diagram identifies the elements of good forest governance that are common to a range of nations and were derived from a variety of sources and experiences. The elements and their

[380] James Mayers, Stephen Bass and Duncan Macqueen, 'The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance' (The report prepared for the World Bank and WWF Alliance for Forest Conservation & Sustainable Use, International Institute for Environment and Development, 2002) 4.

[381] Certification has emerged as a market mechanism for monitoring and promoting sustainable management practices in various resource-based industries, including agriculture, forestry and fisheries. Forest certification was introduced by environmental NGOs in 1993, but has been incorporated into mainstream forest policy with more than 100 initiatives worldwide. Forest certification is a process that involves an independent third-party certifying that a particular forest is managed in accordance with agreed standards on a sustainable basis and that any timber from it has been produced in accordance with best practice forest management and environmental standards, see The Institute of Forester of Australia, *Forest Certification (IFA Forestry Policy Statement No. 2.1)* (2007) The Institute of Forester of Australia <http://www.forestry.org.au/pdf/pdf-public/policies/Statement-v2-1-Certification.pdf>.

[382] The Intergovernmental Panel on Forests (IPF) and the Intergovernmental Forum on Forests (IFF) represent five years of international forest policy dialogue. The Intergovernmental Panel on Forests (IPF), established by the Commission on Sustainable Development (CSD) for two years (1995-97) to provide a forum for forest policy deliberations. Subsequently, in 1997, The Economic and Social Council (ECOSOC) established the Intergovernmental Forum on Forests (IFF), for three years (1997-2000). The IPF/IFF processes produced a body of more than 270 proposals for action towards sustainable forest management, known collectively as the IPF/IFF Proposals for action. These proposals provide governments, international organisations, private sector entities and all other major groups guidance on how to further develop, implement and coordinate national and international policies on sustainable forest management, see UN, *About UNFF: IPF/IFF Process (1995-2000)* (2013) UN <http://www.un.org/esa/forests/ipf_iff.html>.

[383] Mayers, Bass and Macqueen, above n 380, 3-4.

arrangement in the pyramid offer a comprehensive agenda for thinking through the main elements of forest governance – policy, law, roles, capacities, and instruments. The Pyramid Diagram was intended to provide the basis for country-specific assessments with different degrees of information and participation.[384] The Pyramid Framework was field-tested in Brazil to provide a preliminary assessment of its applicability as a diagnostic tool to assess the status of forest governance in Brazil and, specifically, the national forest program. The Brazil case study showed that the use of the tool is highly subjective, and its legitimacy depends on who does it and how. The test showed that an effective multi-stakeholder process is needed. Only if this tool becomes further developed and used by credible teams in a range of countries and contexts will it become possible to accurately measure its use to compare finding from one place to another.[385]The Pyramid Diagram has not been further developed since its field-testing in Brazil.[386]

On 21 May 2003, the program of the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan of the European Union (EU) set out criteria to combat illegal logging, with particular emphasis on trade. The *FLEGT Action Plan*[387] specifies the creation of voluntary partnership agreements between the EU and the government of the countries who provide timber to the EU market. The *Action Plan* commits the parties to developing a principle for licensing of produced timber; only timber produced under licence can be imported into EU Market.[388] These criteria focus on timber trading and not particularly on issues of forest governance.

Since 2006, Chatham House – one of the world's leading non-profit NGOs, based in London, whose vision is to analyse and promote understanding of major international issues and current affairs, has published assessments of the global response to the problem of illegal logging and associated trade. Chatham House uses 20 indicators to measure the ultimate end goals and the early response of dealing with illegal logging and related trade, including issues such as building awareness and political will, providing financing, and developing policies. The Chatham House indicators have been used in countries involved in processing timber for export; for example, in 2008, Chatham House initiated a pilot assessment in five countries (Indonesia, Cameroon, Vietnam, the United States, and the United Kingdom). In terms of the result, the indicators of building awareness showed a decline in most countries, while the other three suggested considerable improvement.[389]

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[384]World Bank, above n 375, 15-16.
[385]Mayers, Bass and Macqueen, above n 380, 1.
[386]Capistrano, above n 375.
[387] The Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan of the European Union (The EU FLEGT Action Plan) provides a number of measures to exclude illegal timber from Market, to impirove the supply of legal timber and to increase the demand for responsible wood products, see EUFLEGT, *FLEGT Voluntary Partnership Agreements: Ensuring legal timber trade and strengthening forest governance* (2012) EUFLEGT <http://www.euflegt.efi.int/portal/>.
[388]FAO and ITTO, above n 367, 4-5; Lola Leal, *What is the EU FLEGT?* (2003) FERN <http://www.fern.org/sites/fern.org/files/What%20is%20EU%20FLEGT_1.pdf>.
[389]World Bank, above n 375, 18-19.

In May 2009, the World Resources Institute (WRI) and its partners established the Governance of Forests Initiative (GFI). The GFI is built on the SFM developed by IIED.[390] The purpose of the GFI is to provide a common definition and conceptual framework for understanding governance of forests across a variety of developing country contexts, based on widely agreed principles of good governance.[391] The Framework has five key principles: transparency, participation, accountability, coordination and capacity. These key principles focus on addressing four key issues: forest tenure, land use planning, the management and control of different uses of forests, and forest revenues and incentives.[392]

The GFI framework contains 94 indicators based on several diagnostic questions that assess the quality of a particular case of governance. The focus of the diagnosis is on *how* decisions intended to address the four issues are made. The framework was drawn from a number of assessments ('formats') – principally case studies but also general assessments and expert assessments. The GFI frameworks were tested in Brazil and Indonesia between 2009 and 2010.[393] Pilot assessment results emphasised well-known governance problems in both countries including a lack of clear criteria and transparent procedures for hiring and promotion of officials; no definition concerning financial capacity and lack of clear authority for the implementation of programs to reduce deforestation; no regular updating mechanism; a lack of precision and accuracy of information, such as scientific and technical information; a lack of timely answers to public requests; the lack of financial or technical assistance programs for public participation; an absence of adapted communication on forest related legislation; absence of communication mechanism between state and community; a lack of comprehensive and appropriate management plans; a lack of financial, human and logistical resources; and a lack of mechanisms to resolve disputes among stakeholders.[394] The lessons learned from testing the GFI frameworks in Brazil and Indonesia are that: stakeholders felt that the GFI indicators are a novel and useful approach; governance indicators are most useful when developed through a bottom-up approach; common indicator frameworks can facilitate learning and sharing between different countries; and generating objective evidence about governance issues is important but difficult and requires more work.[395]

From examining the criteria for good forest governance identified by various organisations, it is apparent that some criteria are common. One lesson is that the criteria need to be comprehensive and adaptive overtime, but reflecting the aims of those who will be using them. Criteria set by the organisations discussed above fail to do this. The CIFOR criteria apples mostly at the level of the

[390]Capistrano, above n 375.
[391]Brenda Brito et al, 'The Governance of Forests Initiative: An Introduction to the Indicator Framework (Version 1)' (The Governance of Forests Initiative, World Resources Institute, 2009) 3.
[392]Ibid, 3-4.
[393]World Bank, above n 375, 19; Capistrano, above n 375.
[394]Crystal Davis, *The Governance of Forests Initiative (GFI)* (2010) Program on Forest (PROFOR) <http://www.profor.info/sites/profor.info/files/docs/GFI-091310.pdf>.
[395]Ibid.

forest management unit, and the indicators are less relevant to a broader program of improvement of forest sustainability;[396] the *FLEGT Action Plan* and the criteria for assessment of are focused merely on dealing with global illegal logging and associated trade;[397] and the GFI of WRI focuses on the four main issues of land tenure, land-use planning, forestland management, and revenue distribution and economic incentives.[398] Comprehensiveness also refers to the actionability of criteria. Not all the criteria set by the ITTO are actionable because they do not fully cover macro- and extra-sectoral links or broad governance issues, such as freedom, transparency, and accountability.[399]

In 2009, the WB developed the Analytical Framework for Forest Governance Reforms (FFGR).[400] Similar to the WRI, it builds on the work of the IIED. It uses an analytical framework to explicitly link governance and SFM. The initiative aims to identify and prioritise governance reforms with a high chance of success. A WB report defines the scope of good forest governance through a framework of five building blocks: (1) transparency, accountability and public participation; (2) stability of institutions and conflict management; (3) quality of government administration; (4) coherence of legislation and rule of law; (5) and economic efficiency, equity and incentives.[401]

In 2010, three coordination meetings were held to identify a comprehensive, practical and workable framework for assessing good forest governance. In February 2010, the EU organised a meeting on FLEGT at the FAO headquarters in Rome. At this meeting, participants representing key international forest organisations identified the need to develop practical and workable forest governance indicators. In May 2010, the UN Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD)[402] jointly held a workshop with Chatham House to establish a harmonised framework for good governance in implementing REDD. In September 2010, the WB, FAO and the Swedish International Development Cooperation Agency (SIDA) organised an international symposium in Stockholm to decide on a mutually acceptable framework of criteria to help assess and monitor forest governance for countries

[396]World Bank, above n 375, 17-18; Capistrano, above n 375.
[397]FAO and ITTO, above n 367, 4-5;World Bank, above n 375, 18-19.
[398]World Bank, above n 375, 19; Capistrano, above n 375.
[399]World Bank, above n 375, 15; Capistrano, above n 375; Mayers, Bass and Macqueen, above n 380, 6.
[400] An analytical framework for governance reforms was developed by the World Bank in 2009. It is the first step of the work of the economic and sector work (ESW) of the World Bank in creating a reformer's tool to diagnose forest governance weaknesses and pinpoint appropriate reforms, see World Bank, above n 375.
[401]Ibid, 34.
[402] The UN-REDD Programme is the United Nations collaborative initiative on Reducing Emissions from Deforestation and forest Degradation (REDD) in developing countries. The Programme was launched in 2008 and builds on the convening role and technical expertise of the Food and Agriculture Organisation of the United Nations (FAO), the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP). The UN-REDD Programme supports nationally-led REDD+ processes and promotes the informed and meaningful involvement of all stakeholders, including Indigenous Peoples and other forest-dependent communities, in national and international REDD+ implementation, see UN-REDD, *About the UN-REDD Programme* (2009) UN-REDD <http://www.un-redd.org/AboutUN-REDDProgramme/tabid/102613/Default.aspx>.

around the world. This symposium involved key representatives from different countries and organisations with extensive experience in forest governance assessment and monitoring.[403]

It is evident that each new set of criteria has typically borrowed from, modified, or built upon the criteria previously set. The ITTO first established the criteria for ensuring good forest governance in 1992. It adjusted the criteria in 1998 and 2001 to reflect the changes and trends in conditions relevant to SFM over time. In 2009, the WRI and the WB developed the GFI and FFGR respectively. The criteria developed by the WRI and the WB were built on the criteria of SFM developed at earlier effort in the late 1990s to early 2000s by the IIED.[404] In 2011 the FAO and the WB's Program on Forests (PROFOR) drew on several approaches in use or under development, including: the FFGR of the WB; the GFI of WRI; the Criteria and Indicators for SFM of the MP and the ITTO; and the proposed draft UN-REDD/Chatham House Framework for Monitoring REDD+ governance,[405] to establish a core set of principles and criteria for good forest governance that was generic enough for wide application, and amenable to fine tuning to meet specific application requirements.

The FAO and PROFOR framework consists of six generally accepted principles of 'good' forest governance: accountability, effectiveness, efficiency, fairness/equity, participation and transparency.[406]The framework is based upon mutually supportive and cooperative relationships among government, private sector and civil society (ie, NGOs, advocacy networks and social movements). The framework provides a means to view and analyse the institutions and interactions within and outside the forest sector that together create the conditions for the governance of forest resources. The framework can be used by anyone involved in forest governance, including government, non-governmental organisations, advocates, investors, donors, researchers and generators of forest governance data organisation. The framework can be used for several purposes, such as diagnosis, monitoring and assessment of the state of forest governance, organising, analysing, and communicating forest governance information as well as in analyses for designing REDD+ implementation.[407]

In 2011, PROFOR revised the FAO and PROFOR 2011to include 'local involvement', recognising this indicator as a key to successful forest governance reform. The PROFOR criteria are: adherence to the rule of law, transparency and low levels of corruption, stakeholder inputs in decision making, accountability of all officials, low regulatory burden, and political stability.[408]To measure the extent to

[403] See PROFOR, *Stockholm Symposium on Forest Governance Indicators* (2010) PROFOR <http://www.profor.info/node/2030>.
[404]Capistrano, above n 375.
[405] The principles and criteria were workshopped in close collaboration with the UN-REDD/Chatham House initiators.
[406]FAO, 'Framework for assessing and monitoring forest governance' (FAO and the Program on Forests (PROFOR), 2011) 10.
[407]Ibid, 7-9.
[408]Nalin Kishor and Kenneth Rosenbaum, 'Assessing and Monitoring Forest Governance: A User's Guide to a Diagnostic Tool ' (Program on Forests (PROFOR), 2012) 3, 5-8.

which criteria are met, PROFOR suggests using workshops at which local stakeholders meet to discuss governance issues and try to come to agreement on scoring the indicators. Participants are provided with a set of indicators to promote discussion, identify areas of consensus, and build momentum for change. The indicators are all 'actionable' because they present a spectrum of conditions, from quite undesirable to desirable. Selecting something less than the most desirable choice indicates an opportunity for action to improve governance. As well, each criterion is divided into components, and each component is divided into subcomponents ensuring that the primary set covers the subject matter of governance quite broadly.

The PROFOR indicators are a tool for diagnosing strengths and weaknesses in forest governance. The PROFOR instrument claims to be comprehensive in its assessment of forest governance because it draws on a broad, internationally developed framework for assessing forest governance, and is robust because it systematically captures the perceptions of a representative group of stakeholders for scoring.[409] The tool was field-tested in Uganda in 2010, and in Burkina Faso in 2011. In the same year, the tool was modified, but based upon its original version to assess forest governance in Miti Mingi Maisha Bora in Kenya, as well as in four provinces in Russia by the Federal Forest Agency with support from Department for International Development (DFID) and the WB. Results from these pilot studies have confirmed the feasibility of carrying out forest governance assessment and providing feedback for improving the tool.[410]

Although the work on establishing principles and criteria has led to an increasingly sophisticated understanding of good forest governance, it is evident that no one instrument can be useful for all situations. If the aim of governance is to achieve sustainable commercial logging, then the governance issues that should make up the criteria should be those related to the management of logging concessions, including the processing of allocations to commercial interests. If a country intends that its forest should contribute to poverty reduction, the governance issues are those related to benefit sharing and devolution of right over forest resources.[411] The instruments may provide a range of rationales to support different criteria that are closely related or, in some cases, overlap, but the rationales draw their meaning from the particular criteria and purposes for which they have been defined. Thus the same criteria may be interpreted or supported differently by different rationales for different purposes.

4.3. Criteria used in this thesis

Research and discussions since the mid-990s have established that good governance relies upon the integration of legal and policy instruments, and engagement and capacity of stakeholders. The criteria

[409]Ibid.
[410]Ibid,1.

and their indicators (sometimes also called 'principal components') [412]used in this thesis to assess the Thailand's forest governance system utilise the findings discussed in section 4.2.[413]

This thesis is concerned with the role of forest governance in terms of stopping deforestation and improving the welfare of forest-dependent people. The criteria of interest must include those that will enable assessment of mechanisms, processes and institutions that encourage stakeholders (particularly those whose livelihoods rely on forests) to express their interests, exercise their legal rights, mediate their differences and meet their obligations. The criteria must also recognise the roles that other stakeholders, including government, NGOs, civil society and the private sector, play in ensuring good forest governance.

Within these constraints, it is evident that some criteria need not be included in the criteria instrument for this thesis. These criteria focus on biodiversity, soil, water and forest contribution to carbon cycles, such as ITTO's criteria five and six for SFM and criteria one, four and five of the *Montreal Process.*[414] Criterion seven of the *Montreal Process*, however, concerning the requirement for laws that recognise and clarify the rights of community and indigenous people, and also to involve and enable them to access information about forest management, are relevant.[415]

This thesis uses ten criteria and their principal components as its basis for examining what aspects of Thailand's governance system might be contributing to the country's ongoing deforestation, and for guiding how the governance system might be improved. Each criterion is associated with several 'principal components' that describe the attributes that must be met to demonstrate good forest governance.[416]

Each section below discusses the criterion by turn, explaining how it was derived and providing sources where greater detail can be obtained. The discussion also contains examples of the issues the criterion. Note that, the criteria are not independent; they share principal components.

Table 4.1 summarises the criteria. Figure 4.1 (part of the conclusion of this chapter), provides a systems map of the criteria, showing how the elements link.

[412]World Bank, above n 375, xi, 39-40; Tapani Oksanen et al, 'Strategy Note for Forest Governance Reform in Kenya' (Final Draft for the "Miti Mingi Maisha Bora – Support to Forest Sector Reform in Kenya" (MMMB) Programme, 2011) 8.
[413]Capistrano, above n 375.
[414]ITTO, 'Revised ITTO criteria and indicators for the sustainable management of tropical forests including reporting format' (ITTO policy Development Series No. 15, ITTO, 2005)25-29; FAO, *Montreal Process on Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests* (2001) FAO <http://www.fao.org/docrep/004/ac135e/ac135e08.htm>.
[415]FAO, above n 414.
[416]World Bank, above n 375, 20; Brito et al, above n 391, 5.

Table 4.1: Good forest governance criteria and principal components

No.	Criteria	Principal components	Organisation(s)/study(s) that employ the criteria
1	Reliance upon the rule of law	- Impartiality: *Laws that are impartially enforced* - Consistency: *laws that are consistent with other laws* - Expense: *laws that are not expensive to implement* - Complexity: *laws that avoid complex requirements*	- *FFGR* of the WB;[417] - *A User's Guide to a Diagnostic Tool* of the PROFOR;[418] - *The Sustainable Forestry Handbook* by Higman;[419] - *Framework for assessing and monitoring forest governance* by FAO;[420] - *The GFI of* WRI;[421] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[422] - CIFOR;[423] - *Reforming forest tenure: Issues, principles and process* by FAO.[424] -
2 3 4	Transparency Accountability Stakeholders participation	- Information: (a) Reliability: *accurate and up to date* (b) Accessibility: *publicly accessible in an affordable, in a timely manner and understandable* (c) Dissemination: *relevant information is disseminated to the public on an ongoing basis* - Rationale: *Ensuring that those in power are able to explain the reasons for their decision* - Consultation: *Adequate consultation and decision-making processes with stakeholders, particularly those whose livelihoods rely on forest resources* - Stakeholder engagement: *Active and direct participation by all stakeholder* - Regulatory framework: (a) Legal requirement: *Having regulations that enable transparency; accountability and public participation;* (b) Sanctions: *for failure to implement legal requirement*	- *FFGR* of the WB;[425] - *A User's Guide to a Diagnostic Tool* of the PROFOR;[426] - *Framework for assessing and monitoring forest governance* by FAO;[427] - *The Sustainable Forestry Handbook* by Higman;[428] - *Reforming forest tenure: Issues, principles and process* by FAO;[429] - *The GFI of* WRI;[430] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[431] - ITTO;[432] - CIFOR;[433] - *Forest Law and Sustainable Development: Addressing Contemporary Challenges through Legal Reform* by Lawrence C. Christy;[434] - Montreal Process.[435]

[417]World Bank, above n 375, 22.
[418]Kishor and Rosenbaum, above n 408, 3, 34.
[419]Higman et al, above n 95, 7.
[420]FAO, above n 406, 14.
[421]Brito et al, above n 391, 10-12.
[422]Mayers, Bass and Macqueen, above n 380, 22-23.
[423]Prabhu, Colfer and Shepherd, above n 377, 9.
[424]FAO, above n 138, 57-59.
[425]World Bank, above n 375, 22.
[426]Kishor and Rosenbaum, above n 408, 3, 6-7.
[427]FAO, above n 406, 10, 16.
[428]Higman et al, above n 95, 7.
[429]FAO, above n 138, 59-60.
[430]Brito et al, above n 391, 3-4.
[431]Mayers, Bass and Macqueen, above n 380, 12.
[432]ITTO, above n 414, 14-15, 33.
[433]Prabhu, Colfer and Shepherd, above n 377, 12.
[434]Christy, above n 333,101-110.
[435]FAO, above n 414.

No.	Criteria	Principal components	Organisation(s)/study(s) that employ the criteria
5	Effectiveness	- Monitoring: *Regular monitoring and evaluations to determine whether the objectives of laws and policies are being met in practice* - Stakeholder capacity	- *A User's Guide to a Diagnostic Tool* of the PROFOR;[436] - *Framework to assess and monitor forest governance*, FAO;[437] - *FFGR* of the WB;[438] - GFI of the WRI;[439] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[440] - ITTO;[441] - Montreal Process;[442] - CIFOR.[443]
6	Efficiency	- Competition: *Promote competition to increase motivation for efficiency* - Monitoring: *Regular monitoring and evaluations to determine whether the objectives of laws and policies are being met in practice* - Stakeholder right: *recognising rights of stakeholders, particularly those whose livelihoods rely on forest resources to reduce social costs* - Complexity: *laws that avoid complex requirements*	- *A User's Guide to a Diagnostic Tool* of the PROFOR;[444] - *Framework to assess and monitor forest governance*, FAO;[445] - *The Sustainable Forestry Handbook* by Higman;[446] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[447] - *FFGR* of the WB.[448]
7	Fairness and equity	- Benefit and costs sharing: *Fair and equitable sharing of costs and benefit*; - Stakeholder right: *recognising rights of stakeholders, particularly those whose livelihoods rely on forest resources*: (a) Secure rights: Legally defined and secure rights (b) Generational rights: Recognising rights of next generation (c) Traditional knowledge: *traditional forest knowledge is clearly recognised and applied in the regulatory framework* - Gender discrimination: *avoiding gender discrimination, particularly women*	- *A User's Guide to a Diagnostic Tool* of the PROFOR;[449] - *Framework for assessing and monitoring forest governance* by FAO;[450] - *Reforming forest tenure: Issues, principles and process* by FAO[451]; - *The Sustainable Forestry Handbook* by Higman;[452] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[453] - ITTO;[454] - CIFOR;[455] - *FFGR* of the WB;[456]

[436]Kishor and Rosenbaum, above n 408, 6-7.
[437]FAO, above n 406, 10.
[438]World Bank, above n 375, 22.
[439]Brito et al, above n 391, 13.
[440]Mayers, Bass and Macqueen, above n 380, 26, 43.
[441]ITTO, above n 414, 16-17.
[442]FAO, above n 414.
[443]Prabhu, Colfer and Shepherd, above n 377, 15.
[444]Kishor and Rosenbaum, above n 408, 6-7.
[445]FAO, above n 406, 10.
[446]Higman et al, above n 95, 7.
[447]Mayers, Bass and Macqueen, above n 380, 12.
[448]World Bank, above n 375, 22, 28-31.
[449]Kishor and Rosenbaum, above n 408, 6-7.
[450]FAO, above n 406, 10.
[451]FAO, above n 138, 56-58.
[452]Higman et al, above n 95, 7.
[453]Mayers, Bass and Macqueen, above n 380, 40-42.
[454]ITTO, above n 414, 30.
[455]Prabhu, Colfer and Shepherd, above n 377, 11-13.

No.	Criteria	Principal components	Organisation(s)/study(s) that employ the criteria
			- Montreal Process.[457]
8	Coordination	- Common objective: *agencies and actor (including community), such as those responsible for land management system, water management, agriculture, infrastructure, human rights, and economic development advance objective that are common to good forest governance* (a) Joint formulation: jointly formulating objectives (b) Joint budgeting: jointly establishing the land management budget - Shared information: *use of the same information, eg, same cadastral map, forest inventories.* - Enforcement: enforcement authorities, eg, judiciary and police, understand and implement objective	- The *GFI* of WRI;[458] - *FFGR* of the WB;[459] - *A User's Guide to a Diagnostic Tool* of the PROFOR;[460] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[461] - *Framework for assessing and monitoring forest governance* by FAO.[462]
9	Capacity building and incentives	- Stakeholder capacity: stakeholders have: (a) Sufficient numbers to carry out their duties (b) Technology to implement forest management (c) Information (d) Sufficient Budget to implement action (e) Coordination - Motivation: *provide stakeholders with sufficient incentives to invest their efforts in forest management:* (a) Benefit and costs sharing (b) Stakeholder rights	- *A User's Guide to a Diagnostic Tool* of the PROFOR;[463] - *The GFI of WR;*[464] - *Reforming forest tenure: Issues, principles and process* by FAO;[465] - ITTO;[466] - *Framework for assessing and monitoring forest governance* by FAO;[467] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[468] - *FFGR* of the WB;[469] - Montreal Process.[470]
10	Stakeholder relationship: *Ensure trusting relationships among stakeholders*	- Sharing: *Fair and equitable sharing of costs and benefit* help reduce conflicts; - Stakeholder right: *recognising rights of stakeholders, particularly those whose livelihoods rely on forest resources* - Consultation: *Adequate consultation and decision-making processes with stakeholders, particularly those whose livelihoods rely on*	- *A User's Guide to a Diagnostic Tool* of the PROFOR;[471] - *FFGR* of the WB;[472] - *The Pyramid: A Diagnostic and Planning Tool for Good Forest Governance* by IIED;[473] - *Framework for assessing and monitoring forest governance* by

[456]World Bank, above n 375, 22, 28-31.
[457]FAO, above n 414.
[458]Brito et al, above n 391, 3-4.
[459]World Bank, above n 375, 39-40.
[460]Kishor and Rosenbaum, above n 408, 41-42, 78, 86-88.
[461]Mayers, Bass and Macqueen, above n 380, 12, 29.
[462]FAO, above n 406, 12-13,18.
[463]Kishor and Rosenbaum, above n 408, 97-99.
[464]Brito et al, above n 391, 3-4.
[465]FAO, above n 138, 60-61.
[466]ITTO, above n 414, 16-17.
[467]FAO, above n 406, 11-17.
[468]Mayers, Bass and Macqueen, above n 380, 41.
[469]World Bank, above n 375, 40-41.
[470]FAO, above n 414.
[471]Kishor and Rosenbaum, above n 408, 97-99.
[472]World Bank, above n 375, 22-25.
[473]Mayers, Bass and Macqueen, above n 380,34.

No.	Criteria	Principal components	Organisation(s)/study(s) that employ the criteria
		forest resources - Common objective: agencies and actor (including community), such as those responsible for land management system, water management, agriculture, infrastructure, human rights, and economic development advance objective that are common to good forest governance - Conflict management: *effective conflict management mechanisms are in place*	FAO;[474] - *The GFI of WRI;*[475] - CIFOR;[476] - ITTO.[477]

4.3.1. Criterion 1: Reliance upon the rule of law

Rule of law is a key element of good forest governance. It requires the application of an impartially enforced and a fair legal framework. Laws that are expensive, complex, or inconsistent prevent the application of an enforceable and fair legal framework.

Rule of law is a criterion used in several forest governance instruments including: FFGR of the WB, PROFOR, FAO, GFI of the WRI, IIED, and CIFORs. The WB notes that laws can have a significant impact on the rate of deforestation in a country. Costly enforcement of law discourages people from being involved in governance and discourages people from investing in forest management practices. For example, a WB study found that unnecessary and cumbersome requirements for the procedure to get a transit permit to move wood off private land in Bangladesh discouraged people from investing in trees. In the study, the wood operators had to fill out a permit application and submit it to the Divisional Forest Officer (DFO) to verify that the land involved was not under management of the Forest Department. Then the DFO would send the application to the Deputy Commissioner (DC) of the District to verify who owned the land. This typically required the application to pass through the hands of the Additional DC/Revenue and an Assistant Commissioner for Land before the application could reach a local official who had the power to verify ownership. If the land were near a government forest, the local official would have to arrange for someone from the Forest Department to verify the boundaries of the land and forest. Then the application would be passed back to the DC, who would return it to the DFO. If the land passed all verification, the DFO would send out a forest ranger to mark the trees. If fewer than 200 trees were involved, the DFO could approve the permit after making a personal inspection of the site. If 201 to 500 trees were involved, the DFO's supervisor would also have to approve the permit. If over 500 trees were involved, the nation's highest forest officer, the Chief Conservator of Forests, would have to sign off. With all these steps and possible delays, and corresponding opportunities for officials to solicit 'grease' payments, few private

[474]FAO, above n 406 16-17.
[475]Brito et al, above n 391, 4.
[476]Prabhu, Colfer and Shepherd, above n 377, 11.
[477]ITTO, above n 414, 30-31.

landowners braved the system alone. Most operators sold their trees at low prices to middlemen who knew how to get through the necessary approvals process.[478]

PROFOR and FAO also highlight that onerous procedural requirements can discourage or delay forest management or create unnecessary opportunities for corruption. It is acceptable for the law to place requirements on forest activities to ensure sustainability, discourage corruption, and secure other public benefits, but it should not impose requirements that are tangential to such objectives. Factors that make compliance difficult might include high fees, complex procedures, or requirements for high-level or multiple official approvals.[479]

The WRI and IIED emphasise that forest management is a central aspect of forest governance, requiring the management and control of the different uses of forests, including conservation and ecological uses, community uses, extractive uses and conversion for agriculture and infrastructure. It is, therefore, likely to involve a number of laws, so clarity and consistency within and between these laws is necessary,[480] and practicality and affordability of laws is necessary make sustainable forest management more possible.[481]

Higman states that inconsistent laws, such as in laws regarding land allocation, can lead to more deforestation. In some countries, mining leases can be issued on forestland, even though mining and forest conservation are incompatible activities. When the forest becomes degraded due to mining activities, more mining leases can be issued with the excuse that the land is already degraded.[482]

FAO's study in relation to CIFOR indicates that laws ensuring that community and indigenous people have secure rights to forest resources should be enforceable, avoiding complex and costly compliance processes. When tenure has been reformed, complex compliance procedures such as multiple or costly processes for registering forests and establishing forest management groups can neutralise the benefits of secure tenure and make it difficult or impossible for people to comply.[483]

In 2011, Oksanen, Gachanja and Blåsten carried out an assessment of governance of the forest sector in Kenya. Their assessment process used the criteria for good forest governance developed by the WB in 2009.[484] The assessment found that Kenya has made considerable efforts and progress in promoting good forest governance, but the country has suffered and still suffers poor forest governance. One key

[478]World Bank, above n 375, 28.
[479]Kishor and Rosenbaum, above n 408, 34-35; FAO, above n 406, 14.
[480]Brito et al, above n 391, 12.
[481]Mayers, Bass and Macqueen, above n 380, 22-23.
[482]Higman et al, above n 95, 45.
[483]FAO above n 138, 58; Prabhu, Colfer and Shepherd, above n 377, 9.
[484] The criteria include:
(i) transparency, accountability and public participation;
(ii) stability of forest institutions and conflict management;
(iii) quality of forest administration;
(iv) coherence of forest legislation and rule of law; and
(v) economic efficiency, equity and incentives, see Oksanen et al, above n 412, 1.

challenge is an absence of coherent forest legislation and rule of law. Kenya has ratified and actively participates in the implementation of most relevant international obligations, such as *Agenda 21*; the *UNFCCC*; *CBD*; *UNCCD*; the *Kyoto Protocol*; and REDD+. Kenya has also a new *Constitution* providing national values and principles of governance as a basis for improving forest governance. However, there is no revision of the key forest law – presently the *Forests Act 2005* – to implement the provisions of the *Constitution*. Oksanen et al noted that the most urgent action to improve forest governance in the short-term was to fast track revision of Forest Policy and/or the Act to establish a clear direction for the continued implementation in line with the *Constitution*, and avoid regulatory overreach in such implementation. The assessment also highlighted that, in addition to coherence between the *Constitution* and the *Forest Act*, harmonisation of laws relevant to the forest sector also was needed. For example, the *Wildlife Conservation and Management Act (1989)* prohibits extractive uses of forests, while the *Forests Act* permits such uses under section 46(2). Similarly, the *Agriculture Act (2011)* focuses on economic development and allows clearance of natural habitats to attain this goal without consideration of environmental issues. This has resulted in clearance of prime forests for establishment of tourism facilities, roads and agricultural projects, which contrast with the objective of the *Forest Act*.[485]Even though, Kenya has established the Enforcement and Compliance (ENCOM) Division of Kenya Forests Service (KFS) to ensure effective enforcement of the *Forest Act*, the costs of enforcement at acceptable levels to ensure that enforcement does not disproportionally target poverty-driven illegal activities remain a key challenge for forest governance.[486]

A survey conducted by IUCN seeking to promote more effective forest governance in six key tropical forest countries (Brazil**,** Democratic Republic of Congo (DRC), Ghana, Sri Lanka, Tanzania and Vietnam) notes that laws that enable taxes, fees and royalties can support governments financially. However, they can be costly to the government to collect those taxes, fees and royalties, and the process of collection may create opportunities for rent seeking and corruption. In DRC, for instance, timber transport fees depend on the route taken and distance travelled rather than the volume of timber transported, this creates costs to the harvesting of timber and encourages logging operators to add as much timber as possible to one round of transporting, which save logging operators on transporting fees, but does not limit the harvest of timber which is the aim of the imposed fees.[487]

The Annual Review of Environment and Resources, in reviewing the literature on good governance that focused on natural resource decentralisation, particularly of forests in developing countries, noted that Cameroon has laws to transfer rights to the community, but the application to obtain such rights is highly complex, time-consuming and expensive, and the community's rights can be withdrawn.

[485]Oksanen et al, above n 412, 1, 41-46; UN, 'Sustainable Development in Kenya: Stocktaking in the run up to Rio+20' (UN, 2012) 1.
[486]Oksanen et al, above n 412, 1, 41-46.
[487]Patricia Moore, Thomas Greiber and Saima Baig, 'Strengthening Voices for Better Choices. Forest governance and law enforcement: Findings from the field' (Forest Conservation Programme, IUCN, 2010) 7.

Likewise, in Nicaragua, indigenous peoples won ownership rights to their historic lands and natural resources, but forest regulations are so complex, expensive, and time consuming that it is impossible for communities to participate in logging without significant donor support.[488]

Indonesia has forestland covering 60 per cent of the country's land area, which makes it the third largest area of tropical rainforest in the world. Indonesia's forest is therefore important not only for the national economy and local livelihoods, but also for the global environment. Indonesia rainforests are among the worlds richest in terms of biodiversity, and cover a significant proportion of the planet's tropical deep peat. The Government of Indonesia estimates that each year between 2003 and 2006, around 1.17 million ha of forest was cleared or degraded.[489]It was also reported by CIFOR that operating a legal logging enterprise in Indonesia – a country known for its high net loss of forest in the 1990s (as was Brazil)[490] – is expensive and time consuming. The operators have to pay high taxes and operating fees to the officials to obtain permission for logging operations. This has driven some operators to work for illegal loggers.[491] Similarly, research interviewing key-front line stakeholders who were influencing the process of translating REDD+ into a national-level policy in Indonesia, conducted between June and December 2011, revealed that one key challenge for REDD+ implementation in Indonesia is complexity of forest-related laws. The Indonesian legal system is complex because each Ministry has its own (sectoral) laws, which often conflict with others, and of subnational Governments that result in overlapping forest concessions.[492]

The FAO and ITTO reported in 2010 that in Southeast Asia illegal logging was a major driver of deforestation, accounting for nearly 25 per cent of global deforestation in the previous decade. A significant difficulty in addressing illegal logging of Southeast Asian countries is the inconsistency of forest laws. Laws are both internally inconsistent (among forest laws) and externally inconsistent (between forest laws, other environmental laws and other laws such as customs and trade, banking, and anti-corruption).[493]

Inconsistency can occur when two laws regulate the same resource but with different aims. For example, laws that grant rights to the community to use and collect forest products, particularly for sale, can be inhibited by marketing or transportation laws that involve excessively harsh bureaucratic approval to ensure the forest products have been legally collected.[494]

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[488]Anne M. Larson and Fernanda Soto, 'Decentralisation of Natural Resource Governance Regimes' in Pamela A. Matson et al (eds), *Annual Review of Environment and Resources* (Annual Reviews, 2008) vol 33, 213, 218, 228.
[489]UN-REDD Programme, *Indonesia* (2012) UN-REDD Programme <http://www.un-redd.org/UNREDDProgramme/CountryActions/Indonesia/tabid/987/language/en-US/Default.aspx>.
[490]FAO, 'Global Forest Resources Assessment-Main Report' (FAO Forestry Paper No.163, FAO, 2010) 10.
[491]D. Kaimowitz, 'Forest law enforcement and rural livelihoods' (2003) 5(3) *International Forestry Review* 199, 201.
[492]Mari Mulyani and Paul Jepson, 'REDD+ and Forest Governance in Indonesia: A Multistakeholder Study of Perceived Challenges and Opportunities' (2013) 22 *The Journal of Environment Development* 261, 269.
[493]FAO and ITTO, above n 367, 13.
[494]FAO, above n 138, 48.

Lack of coordination among relevant agencies (see Criterion 8) is often a significant reason for inconsistency of laws. Lack of agreement among forest departments on how to coordinate the implementation of laws and policies results in each department making laws and policies without reference to each another.[495] Oksanen et al's assessment study recommended that coordination within the Ministry of Forestry and Wildlife, Kenya (MFW) and between the MFW and other ministries would be a prerequisite for creating consistency between the *Forests Act* and other legislation relevant to the forest sector, such as the *Wildlife Act* and the *Agriculture Act*.[496]

The complexity and expense of law, such as requiring the completion of complex administrative requirements or imposing high costs for compliance, discourage people from complying with laws or excludes those who cannot pay from the intended benefits of forest laws and policy. For example, overall agreement at the workshops on forest law compliance and governance from five regions including Amazon, Central Africa, Mesoamerica, Southeast Asia, and West Africa reported by FAO and ITTO in 2010 highlighted that approval for establishing a community-based forest management program required not only a number of approval steps but also a large fee for approval. Consequently, people do not set up forest management programs and manage or exploit forest resources without the legal authorisation to do so.[497]

Similarly, in the Philippines, high transaction costs for obtaining harvesting and transport permits from the government have discouraged forest plantation development.[498]Thus, the law in the Philippines which placed over five million ha under a community-based forest management regime to benefit communities has not achieved its aims. To utilise the forests, communities must obtain approval documents to harvest and transport the legally harvested forest products. A medium-sized truck transporting wood products would be required to pay $60-140 in transportation costs at each of 14 checkpoints. Each operator had to pay the Department of Environment and Natural Resources (DENR) up to $400 for the approval of a work plan authorising the annual allowable cut and up to $500 each year to the DENR to facilitate the issuance of an Environmental Compliance Certificate. These transportation and approval fees significantly reduced the economic viability of community-managed forest operators.[499]

As well as making it difficult to take advantage of laws, complexity, expense and inconsistency of laws open legal loopholes that enable illegal activities to occur. For example, complexity or inconsistency of laws could mean there is uncertainty or unclear provision in the laws, which enable

[495]FAO and ITTO, above n 367, 10.
[496]Oksanen et al, above n 412, 1.
[497]FAO and ITTO, above n 367, 10-11.
[498]Jerry Bisson et al, *Better governance critical to reversing forest degradation in Southeast Asia* (2003) Food and Agriculture Organisation of the United Nations (FAO) <http://www.fao.org/docrep/ARTICLE/WFC/XII/0837-A4.HTM>.
[499]Ibid.

future challenges. Illegal loggers utilise this uncertainty to commit forest crime, such as quickly deforesting an area to make a quick profit.

PROFOR and FAO indicate that it is important for the countries to ensure that national laws are consistent with international laws. Widely adopted international obligations[500] represent the closest thing available to international norms for resource management and environmental protection addressing sustainability issues.[501]

4.3.2. Criterion 2: Transparency; Criterion 3: Accountability; and Criterion 4: Stakeholder participation

'Transparency' refers to availability of reliable information about the forest, including information about forest laws; relevant policies and authorities; trends in deforestation, forest maps; inventory of data; and concessions.

'Accountability' refers to the degree to which those in power are accountable for their actions.

'Stakeholder participation' refers to the degree to which those affected by laws have an opportunity to influence government decisions that affect the forest and their livelihoods.[502]

Forests can be considered as a common-pool resource comprising a web of interests which can be shared among stakeholders.[503] A lack of adequate communication and coordination among stakeholders can lead to over-exploitation.[504]Accountability, transparency and stakeholder participation are necessary to enable good communication and coordination among stakeholders.

Transparency requires that stakeholders have access to reliable information. This helps to ensure that stakeholders understand how forests are being governed. Availability of such information enables people to participate in decision-making, giving them the information to help them analyse issues and make decisions. For information to be useful, it must be generally available and understandable, such as having policies and regulations written in plain text.[505] When information is available to a select group, such as governing authorities, there is an increased risk of corruption.

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[500] Such as the CITES, Convention on Biological Diversity, Convention on Combating Desertification, Ramsar (Wetlands see Kishor and Rosenbaum, above n 408, 89.

[501]Kishor and Rosenbaum, above n 408, 89; FAO, above n 406, 18.

[502]The definition of Transparency, Accountability, and Stakeholder participation are based on, see Higman et al, above n 95,7; World Bank, above n 375, 34; Brito et al, above n 391, 3-4; FAO, above n 406, 10; FAO, above n 138, 59-60; Kishor and Rosenbaum, above n 408, 3, 5-8.

[503]Elinor Ostrom, 'Self - Governance and Forest Resources' (Occasional Paper No.20, Center For International Forestry Research (CIFOR), 1999) 2; Kanchan Chopra and Purnamita Dasgupta, 'Common Pool Resources in India: Evidence, Significance and New Management Initiatives' (Natural Resources Systems Programme: Project No. R7973, 2002) 4; Blake D. Ratner, 'Common-Pool Resources, Livelihoods, and Resilience Critical Challenges for Governance in Cambodia' (IFPRI Discussion Paper 01149, The International Food Policy Research Institute (IFPRI), 2011) 1.

[504]Ostrom, above n 503, 2; Elinor Ostrom, *Governing the commons: the evolution of institutions for collective action* (Cambridge University Press, 1990) 30.

[505]Christy, above n 333, 101-103.

Accountability is linked to transparency. It is important, for example, that government authorities – who play a leading role in forest governance – are always able to account for the rationale behind their particular forest management decisions.

Public participation could help ensure not only active communication but also active coordination. When people participate in decision-making, they can help monitor if governments are managing forest properly, and can express their needs and values to help formulate policies and regulations responsive to public interests. This is particularly pertinent for those whose livelihoods rely on forest resources (see criterion 7). Another significant benefit of public participation is that it provides all stakeholders, including government, with the opportunity to learn from each other, and to develop trusting relationships (see criterion 10), thereby helping to ease the process of governing.

The WB notes that transparency, accountability and public participation depend upon and reinforce each other. Transparency is essential if forest governance is to be made more accountable. Transparency supports public participation – effective sharing of information helps enable effective participation and helps ensure equitable outcomes. When there is no information about laws and institutions governing forest resources, predatory agents or unscrupulous officials can easily manipulate the law to favour their interests.[506]The WB demonstrates that public participation and accountability have become fundamental to promote better governance in Yunnan Province in China. China has reformed its forest regulatory system to devolve the power to manage forest to villagers. However, this reform has failed to give local communities adequate control, where the ethnic minority population is heavily dependent on these resources for its livelihood. Genuine participation by those minority groups has been insufficient and governance at village level is not sufficiently accountable.[507] By contrast, the afforestation program in the west of Yunnan Province in China promotes the active participation of small-scale farmers. This has provided support for them to access high quality planting materials and improved the effectiveness of nursery management.[508]

PROFOR and FAO also note that transparency, accountability and public participation are closely interrelated. Dissemination of reliable and understandable information, in the relevant language, about how forests are governed will help strengthen the power of stakeholders to assess forest governance and increase accountability, which helps to minimise opportunities for corruption. To illustrate, laws that support openness in the award of concessions provide foundations for operating under the rule of

[506]World Bank, above n 375, 23.
[507]World Bank, above n 375, 23; Jianchu Xu and Jesse C Ribot, 'Decentralisation and accountability in forest management: A case from Yunnan, Southwest China' (2004) 16 *European Journal of Development Research* 153, 153.
[508]Jun He et al, 'Decentralisation of Tree Seedling Supply Systems for Afforestation in the West of Yunnan Province, China' (2012) 11 *Small-scale Forestry* 147, 150.

law in a fair and transparent manner, which help minimise opportunities for corruption and tends to award resources to the most deserving parties.[509]

PROFOR and FAO also note that it is important to have laws imposing sanctions for failure of agencies to disclose information, enable public participation and deliver accountability.[510]The *Montreal Process* notes that regulatory frameworks should provide for public involvement activities and public education, awareness and extension programs, and to make available forest-related information.[511]

Higman also highlights that transparency, accountability and public participation depend on each other and help ensure affected stakeholders are taken into account for forest governance. He suggests that the summary of a management plan should be appropriate to the readership, with understandable language and appropriate illustration.[512]

A pilot project conducted with the support of PROFOR in June 2010 in Uganda and October 2011 in Burkina Faso intended to diagnose the source of poor forest governance, noted that consultation with stakeholders builds trust between the forest agency and stakeholders, promotes transparency and ensures inclusive solutions that incorporate stakeholders' views.[513]Another 2012 assessment conducted by PROFOR in Burkina Faso reflected similar conclusions but also highlighted the adverse effects of illiteracy.[514]Christy provides similar conclusions.[515]

WRI notes that accountability includes consideration of the extent to which there is clarity about the role of various forest authorities, there is systematic monitoring of sector operations and processes, the basis for decisions is clear or justified and legal systems adequately uphold public interests. Transparency and stakeholder participation enable these components of accountability to be occurred.[516]

A FAO study further states that the property rights of community and indigenous people to forests should be recognised and secure. The DRC aimed to support tenure security by improving communication and dialogue among stakeholders information-sharing and securing a 'safe space' for building trust and accountability.[517]

[509]Kishor and Rosenbaum, above n 408, 6-7, 45-55; FAO, above n 406, 10, 16.
[510]Ibid.
[511]FAO, above n 414.
[512]Higman et al, above n 95, 7, 37-38.
[513]Kishor and Rosenbaum, above n 408, 48.
[514]Edouard Bonkoungou and Nalin Kishor, 'The Quality of Forest Governance in Burkina Faso: A first analysis of strengths and weaknesses' (Working Paper (In French and English), PROFOR, 2012) 34.
[515]Christy, above n 333, 101-110.
[516]Brito et al, above n 391, 3-4.
[517]FAO, above n 138, 59-60.

CIFOR asserts that ensuring that more than 50 per cent of local people can communicate with the forest officials is also important.[518]

The assessment of forest governance in Kenya in 2011 that tested the criteria developed by the WB affirmed that availability of reliable information is a prerequisite for markets to operate efficiently, and ensures that the Government of Kenya gets the best possible sustainable returns from the plantations. It is also a fundamental enabling factor for the Community Forest Associations (CFAs) and local governments to participate, and to ensure equitable revenue/benefit sharing.[519] This forest assessment revealed inadequate consultation and decision-making process enabled the State to issue concessions or licenses that significantly favour their personal interest.[520]

Lawson and MacFaulassert that a lack of transparency, accountability, and public participation lead to national laws and policies that result in 'state capture' of power over forest resources, resulting in over harvesting of forest resources. For example President Soeharto of Indonesia, implemented policies that favoured Indonesian-Chinese entrepreneurs, enabling them to establish highly profitable concessions and wood-processing industries. At that time, the 10 largest timber groups in Indonesia held 47 per cent of the 51.3 million ha allocated as production forests under concessions. Similarly, in 1976, the Government of the Philippines allocated 10 million ha of forestlands (one-third of the country's total land area) to 200 Timber License Agreement holders based on politics, military and other vested interests. The decisions and actions of these governments contributed to the significant loss of forest cover in the countries and have led current governments to increasingly involve community in designing forest laws and policy.[521]

Indonesia initiated an illegal logging and law enforcement assessment project in 2005 supported by the WB/ WWF. The project focussed on disseminating forest-related information to stakeholders and on involving the public in controlling illegal logging.[522] The FAO and ITTO reported that illegal logging in Indonesia had reduced by 75 per cent in 2010 from a peak in 2000.[523] They also reported that the direct participation of local stakeholders in clarifying land tenure is essential for the security of forest use and has proven effective for stopping illegal logging in the Amazon and in Mesoamerica.[524]

Transparency, accountability and public participation are particularly relevant to the requirements of REDD+. In 2009 by CIFOR conducted a survey of forest management in Bolivia, Indonesia,

[518]Prabhu, Colfer and Shepherd, above n 377, 12.
[519]Oksanen et al, above n 412, 2, 18.
[520]Ibid, 20.
[521]Bisson et al, above n 437.
[522]Christy, above n 333, 110.
[523]Sam Lawson and Larry MacFaul, 'Illegal Logging and Related Trade: Indicators of the Global Response' (Chatham House (The Royal Institute of International Affairs), 2010) xvi.
[524]FAO and ITTO, above n 367, 12-13.

Tanzania, Cameroon and Vietnam on their implementation of REDD+. In relation to Vietnam it was noted that the country has a Climate Change Mitigation and Adaptation steering committee under the Department of Forestry at the Ministry of Agriculture and Rural Development (MARD) to implement REDD+. A REDD National Network and working group have also been established to enable the wider participation of stakeholders. However, ongoing consultation to plan REDD+ had only involved the Central Government, with few consultations in the pilot areas or with other sections of the public. The study also noted that indigenous people, including ethnic minorities, are often at the centre of the discussions because it is recognised as important aspects of the success of REDD projects, but they are rarely consulted by the REDD National Network and working group. Vietnam lacks supportive policies, mechanisms and tested guidelines to achieve an effective, transparent and practical payment system to individual households.[525] Similar issues of transparency and corruption have also been identified for Indonesia.[526]

4.3.3. Criterion 5: Effectiveness

National forest policies often have objectives for effective forest governance. 'Effectiveness' means that the mechanisms of governance should achieve the goals they are intended to achieve.[527] Monitoring and evaluating to ensure that objectives are being met are important. Monitoring helps ensure that the implementation of policies are on the right track – by providing information on the actual impacts of policies and institutional practices – and supports accountability. Monitoring is fundamental to identify weaknesses and strengths of forest mechanism, which help identify the changes that respond to new demands and priorities, address weaknesses and build on strengths.[528]

Someone from outside the agency should be able to determine what activities were undertaken and whether authorities are following management plans. Problems in supervision may result in inequities, waste, theft, and corruption, leading to loss of public confidence.[529] Effective monitoring may require good information technology – such as remote sensing, geographic information system (GIS), global positioning system (GPS), computers and communication devices, as well as skilled people to use the technology.

Consistency between national forest laws and international obligation (as identified in criterion 1) is important. The WB highlights that the absence of monitoring in logging concession opens opportunities for corruption and decreases public confidence in forest agencies. For example, the Liberian Government issued logging concessions to raise national income for social development.

[525]Leo Peskett and Maria Brockhaus, 'When REDD+ goes national: A review of realities, opportunities and challenges' in Arild Angelsen et al (eds), *Realising REDD+: National strategy and policy options* (Center for International Forestry Research (CIFOR) 2009) 25, 34-35.
[526]Mulyani and Jepson, above n 431, 265-269.
[527]Kishor and Rosenbaum, above n 408, 6.
[528]Martin Sekeleti, 'Integrating Forest Governance Monitoring into existing related national monitoring Systems' (Background Paper, FAO, 2011), 11.
[529]Kishor and Rosenbaum, above n 408, 70; FAO, above n 406, 10.

Under the cover of a lack of monitoring President Taylor's inner circle reallocated concession territories in 1998 and 1999, favouring political associate, militia leaders, and arms dealers. As a result, less than 14 per cent of all taxes assessed were actually paid. Some concession holders funnelled their profits from the logging concessions into their personal wealth and private militia.[530]

The GFI also notes that corruption is a critical issue in financial transactions in the forest sector. Having laws requiring monitoring for budget processes helps discourage corruption opportunities and enables programs to fulfil their social, economic and environmental goals for forest management.[531]

The IIED states that forest certification schemes help ensure forest resources are managed sustainably. A creditable forest certification scheme requires a goal-oriented approach encouraging forest managers to work hard to ensure that forest management is reaching its identified objectives.[532] ITTO agrees that adequate planning, monitoring and assessment reflect the effectiveness of implementation of forest management plans. Monitoring and assessment help to identify improvements and constraints from forest management.[533]

CIFOR notes that sustainable forest management requires an assurance that forest management conforms to planning. The results of measurement can be used to revise forest management plans to enable them to more effectively achieve their objectives.[534] The *Montreal Process* agrees that good forest governance requires laws providing for periodic forest-related planning, assessment and policy review that recognises the range of forest values, and supports coordination with relevant sectors.[535]

A lack of effective monitoring was reported by the FAO as a key problem of forest governance in Zambia.[536] Zambian laws now require that forestry inventories for each protected forest area every five years. However, these inventories are rarely conducted. Stakeholders in Zambia indicate that monitoring should not be limited to forest activities, but also include other activities that impact the environment, such as agriculture and mining.[537]

As already noted, Vietnam has developed a Forestry Development Strategy targeting forest governance. Adherence to activities allowed in each of the three categories of forest has not moved beyond the master plan level, because the types of forest are not clearly marked on maps and not demarcated in the field.[538]

[530]World Bank, above n 375, 25-26.
[531]Brito et al, above n 391, 13.
[532]Mayers, Bass and Macqueen, above n 380, 26, 43.
[533]ITTO, above n 414, 16-17.
[534]Prabhu, Colfer and Shepherd, above n 377, 15.
[535]FAO, above n 414.
[536]Bodegom et al, above n 366, 38.
[537]Ibid, 20, 38.
[538]Ibid, 21.

Transparency International Papua New Guinea (PNG) reported in 2011 that illegal logging occurs in that country in part because of a lack of effective monitoring. A National Forestry Inventory was stipulated under the *PNG Forestry Act 1991* to determine the sustainability of each logging concession. However, without effective monitoring the strategy has not been effectively implemented, leading to logs being exported without an accurate appraisal of the standing forest volume. The provisions of the *PNG Logging Code of Practice 1996* are largely ignored by officials because monitoring of the *Code* is weak.[539]

4.3.4. Criterion 6: Efficiency

Forest governance involves the interactions of many stakeholders. Poorly managed forests often mean increases in costs for stakeholders and wasted resources; in other words, inefficiencies. Efficiency relates to all aspects of governance: monitoring, planning, supervision, revenue collection and pursuit of social justice.

PROFOR and FAO note that efficiency is a core element of good forest governance. Efficiency refers to forest governance ensuring a minimum of waste. In other words, optimal use of human, financial and other resources without unnecessary waste or delay. The FAO states that the quality of forest governance often determines whether forest resources are used efficiently.[540]

PROFOR suggests that promoting competition in forest management, such as bidding to obtain forest concessions, enhances efficiency and optimal allocation of resources.[541] This is because competition increases the likelihood that concessions will be issued to those who can best utilise funds and best contribute to good use of forest resources and benefit to society as a whole.

Efficiency is reinforced by effectiveness (Criterion 5). Regular assessment provides the information to enable decisions about what is worthwhile for further investment. PROFOR notes that regular assessment, for example through audits of financial activities, is an effective method of deterring unlawful behaviour, increasing accountability and discouraging waste.[542]

The WB, IIED, and Higman highlight that good forest governance requires consideration of all relevant costs.[543] Demand and supply of forest resources should be in balance. For example, the WB pointed out that the Indonesian government focuses predominantly on extracting timber for meeting the demand of the country and for exporting to overseas. The high demand of timber leads to

[539]Michael Avosa and Alfred Rungol, 'Forest governance integrity report Papua New Guinea ' (Transparency International Papua New Guinea, 2011), 13-14.
[540]Kishor and Rosenbaum, above n 408, 6-7; FAO, above n 406, 7, 31.
[541]Kishor and Rosenbaum, above n 408, 73.
[542]Ibid, 93.
[543]World Bank, above n 375,28-30; Mayers, Bass and Macqueen, above n 380, 44; Higman et al, above n 95, 12.

increases in the prices of timbers; as a result, overharvesting of timbers occurred (mostly illegally). This contributes to widespread clearing of forest areas in Indonesia.[544]

Higman points out that poor forest governance can have environmental and social impacts. For society, inefficiently managed forests can increase the cost of daily living, especially for those who depend on forest because: they lose their source of food, watersheds for farming activities, and the opportunity to generate income from forest products.[545] These losses increase inequity. A study conducted in 2006 to identify costs of community-based forest management in Nepal revealed that there is increased hardship when people cannot supplement their income by obtaining food from forests.[546] Inefficiently managed forests also increase the costs of resolving situations where parties have conflicting interests, such as different definitions of boundaries.[547]

Inefficiency can increase the cost of approvals, negotiations, monitoring and providing information required by law (see Criterion 1). For example, in 2003, the Government of Indonesia estimated that it annually lost potential tax revenues of $1 billion to $1.9 billion from logging activities – these logging activities being largely illegal. Similarly, in the 1980s, the government of the Philippines lost $1.8 billion annually in potential revenue. In Cambodia in 1994, 4 million cubic meters of wood were illegally logged with a loss of $60 million in revenue.[548]

Effectiveness and efficiency indicators have been included in the implementation of REDD+. The countries hosting REDD+ projects will be paid only if they can prove that they prevent the emissions of forest-based carbon into the atmosphere. Effective monitoring, reporting, and verification (MRV) are, therefore, needed to ensure that changes in forest-based carbon are measured accurately.[549] REDD+ also requires demonstration of the achievement of social inclusion goals in the management of forests for carbon. In the paper on REDD+ included in this thesis (see section 7.3.1), the efficiency challenges of this aspect of forest governance are discussed.

4.3.5. Criterion 7: Fairness and Equity

The fair and equitable sharing of benefit from forest resources is key to rural economic growth and poverty reduction, and sustainable forest management. Communities rely on forest resources for their livelihoods. When they feel that their expectations to benefit from forest resources are ignored, they

[544]World Bank, above n 375, 30.
[545]Higman et al, above n 95, 12.
[546]Bhim Adhikari and Jon C. Lovett, 'Transaction costs and community-based natural resource management in Nepal' (2006) 78 *Journal of Environmental Management* 5, 7.
[547]Ibid, 2.
[548]Bisson et al, above n 437.
[549]William D. Sunderlin and Stibniati Atmadja, 'Is REDD+ an idea whose time has come, or gone?' in Arild Angelsen et al (eds), *Realising REDD+: National strategy and policy options* (Center for International Forestry Research (CIFOR) 2009) 45, 50.

can be discouraged from investing in forest preservation. This produces conflicts and also fuels unauthorised exploitation of forest resources.[550]

PROFOR defines fairness and equity as the just distribution of benefits and burdens of forest.[551] The FAO believes that equity means equal opportunities for all members of society to improve or maintain their wellbeing from forest resources[552] and Higman reinforces the view that all members of society includes those who are vulnerable and rely on forest resources for their subsistence.[553]

The Right and Resources Initiative (RRI), the Public Interest Project Organisation, and Simond Counsell note that one weakness in the institutions charged with forest governance is a pervasive 'silo' approach of forest agencies.[554] This overlooks how forest governance has an impact on other groups and sector. Siloed responsibility focussing only on forest conservation (or exploitation) can result in overlooking interest of forest dependant people. This does not ensure fairness and equity.

Oksanen et al found that forest policy and law in Kenya does not have mechanisms to ensure equitable benefit sharing. Both the PROFOR and the Oksanen et al assessment highlight that unless there is clarity about sharing costs and benefits, communities will not invest in good forest management.[555] To encourage people to invest in forest management, rights must be clearly defined and secure. It also must be easy to identify who holds rights.[556]

Nationalisation of forests can have significant perverse effects upon public benefits. Bison et al reported in 2003 that in many countries of Southeast Asia, tax revenues from legal logging accrue almost solely to central governments and do not provide significant revenues to local governments or communities. One consequence is that illegal loggers can build powerful networks at the local level with a promise to provide local benefit.[557] For example, the FAO reported that lack of community benefit from official exploitation of forest resources in the Amazon encourages illegal forest clearing and adds to problems of deforestation. It concludes that restrictions on legal access to forest resources promotes illegal logging and unauthorised forest clearing in Mesoamerica.[558]

Regulatory frameworks that secure the rights of (particularly marginalised) people who rely on forests can help ensure fairness and social equity. In 2011, the FAO pointed out that having rights over forest

[550]World Bank, above n 375, 29-30.
[551]Kishor and Rosenbaum, above n 408, 6.
[552]FAO, above n 406, 10 and 31.
[553]Higman et al, above n 95, 7.
[554]RRI, 'A summary report of the Tenth Right and Resources Initiative (RRI) Dialogue on Forests, Governance and Climate Change' (RRI, 2011); Public Interest Project, 'Alliance Building in action: Profiles from the filed' (Public Interest Project, 2010) 1; Simon Counsell, 'Forest Governance in Africa' (Accasional Paper No. 50 of Governance of Africa's Resources Programme, South African Institute of International Affairs, 2009) 24-25.
[555]Oksanen et al, above n 412, 54.
[556]Garret Harding, 'Tragedy of the Commons' (1968) 162(3859) *Science* 1243, 1245; Kishor and Rosenbaum, above n 408, 38,81.
[557]Bisson et al, above n 437.
[558]FAO and ITTO, above n 367, 12-13.

resources provides an important source of power and can ensure equitable access to, benefits from, and decision-making power over forest resources.[559]

The WB notes that insecurity of tenure increases deforestation rates in Ethiopia. The landowners in Ethiopia have no guarantee that they will receive a future return from forest resources. The situation is exacerbated by the fact that landowners are treated as encroachers and are unfairly relocated by the Government. These landowners believe that their survival is at stake and move into forest areas to harvest or clear reserved areas even though there is a chance that they will be injured or killed.[560]

The IIED asserts that to achieve good forest governance, it is essential for people to be made aware of their rights. Laws should also respect marginalised communities, their local rules, and their customary rights. Rights should be clearly defined and defensible. Rights could be for various kinds of ownership, such as: rights to use forests for livelihoods or for commercial production; rights to manage forest resources (based on free and informed consent of others with legal and customary rights); and rights to be compensated when cancellation of rights occurs.[561]The *Montreal Process* emphasises that good forest governance enables the protection of cultural, social and spiritual needs and values of, particularly, traditional people. Forestlands can be collectively designated in relation to the total area of forestland to protect the range of cultural, social and spiritual needs, and values. The community can be directly and indirectly employed in the forest sector and forest areas can be demarcated and areas used for subsistence purposes.[562] Brazil, one of the five most forest-rich countries in the world, with the most tropical forest area,[563] adopted the GFI to reform its forest governance in 2009[564] and designated more than one-fifth of its forest area for the protection of the culture and way of life of forest-dependent people.[565]

ITTO notes that a well-managed forest is a self-renewing resource producing a host of benefits, which might include supplying high-quality timber and satisfying the basic needs of people, contributing to quality of life by providing opportunities for recreation and ecotourism, as well as generating employment and investment in processing industries.

The ITTO emphasises numbers of people whose livelihoods rely on the forest should be identified. This is useful, for example, for making decision about employment that might be available (such as for becoming a local forest ranger) or calculating benefits from forest resources. If employed, benefits and wages should conform to national and/or International Labour Organisation (ILO) standards.

[559]FAO, above n 138, 56.
[560]World Bank, above n 375, 25.
[561]Mayers, Bass and Macqueen,above n 380,41.
[562]FAO, above n 414.
[563]FAO, above n 429, 10, 17.
[564]Davis, above n 394.
[565]FAO, above n 429, 15.

Rights holders should be compensated in a fair manner when rights are extinguished.[566]The area of forests upon which people are dependent for subsistence uses and traditional and customary lifestyles should also be designated.[567]

Fairness and equity should extend to future generations. The rights of the next generation should be protected and recognised by the current regulatory framework. It is suggested that children should be able to be involved in the management of forest resources and be educated (formally and informally) to enable them, for example, to recognise the need to balance exploitation with sustainable use.[568]

Gender should not be a constraint to being involved in forest management. PROFOR notes that men and women often use forests differently and have different knowledge. The decision-making process should respect these differences.[569]The CIFOR and FAO emphasise that women should have their voices heard on sharing benefits from forest resources.[570]

Women are often responsible for managing household income, raising children and providing food; women traditionally collect food from forest products, such as mushrooms, bamboo shoots, and ant eggs and other kinds of wild food. However, women frequently lack secure access to forest resources, owing to discriminatory religious reasons. The FAO and PROFOR note that reforming rights to forest has to ensure equal rights of access to and control over forest resources, and must address potential unintended impacts of reforms on women.[571]

In 2013, the government of Nepal established the *Forest Sector Master Plan 2046,* which aims to ensure social equity in forest governance. The Ministry of Forest and Soil Conservation, Nepal, developed a vision to ensure equitable access to, benefits from and decision-making power over forest resources. The Ministry identified four change areas: (1) gender and equity sensitive policy and strategy (2) equitable governance (3) gender and equity sensitive organisational development and programming, and (4) equitable access to resources and benefits.[572]

It is increasingly accepted that women play a key role as producers and providers of forest products, and in making decisions in forest management.[573]The Philippines *Administrative Order 96-29 (1996)*

[566]Prabhu, Colfer and Shepherd, above n 377, 11-13.
[567]ITTO, above n 414, 30-31.
[568]Prabhu, Colfer and Shepherd, above n 377, 11-13.
[569]Kishor and Rosenbaum, above n 408, 41.
[570]Prabhu, Colfer and Shepherd, above n 377, 11-13; FAO, above n 138, 56.
[571]FAO, above n 138, 56.
[572]Nepal Ministry of Forest and Soil Conservation, 'Forest Sector Gender and Social Inclusion Strategy' (Singhadurbar Ashad 2064, Ministry of Forest and Soil Conservation, Nepal, 2013) 4.
[573]Edmund Barrow et al, *Customary Practices and Forest Tenure Reforms in Africa—Status, Issues and Lessons* (IUCN, 2009) 1.

provides that contracts concluded with persons occupying forestlands must be signed by both spouses.[574]

Woodburne et al, in collaboration with the PROFOR, examined the extent to which national law and policy in the Central African Republic reflects international conservation standards relating to indigenous people's rights in managing forest resources in the Dzanga-Sangha Protected Area Complex. The examination highlighted that current management of the forest area is not meeting many of the obligations specified in the international conservation standards. For example, participation in decision-making processes is low. Although some BaAka people (one tribe of indigenous people in the Central African Republic) are employed by the project, few other benefits from conservation or eco-tourism are shared equitably with communities. Customary forestry practice has not informed park/reserve design, leaving many communities unable to access sufficient natural resources for subsistence purposes.[575] PROFOR notes that having a regulatory framework to enable the employment of traditional forest-related practices in forest governance could help ensure social equity. Traditional forest practices are part of their daily lives and support their needs and livelihoods.[576]The FAO stresses that national regulatory frameworks should identify and recognise customary forest system. At an international conference on forest tenure, governance and enterprise in Africa in 2009, delegates agreed that the most successful forest tenure reforms, especially in Africa, are those in which the rights established by customary systems are recognised by the statutory legal systems for land and forest tenure.[577]

The IUCN reports that laws which overlook customary forest activities make people feel insecure and provides incentives for illegal practices. In the case of Vietnam, it has led to deforestation because the patrols traditionally carried out by indigenous people have been ignored. Vietnam has piloted a project to incorporate customary forest communities and their traditional knowledge into forest management. The project was conducted with five ethnic villages in the buffer zone of Phong Dien Nature Reserve in Thua Thien Hue province. The project involved selected households in each village in the entire process for forest allocation, including surveying, planning, developing benefit-sharing arrangement, sharing knowledge and establishing at forest protection team. Although the project did not involve every household, local people generally viewed its process and result positively.[578]

[574]FAO Legal Office (ed), *Law and sustainable development since Rio: Legal trends in agriculture and natural resource management* (FAO, 2002) 255.
[575]Olivia Woodburne et al, 'Securing indigenous peoples' rights in conservation: Review of policy and implementation in the Dzanga-Sangha Protected Area Complex, the Central African Republic' (FPP series on Forest Peoples and Protected Areas, PROFOR, 2009) 1-2.
[576]Kishor and Rosenbaum, above n 408, 32.
[577]FAO, above n 138, 57.
[578]Moore, Greiber and Baig, above n 426, 8, 11.

4.3.6. Criterion 8: Coordination

Lack of coordination among agencies involved can be a cause of inconsistency, overlap or complexity. As noted under Criterion 1 (Reliance on the rule of law), inconsistency and complexity are impediments to good forest governance.

Coordination refers to the extent to which agencies and actors whose decisions impact upon forests are advancing common objectives using complementary methods. There are usually various authorities influencing forest management, such as, land use, agriculture, infrastructure and general economic planning. Too often, these authorities are not coordinated.[579] Forest resources and land use are interdependent. Mismanagement of land use, ineffective planning of agriculture, infrastructure and economic development can be important causes of deforestation.

PROFOR, FAO, and WRI state that forest use can affect and be affected by land use management, rural development, energy, transportation, water supply, agriculture, mining, tourism, trade, law enforcement, taxation and other factors outside the responsibility of a forest agency or minister. Co-ordination could be achieved by formulating policies together or establishing budget plan together, enabling other agencies to reflect forest-related activities in their budgets.[580] Reflecting forest-related practices in the budget plans of other non-forest agencies may also help reduce total costs of forest management.

PROFOR points out that governing forests while remaining ignorant of other areas of law that effect forests (such as laws on environmental impact assessment, public procurement processes, community rights, biodiversity protection, and water quality), means that a government is not effectively implementing the 'rule of law', as discussed under Criterion 1.[581]

Illegal logging includes not only illegal harvesting, but also collusion or rigging bids to obtain permission to harvest forest products, laundering of forest products to make illegal products appear to have legal origins, mislabelling forest products for fraudulent purposes, evasion of taxes or harvest fees, illegal transport, illegal processing, illegal export, and bribery. The effective enforcement of law is essential to deal with these complex aspects of illegal logging. Law should not just target forest workers and logging truck drivers, but should cover white-collar crime and organised crime as well.[582] To do this well requires law enforcement capacity that is usually beyond the capacity of a forest agency (see Criterion 9). Coordination among forest authorities and other relevant agencies, such as the police department and judicial departments, is essential. The Oksanen assessment of forest governance in Kenya highlighted that lack of adequate involvement of prosecutors and judges in

[579]Brito et al, above n 391, 3-4.
[580]Kishor and Rosenbaum, above n 408, 38-40; FAO, above n 406, 18.
[581]Kishor and Rosenbaum, above n 408, 71.
[582]Ibid, 78.

forest law enforcement made it significantly more difficult to prevent forest crime in Kenya. Collaboration between the judiciary and the forest administration to prosecute illegal activities in the forest sector is important.[583]

PROFOR and FAO assert that forest management must confront cross-national boundaries. Examples include management of migratory species, management of shared watersheds, and control of fire or disease in border areas. Addressing these trans-boundary issues requires communication, cooperation, and collaboration.[584]The FAO and ITTO point out that in all countries of Central Africa, there is a lack of coordination between the three branches of government (executive, legislative and judicial) and little political commitment to enforce forest legislation, making it difficult to arrest illegal loggers and halt deforestation.[585]

The WB notes that authorities should join together to establish policy, planning and impact assessment for forest management.[586]

The IIED and WB note coordination among agencies helps to increase the quality of planning and forest management. Coordination can also be about coordination between the government and the public, such as in consultation exercises with the public (as discussed in Criterion 4).[587]

Lack of coordination is also caused when there is a lack of transition planning, such as when newly instated governments overturn the decisions of former governments. Such instability discourages investments. For example, in the Philippines, forest plantation policy has changed 20 times from 1975 to the 1990s, causing small, medium and commercial forest investors to stop their developments of forest plantation in Eastern Mindanao of Philippine.[588]

A 2009 survey conducted by CIFOR noted that the Vietnamese government agrees that REDD+ should enhance sustainable forest management, biodiversity conservation and forest carbon stocks. After being selected as a participant in the WB Forest Carbon Partnership Facility (FCPF) in 2008, the country has built a REDD road map, which proposes the country's central highlands and the northern central provinces for REDD pilot projects. The road map strengthened coordination among ministries, but barriers remain, such as overlaps between authorities and lack of effective coordination. CIFOR reported that the limitation of data on deforestation trends is caused by the lack of coordination and technology among relevant authorities. There is fragmentation of monitoring systems across government departments, application of low-resolution remote-sensing data in forest cover mapping,

[583]Oksanen et al, above n 412, 36.
[584]Kishor and Rosenbaum, above n 408, 90; FAO, above n 406, 18.
[585]FAO and ITTO, above n 367, 10.
[586]World Bank, above n 375, 39-40.
[587]Mayers, Bass and Macqueen, above n 380, 12, 29.
[588]Bisson et al, above n 437.

weaknesses in forest cover reporting systems from the local to the national level, and inconsistent use of forest classification systems between forest inventory cycles.[589]

To achieve coordinated implementation of REDD+, Indonesia began by forming the Indonesian Forest–Climate Alliance (IFCA). In 2008, the country established Dewan Nasional Perubahan Iklim (National Council on Climate Change, Indonesia) (DNPI) and, in the same year, the *Ministry of Forest Regulation 68/208 on Reduced emission from deforestation and forest degradation - demonstration activity* (‘*REDD DA*’) was imposed. In 2009, the *Ministry of Forest Decree 36/2009 on Carbon Sequestration Licence* and the Indonesia 26 per cent emission target commitment at G-20 meeting were established. In 2010, the country signed a *Letter of Intent on REDD+* with Norway and promulgated two regulations: *Presidential Instruction 10/2011 on Moratorium of New Licenses* and the *Presidential Decree no. 61/2011 on National Plan to Reduce GHGs*. In addition to Norway, REDD+ implementation in Indonesia is supported by several bilateral donors, such as GTZ, DFID, AusAID and the WB. Indonesia took up the challenge to enhance its preparedness by developing policies and strategies to implement REDD+ at the national level by engaging with multilateral initiatives, such as the Forest Carbon Partnership Facility and the UN-REDD programme. The country established a coordinating agency for implementing REDD+. However, Indonesia still faces significant challenges in REDD+ implementation, including: corruption, lack of coordination among governmental bodies, both horizontally and vertically, lack of effective sharing of information, lack of capacity by project developers, lack of capacity to develop the REDD+; lack of clarification of rights to carbon stocks; lack of technology and resources to effectively, for example, measure carbon sequestration and monitoring of REDD+ projects.[590]Interviews of key-front line stakeholders influencing the process of translating REDD+ into a national-level policy in Indonesia between June and December 2011 revealed that coordination issues: overlapping authorities, competing interests are the key issue that were perceived by all but one interviewee as key challenges for REDD+ implementation in Indonesia.[591]

A survey conducted by the IUCN seeking to promote more effective forest governance in six tropical forest countries: (Brazil**,** DRC, Ghana, Sri Lanka, Tanzania and Vietnam) notes that Brazil has at least three national institution that share responsibility for land and forest management: the National Institute for Colonisation and Agrarian Reform (a federal land agency); the Brazilian Institute of Environment and Natural Resources; and the Brazilian Forest Service. A lack of coordination among

[589]Peskett and Brockhaus, above n 464.
[590]Peskett and Brockhaus, above n 464, 32-33; Kaisa Korhonen-Kurki et al, 'Multiple levels and multiple challenges for REDD+' in Arild Angelsen et al (eds), *Analysing REDD+: Challenges and choices* (Center for International Forestry Research (CIFOR), 2012) 91, 96.
[591]Mulyani and Jepson, above n 431, 265-269.

them, exacerbated by lack of staff and funding, has weakened the capacity of the country to effectively manage forests (see Criterion 9).[592]

4.3.7. Criterion 9: Capacity building and incentives

Having sufficient data (important for 'Criterion 2' and 'Criterion 4') is only useful if it is accompanied by a capacity to understand and use such information. Effective information sharing (Criterion 2) also helps enhance the capacity of stakeholders. If people are granted rights over forest resources (important in Criterion '), but lack the capacity to use such rights, the rights are all but meaningless. Local and indigenous communities and smallholders frequently have limited knowledge of their rights and responsibilities under reformed tenure arrangements. Effectiveness requires capacity building programs to build understanding and ability to protect their rights.[593]

The WB notes that in addition to ensuring full and effective rights, strengthening the capacity of those who participate are also fundamental.[594]

Illegal logging involves multiple actors and transactions. Illegal loggers may obtain a legal permit to harvest timber but simply exceed the legal volume or, as permits are normally issued for a geographic area, to cut beyond this area. To control logging in particular areas, official need to go to the area and verify the amount extracted or the area actually logged. The illegal loggers may simply mix legal with illegal timber and thus launder the illegal logs, which may be quite difficult for officials to identify. Illegal loggers may even forge a logging permit and change dates or the details of the logging concession. To resolve these illegalities, an inspecting forest officer or ranger would have to consult multiple offices and files to crosscheck the authenticity of a permit.[595]A lack of resources, such as lack of a vehicle to enable access into logged areas, makes it difficult to monitor, trace or crosscheck the areas logged.

PROFOR, FAO, and IIED highlight that it is important for government to have enough capacity, to enforce laws. As discussed in Criterion 8, coordination among authorities help enhance their capacity. Capacity to enforce laws can include the capacity of the judiciary and law enforcement agencies to deal with forest crime effectively, such as prosecutors and judges having sufficient knowledge about the effects of forest offences and how to support the suppression of such illegal activities.[596]The FAO and ITTO reported that insufficient enforcement capacity rated highly as an important driver of deforestation in West Africa, Central Africa and Mesoamerica. The governments lack the capacity to regulate industry in the logging concessions national parks and other protected areas, and the over-

[592]Moore, Greiber and Baig, above n 426, 10.
[593]FAO, above n 138, 60-61.
[594]World Bank, above n 375, 23.
[595]Christian Nellemann and INTERPOL Environmental Crime Programme (eds), *Green Carbon, Black Trade: Illegal Logging, Tax Fraud and Laundering in the Worlds Tropical Forests. A Rapid Response Assessment.* (United Nations Environment Programme, GRIDArendal, 2012) 31-32.
[596]Kishor and Rosenbaum, above n 408, 78-79; FAO, above n 406, 17;Mayers, Bass and Macqueen, above n 380, 41.

harvesting of forests products.[597] Indeed, it was reported in September 2013 that key-front line stakeholders in Indonesia indicate that lack of capacity (particularly with regard to law enforcement) within Government forest management is a key issue.[598]

The FAO notes that it is necessary to have sufficient staff with the appropriate mix of skills and expertise relative to the scale of the agency's responsibility, measured, for example, in terms of size area or territory to be administered, or volume of production, to act to achieve the objectives of forest governance.[599]

The *Montreal Process* affirms that effective monitoring (a key component of criterion 5) requires the capacity to measure and monitor changes in the conservation and sustainable management of forests. The availability of accurate data about forest management helps to enhance the capacity to assess governance. Key elements of government capacity include: the capacity to conduct and apply research and development; the capacity to develop a scientific understanding of forest ecosystem characteristics and functions; the capacity to develop methodologies to measure and integrate environmental and social costs and benefits into markets and public policies, and to reflect forest-related resource depletion or replenishment in national accounting systems; the capacity to innovate new technologies and the capacity to assess the socio-economic consequences associated with technologies; and the ability to predict impacts of human intervention on forests.[600]

The WRI states that capacity is the fundamental aspect of good forest governance, particularly the capacity of the public, NGOs and media to analyse issues of how forests are being governed, and to participate in making decisions. Capacity also refers to the government's social, educational, technological, legal, and institutional ability to provide public access to decision-making.[601]

IIED confirms that to govern forest resources effectively requires that forest agencies have a programme to build capacity.[602] ITTO notes that training is a common form of capacity building. This can begin by identifying the organisations that are running training programs on sustainable forest management and sending stakeholders, including those from government, private sector, community, academe and NGOs, to training.[603] Involving diverse parties in training enables stakeholders to mutually learn about their roles and responsibilities. Involving research institutions in training programs helps to ensure that forest management is in accordance with scientific and technical knowledge.

[597]FAO and ITTO, above n 367, 10 and 12-13.
[598]Mulyani and Jepson, above n 431, 265-269.
[599]FAO, above n 406, 23-24.
[600]FAO, above n 414.
[601]Brito et al, above n 391, 3-4.
[602]Mayers, Bass and Macqueen, above n 380, 42.
[603]ITTO, above n 414, 16, 33.

PROFOR notes that training may aid in dealing with corruption. On a practical level, codes of conduct and training help officials to understand what actions are considered corrupt

Effective forest governance requires not only having sufficient staff with sufficient capacity, but also sufficient incentive to conduct their role. The WB, PROFOR and FAO emphasise that it is important, for example, for forest rangers to have incentives to conduct their role effectively,[604] because they often conduct their role in remote areas with limited facilities and significant danger. Providing them with sufficient salary, vehicles and weapons would help them to conduct their role effectively. The FAO and ITTO argue it is also important to provide adequate incentives to those who conduct legal operations.[605] Incentive can include, tax incentives, grants, subsidies and subsidised loans, payments for ecosystem services, and rewards for good performance within an agency.[606]

WRI cautions that poorly implemented incentive schemes may result in overpayment or non-additionality (when recipients are paid to do something they would have done anyway).[607] This is consistent with the warning of the WB that while economic incentives have the potential to inspire people to invest, the inspiration may not be sustained over a longer term.[608] Therefore, effective implementation of incentive schemes requires effective law enforcement, which requires effective monitoring processes to ensure that the incentives are delivered to those targeted by the goals of good forest management (see criterion 5).

4.3.8. Criterion 10: Stakeholder Relationships

Good forest governance requires mutually supportive and cooperative relationships among stakeholders (see Criterion 4 and Criterion 8). Where conflict occurs among stakeholders, individuals may be tempted to behave illegally or rapidly maximise their own benefits in the short term (for instance by clearing or harvesting forest products).

FAO and WB note that good forest governance requires effective conflict resolution, particularly conflicts over rights to forest resources. The WB emphasises that conflict over rights, especially violent conflict, contributes to uncertainty, discourages investment in forest conservation, and frustrates long-term forest management planning.[609] The WB has provided several examples of where conflict over resources has boiled over into social conflict in sub-Saharan Africa, in the Philippines, in

[604]World Bank, above n 375, 24; FAO, above n 406, 24; Kishor and Rosenbaum, abvove n 408, 65.
[605]FAO and ITTO, above n 367, 11.
[606]Kishor and Rosenbaum, above 408, 74; FAO, above n 406, 24; Brito et al, above n 391, 65; Mayers, Bass and Macqueen, above n 380, 41, 46; ITTO, above n 414, 10, 15; World Bank, above n 375, 22.
[607]Brito et al, above n 391, 65.
[608]World Bank, above n 375, 31.
[609]Ibid, 25-26.

Vietnam, in India, in Nepal and in Chile.[610] IIED notes that conflict in the forest sector decreases the capacity of government to manage forest and weakens forest institutions.[611]

In order to avoid conflicts over land and resource use, pre-existing claims of communities should be recognised and resolved prior to establishing new or formalising existing tenure rights.[612]

The need for effective ways to handle conflicts is supported the ITTO,[613] CIFOR, IIED, and PROFOR. Ensuring that local communities can effectively control and benefit from forest resources means that conflict resolution mechanisms are needed.[614]PROFOR suggests effective options for conflict management may include informal and formal mechanisms. Informal ways of resolving conflict tend to be more easily accessible and cheaper, and can stop conflict from escalating. Informal ways might include a traditional community process, a stakeholder workshop or community meeting, or using a respected outsider to mediate. Consensus-based conflict management can lead to results that are a better-accepted resolution. Formal conflict management includes lawsuits, reform of the underlying laws, and, in some countries, formal administrative proceedings (resembling judicial proceedings) within the forest agency.[615]

WRI notes that public participation (see Criterion 4) and coordination among relevant agencies (see Criterion 8) can minimise conflict.[616]

Mechanisms that enable participation and coordination build trust and help to decrease conflict. REDD-Net, a network of civil society organisations has identified the issue of trust as a high priority for further examination for the successful implementation REDD+.[617] In 2010, the organisation explored experiences of the importance of trust in REDD+ from several countries in Asia, including Thailand. REDD-Net noted that, in the case of Thailand, past failures of forest governance through corruption, land grabbing, overlooking the rights of the community and indigenous people, has led to a fear that REDD+ may be only another method for overriding the needs of local communities.[618]

[610]Ibid, 31.
[611]Mayers, Bass and Macqueen, above n 380, 45.
[612]Brito et al, above n 391, 30; World Bank, above n 375, 28.
[613]ITTO, above n 414, 30.
[614]Prabhu, Colfer and Shepherd, above n 377, 11.
[615]Kishor and Rosenbaum, above n 408, 83-84.
[616]Brito et al, above n 391, 3, 25.
[617] REDD+ is expanded from REDD standing for Reducing Emissions from Deforestation and Forest Degradation. REDD+ is not only a system whereby the developed country provides money not only to conduct activities that reduce greenhouse gas emission (GHG), but also intended for economic development in developing country. It is important to ensure that how the recipient country cost- effectively allocates such money to fully achieve the emissions offset and other social or ecological goals committed by REDD+ see Korhonen-Kurki et al, above n 529, 95-96; Gabrielle Kissinger, Martin Herold and Veronique De Sy, *Drivers of Deforestation and Forest Degradation: A Synthesis Report for REDD+ Policymakers* (Lexeme Consulting, August 2012) 18-21.
[618]Marcus Colchester, 'The role of trust in REDD+' (2010) (2) *REDD-Net Asia-Pacific Bulletin* 1, 3-6.

4.3.9. Conclusion

Table 4.1 lists the criteria and the principal components of each criterion. Table 4.1, column 4, also summarises the organisations and/or studies that have used the criterion for examining forest governance issues. Figure 4.1 maps how the criterion works through principal components and link with one another.

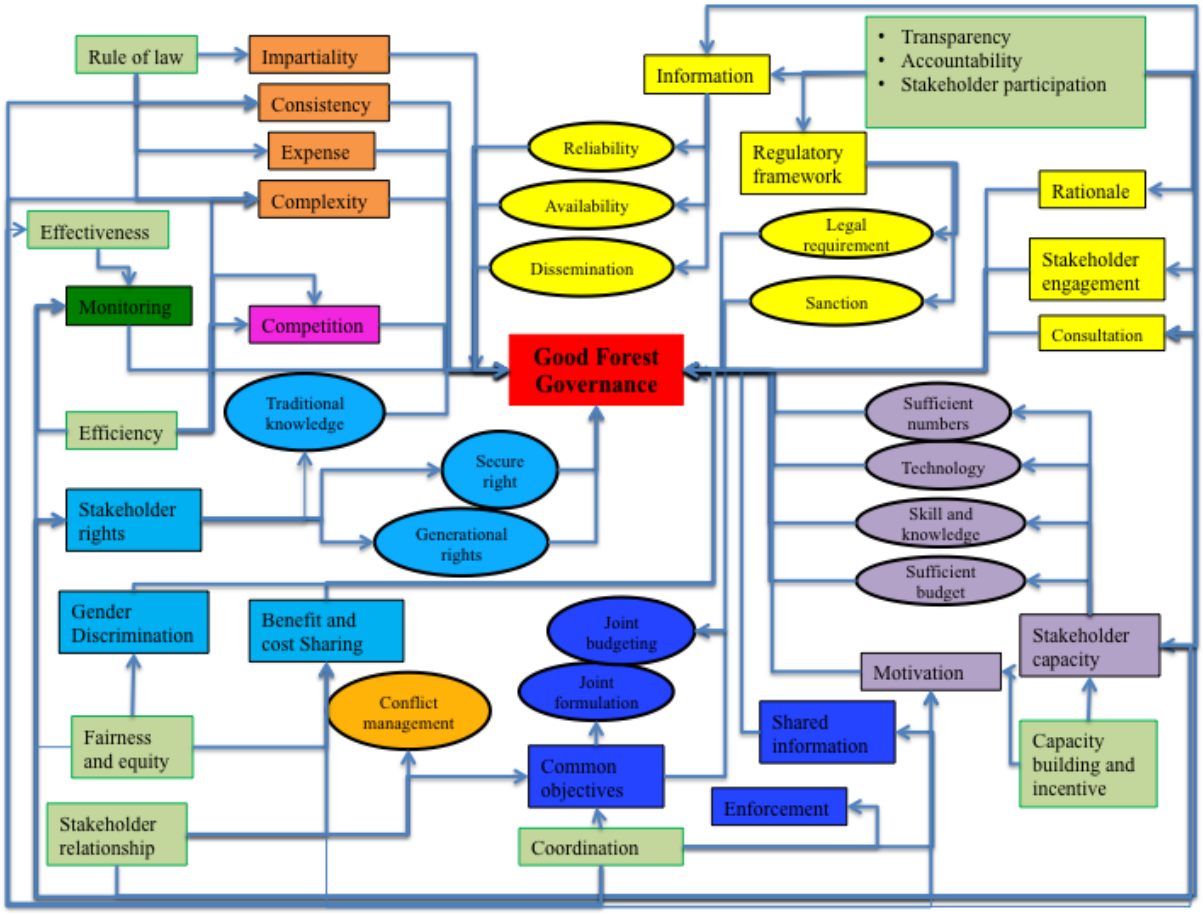

Figure 4.1: Good forest governance criteria and principal components

4.4. Recent developments in forestry rights in Thailand

Criterion 7 – Equity and fairness, and Criterion 10 – Good relationships among stakeholders were used as guidelines for investigating forest laws broadly, particularly the *Community Forest Act*. The discussion is contained in the paper 'Country Report: Thailand Recent Development in Forest Rights in Thailand', published by the IUCN Academy of Environmental Law and reproduced here in full. The paper illustrates the utility of the criteria-based approach to evaluating legal forest instruments in Thailand.

COUNTRY REPORT: THAILAND

Recent Developments in Forestry Rights in Thailand

WANIDA PHROMLAH*

Introduction

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

Current Forestry Rights Arrangement

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

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

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

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

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

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

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[3] E. Fischman, 'The Relevance of Tenure and Forest Governance for Incentive Based Mechanisms: Implementing Payments for Ecosystem Services in Doi Mae Salong' (2012) *View of Doi Mae Salong*, IUCN, 8-9; Lasimbang et al (supra note 2), 18.
[4] FAO, 'Reforming Forest Tenure: Issues, Principles and Process' (2011) *FAO Forestry Paper* No. 165, 39.
[5] R. Fisher, 'Thailand's Forest Regulatory Framework in Relation to the Rights and Livelihoods of Forest Development People' in H, Scheyvens (ed), *Critical Review of Selected Forest-Related Regulatory Initiatives: Applying a Rights Perspective* (2011) Forest Conservation Project (Institute for Global Environmental Strategies (IGES), 73-75; Sumarlan (supra note 2), 52-54; C. Johnson & T. Forsyth, 'In the Eyes of the State: Negotiating a "Rights-Based Approach" to Forest Conservation in Thailand' (2002) 30(9) *World Development*, 1595-1596.
[6] Fisher (supra note 5), 69; Sumarlan (supra note 2), 54; Rights and Resources Initiative, 'Thailand's Community Forest Bill: Jeopardizing Rights and Livelihoods?' (2008) *Rights and Resources Initiative*; Rights and Resources Initiative, 'The Thailand Community Forest Bill' (2008) *Rights and Resources Initiative*.
[7] *Thailand Constitution* (2007), sections 66-67 read with sections 27-29, 56-60, 62, 73, 81-82, 85, 87, 163 and 290.
[8] Rights and Resources Initiative, 'Tenure Data: Thailand' (2012) Rights and Resources Initiative, 1; M. Colchester & C. Fay, 'Land, Forest and People: Facing the Challenges in South-East Asia' (2007) *Listening, Learning and Sharing: Asia Final Report*, Rights and Resources Initiative, Appendix 1 in the Table titled 'Comparative Table of Tenures'.
[9] Johnson et al (supra note 5), 1596; N. Jinarat, *The Process of Public Policy Formulation: A Case Study of the Community Forest Bill B.E. 2550 (2007)* (2010), 140.

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

After long debate, the *Community Forest Bill* was passed by the Parliament on 21 November 2007.[13] However, the Bill has not come into effect as it has been challenged on constitutional grounds.[14] Two issues relating to the the *Community Forest Bill* have been taken to the Constitutional Court for determination. The first issue relates to article 25 of the Bill, which limits eligibility to establish community forests to groups that can prove to have lived in and managed forests for at least 10 years prior to the promulgation of the Bill. This affects some 20,000 communities who have been living around the protected forests for less than 10 years, and would mean that they have no rights to the forests they have been dependent on for the livelihoods for years. The second issue relates to article 35 of the Bill, which prohibits logging within the protected forests. This provision, together with article 25, effectively jeopardizes the rights of communities and indigenous peoples to access forest land and will hinder their previous use of forest resources.[15]

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

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

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

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

[14] Supra note 4.

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

At present, forestry rights in Thailand are controlled by six Forestry Acts including the *Forest Act*, B.E. 2484 (1941), the *Wildlife Conservation and Protection Act*, B.E. 2535 (1992), the *National Parks Act*, B.E. 2504 (1961), the *National Reserved Forest Act*, B.E. 2507 (1964), the *Forest Plantation Act*, B.E. 2535 (1992), and the *Chainsaw Act* B.E. 2545 (2002).[16] These laws focus on extracting[17] and conserving forest areas and overlook the interests of community groups - particularly indigenous and disadvantaged groups whose livelihoods depend on forests.[18] As a result of the difficulties in reconciling community interests to either commercial exploitation or environmental protection, implementation of forestry laws is very difficult and can be considered to have failed, as it has been resisted by those who are impacted.[19]

Lessons Distilled From the Current Forest Property Arrangements

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

[16] K. Manassrisuksi & W Sangkrajang, 'Forest Land Management In Thailand' (2011) *Country Reports on Forest Tenure in Asia and the Pacific: Proceedings of APFNet Workshop on Forest Tenure*, Asia-Pacific Network for Sustainable Forest Management and Rehabilitation, 130-131; V. Jalayananavin & S. Vitayaudon, 'Forest Law Enforcement and Governance in Thailand' in *Forest Law Enforcement and Governance: Progress in Asia and the Pacific* (2010) Asia-Pacific Forestry Commission: FAO, 191.
[17] Lasimbang et al (supra note 2), 16.; M. Matsumura, 'Coercive Conservation, Defensive Reaction, and the Commons Tragedy in Northeast Thailand' (1994) 18(3) *Habitat International*, 110.
[18] Wataru (supra note 1), 208. Rights and Resources Initiative, 'What Rights?: A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights' (2012) Rights and Resources Initiative, 16.; Fisher (supra note 5), 78.
[19] Matsumura (supra note 16), 106 and 112.; FAO Regional Office for Asia and the Pacific (supra note 1), 20.
[20] G. Feder (1993) *The Economics of Land and Titling in Thailand* cited in R. Heltberg, 'Property Rights and Natural Resource Management in Developing Countries' (2002) 16(2) *Journal of Economic Surveys* , 207; F. Romano et al, 'Understanding Forest Tenure: What Rights and for Whom?: Secure Forest Tenure for Sustainable Forest Management and Poverty Alleviation: the Case of South and Southeast Asia (with case studies of Orissa and Meghalaya, India and Nepal)' (2006) *Access to Natural Resources Sub-Programme: Livelihood Support Programme (LSP) Working Paper* No. 29, FAO, 11; B. Robinson, M. Holland & L. Naughton-Treves, 'Does Secure Land Tenure Save Forest?: A Review of the Relationship Between Land Tenure and Tropical Deforestation' (2011) *CGIAR Research Program on Climate Change, Agriculture and Food Security:Working Paper* No. 7, 30-31.
[21] Robinson et al (supra note 19), 30; L. Ellsworth & A. White, 'Deeper Roots: Strengthening Community Tenure Security and Community Livelihoods' (2004) Ford Foundation, 6; J. Bruce, K. Wendland & L. Naughton-Treves, 'Whom to Pay? Key Concepts and Terms Regarding Tenure and Property Rights in Payment-based Forest Ecosystem Conservation' (2010) *Tenure Brief: University of Wisconsin-Madison, 7.*

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

The FAO (2008) states that "both formal titling of individual ownership and systems based on customary tenure can respond to the needs of the poorest and marginalized groups"[23] which ensures that social equity in forest management is being met.[24] The Thailand *Constitution* recognises the rights of the community to forest management,[25] but as a result of a lack of revision of forestry laws to implement the *Constitution,*[26] decision-making on forest management remains with state agencies[27]. This diminishes the security of rights of the community to forest management, as decisions can be readily changed by the state officers.[28]

The six Forestry Acts[29] focus on either commercially exploiting[30] or conserving forest areas. They largely overlook the interests of community groups - particularly indigenous and disadvantaged groups whose livelihoods depend on forests.[31] The Acts retain the power of decision-making on forest management with state agencies.[32] The response of these agencies to community demands and interests has been based upon attempts to either ignore or incorporate community interests as a subset of state control (rather than by attempting to legitimate these interests as suggested by the *Constitution*).

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

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[22] C. Araujo et al, 'Property Rights and Deforestation in the Brazilian Amazon' (2009) 68(8–9) *Ecological Economics*, 2464; W. Sunderlin, A. Larson & P. Cronkleton, 'Forest Tenure Rights and REDD+: From Inertia to Policy Solutions' in A. Angelsen et al (eds), *Realising REDD+: National Strategy and Policy Options* (2009) Center for International Forestry Research, 154.
[23] FAO, 'Understanding Forest Tenure in Africa: Opportunities and Challenges for Forest Tenure Diversification' (2008) Forestry Policy and Institutions Working Paper No. 19, 19.
[24] FAO (supra note 4), 56.; Winrock International & The Ford Foundation, 'Emerging Issues in Community Forestry in Nepal' (2002), 30.
[25] See note 13.
[26] See note 14.
[27] See note 3.
[28] A. White & A.Martin, 'Strategies For Strengthening Community Property Rights Over Forests: Lessons and Opportunities For Practitioners' (2002) *Forest Trends*, 1.
[29] See note 16.
[30] See note 17.
[31] See note 18.
[32] See note 3.

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

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

Customary Forestry Practices Undermined by National Forestry Laws

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

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[33] Fischman (supra note 2), 8-9.
[34] Ibid.
[35] See note 26.
[36] J. Parrotta & R. Trosper (eds), *Traditional Forest-Related Knowledge: Sustaining Communities, Ecosystems and Biocultural Diversity* World Forests (2012) 1st Ed, Springer, 4.
[37] Forest People Programme (supra note 8), 6-7, 16 and 22.
[38] Ibid, 6 and 10.
[39] Forest Peoples Programme (supra note 10), 16; S. Karki, 'Community Involvement in and Management of Forest Fires in South East Asia' (2002) Project FireFight South East Asia, IUCN & WWF, 13.
[40] S. Kritsanarangsan & K. Thaiying, 'Thailand: Forest Management Through Local Level Action; Small Grants Programme for Operations to Promote Tropical Forests (SGPPTF)' (2008) European Commission, United Nations Development Programme, Southeast Asian Regional Centre for Graduate Study and Research in Agriculture, 7; A Salam, T. Noguchi & R. Pothitan, 'Community Forest Management in Thailand: Current Situation and Dynamics in the Context of Sustainable Development' (2006) 31(2) *New Forests*, 281.
[41] Forest Peoples Programme (supra note 10), 21; J. Amornsanguansin & J. Routray, 'Planning and Development Strategy for Effective Management of Community Forestry: Lessons from the Thai Experience' (1998) 22(4) *Natural Resources Forum*, 280.; C. Colfer & Y. Byron (eds), *People*

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

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

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

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

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

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

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

[43] Ibid.

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

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

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

Trust among actors in forest management is necessary for them to manage forest resources through collaborative efforts[47] that can result in effective forest management.[48] By way of illustration of the problem, mistrust and conflict between government departments and local stakeholders has been demonstrate to have caused a major barrier to effective forest governance in Pakistan and Nepal. In Pakistan, mistrust between forest officials and forest users has led to tension in joint forest management programmes. Similarly, in Nepal, different views and mistrust regarding forest land reform among political parties, the state and local people have made it difficult to make progress on forest-land reform.[49] Similar dynamics are evident in Thailand today.

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

Divergent Views Among Stakeholders

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

[47] T. Kusumanto, 'Shaping Opportunities for Improving Forest Quality and Community Livelihoods in Central Sumatra and East Kalimantan, Indonesia' in R. Fisher, R. Prabhu & C. McDougall (eds), *Adaptive Collaborative Management of Community Forests in Asia: Experiences from Nepal, Indonesia and the Philippines* (2007) Centre for International Forestry Research, 120.
[48] Ibid, 100.
[49] National Centre of Competence in Research (NCCR) North-South, 'Mediated Policy Dialogues to Address Conflict Over Natural Resource Governance' (2011) Regional Edition South Asia No. 2: South Asia Research Evidence for Policy, National Centre of Competence in Research (NCCR) North-South, 1-2.
[50] D. Capistrano, 'Decentralization and Forest Governance in Asia and the Pacific: Trends, Lessons and Continuing Challenges' in C. Colfer, G. Dahal & D. Capistrano (eds), *Lessons from Forest Decentralization: Money, Justice and the Quest for Good Governance in Asia-Pacific* (2008) Earthscan, 215.

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

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

Research Agenda for IUCNAEL

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

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

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

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

[51] Supra note 6.
[52] FAO, 'Reaching Consensus-Multi-Stakeholder Processes in Forestry: Experiences from the Asia-Pacific Region' (2007) *RAP Publication* No. 2007/31, 4; FAO (supra note 4), 66-67.
[53] Supra note 20.

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

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

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

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

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

[54] Parrotta et al (supra note 36), 580.
[55] FAO (supra note 4), 70.
[56] Ibid.
[57] Fisher et al (supra note 47), 18.
[58] R. Fisher, R. Prabhu & C. McDougall, 'Introduction: People, Forests and the Need for Adaptation' in Fisher et al (supra note 47), 6.

This has resulted in mutually agreed decisions[59] and building trust regarding forest management.[60]

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

Forest property right reform is a learning process.[62] It requires an adaptive approach to gradually and continuously identify incremental and experiential changes that can be useful for supporting reform.[63] It would be worthwhile to carry out further research on what type of rights should be devolved to what levels[64]. The outcomes of this could be useful to increase decision-makers' confidence in the reforms' effectiveness.

Conclusion

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

[59] Fisher et al (supra note 47), 17-18.
[60] Kusumanto (supra note 47), 116.
[61] L. Pires, 'Strengthening Voices for Better Choices: Lessons Learnt About the Development of Sectoral Agendas for Forest Governance in Acre' (2010) IUCN, 7-8.
[62] FAO (supra note 4), 55
[63] Ibid, x, 44 and 55.
[64] P. Katila, 'Devolution of Forest-related Rights: Comparative Analyses of Six Developing Countries' (2008) Tropical Forestry Reports, 115-130; P. Cronkleton, J. Pulhin & S. Saigal, 'Co-Management in Community Forestry: How the Partial Devolution of Management Rights Creates Challenges for Forest Communities' (2012) 10(2) *Conservation and Society*, 93.

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

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

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

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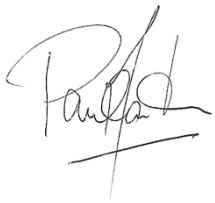

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