

CHAPTER 1: INTRODUCTION

1.1. Introduction

Forests cover about 30 per cent of the planet's surface and store some 80 per cent of all terrestrial carbon, as well as provide the food, water and wildlife essential for the survival of billions of people. Thai forests provide many ecological and social goods and services, including biodiversity, mitigation and adaption to climate change, soil and water conservation, valuable timber, fuel wood for energy, forest food and herbs for subsistence and livelihoods, and cultural enhancement for rural people.¹

A century ago, about 72 per cent of Thailand's area was covered in forestland – approximately 230 million rai of forest (around 35 million ha). By 1961, this forest cover had decreased to 53 per cent.² In the mid-1960s, logging concessions to harvest about 40 per cent of forests in the north of Thailand were granted by the Thai Government.³ In 1968, the government issued additional logging concessions, together with concessions to convert native forest areas to commercial plantations. These measures contributed to further loss of forestlands.⁴ By 1998, only 25 per cent of Thailand's forests – around 12 million ha – remain.⁵ Thailand's State of the Environment Report in 2008 noted that one of the most important causes of environmental deterioration in Thailand is forest degradation.⁶

In an effort to halt losses to Thailand's forest areas, the Thai Cabinet approved a National Forest Policy in 1985. This required retention of at least 40 per cent forest cover in the country, with 25 per cent allocated to commercial forest and 15 per cent to conservation forest. Four years later, in 1989, the Thai government banned logging and revoked all concessions.⁷ In 1990-1995, the government launched the forest-sector master plan for the long-term conservation of forests and biodiversity, both

¹ Right and Resources Initiatives (RRI), *What Rights?: A Comparative Analysis of Developing Countries' National Legislation on Community and Indigenous Peoples' Forest Tenure Rights* (RRI, Washington DC, 2012) 3; The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), 'Thailand: National Report on the Implementation of the Convention on Biological Diversity' (The 4th National Report, Ministry of Natural Resources and Environment, Thailand, 2009) 12; Sureerat Kritsanarangsarn and Komchai Thaiying, 'Thailand: Forest Management Through Local Level Action; Small Grants Programme for Operations to Promote Tropical Forests (SGPPTF)' (European Commission, UNDP, Southeast Asian Regional Centre for Graduate Study and Research in Agriculture, 2008) 7.

² 1 ha is 6.5 rai, see Jannie Lasimbang and Chingya Luithui, 'Natural Resource Management Country Studies: Thailand' (UNDP: Regional Indigenous Peoples' Programme, UNDP, November 2006) 15.

³ M. Poffenberger and B. McGean, *Community Allies: Forest Co-Management in Thailand* (1993) Asia Forest Network <<http://www.asiaforestnetwork.org/pub/pub09.htm>>.

⁴ Komon Pragtong, 'Recent Decentralization Plans of the Royal Forest Department and its Implications for Forest Management in Thailand' in Thomas Enters, Patrick B. Durst and Michael Victor (eds), *Decentralization and devolution of forest management in Asia and the Pacific* (RAP Publication, 2000).

⁵ Sureeratna Lakanavichian, '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: Understanding Forest Tenure in South and Southeast Asia* (Working Paper 14, FAO, 2007) 325.

⁶ The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), 'The State of Environment Report 2008' (ONEP, 2008) 8.

⁷ V Brenner et al, 'Thailand's Community Forest Bill U-Turn or Roundabout in Forest Policy?' (SEFUT Working Paper No. 3, Albert-Ludwigs-Universität Freiburg, Revised edition, 1999) 15; Sureeratna Lakanavichian, 'Impacts and Effectiveness of Logging bans in natural forests: Thailand' in Patrick B. Durst et al (eds), *Forests Out of Bounds: Impacts and Effectiveness of Logging Bans in Natural Forests in Asia-Pacific* (RAP Publication (FAO) 2001) 167.

inside and outside protected areas.⁸ In addition, the government passed legislation dealing with forest practices to protect and maintain forest areas.⁹

Unfortunately, these actions to safeguard Thailand's forests have not achieved the expected result of reducing the destruction of forest. The failures have been largely blamed on poor forest governance.¹⁰

A review of the literature on forest governance suggests that 'good' governance plays a key role in ensuring sustainable natural forest management. Unfortunately, published research specifically on Thailand's forest governance system is relatively sparse. Such research as exists is discussed in Chapter 2 (see, particularly, the 2.1) and research on specific aspects of the system is incorporated in discussions of those issues (especially in Chapters 3 and 4). Like many countries, Thailand has laws and institutions that, arguably, ought to have led to sustainable use of forest resources. Thailand is also party to many international agreements to secure forests and community interests in forests. However, as will become evident in this thesis, Thailand's present forest management system is confounded by an unresolved tension between production forestry, conservation forest management, and social justice issues. Existing legislation, including the country's *Constitution*, emphasise different issues with the result that government departments, in charge of implementing the legislation, arrive at different decisions about how forests should be managed, and the form of rights that people can have to forest resources.

Attempts by governments and government departments to underplay the social justice issues is a cause of social conflict and ongoing attempts by civil society to introduce Bills that will enshrine the rights of forest dependent people to forest resources – rights that are already recognised in the country's *Constitution*. To place this issue of 'social justice' in context, it is pertinent to note that one in six people in Thailand depend on natural forests for their livelihoods.¹¹ In 2007 the Royal Forest Department (RFD) found that 480,426 households lived in forest areas.¹² Legislation setting boundaries for forest types ('protected', 'community' and 'plantation') meant that by the 1990s, approximately 11 million people (over 20% of all Thai villages) were noted as settled in protected

⁸ Lakanavichian, above n 5, 334.

⁹ Chaleo Kanjan and Jessada Kaewchote, 'Community for Watershed Protection: Mae Khan, Thailand' (Community Forest Management Trends in Southeast Asia, Asia Forest Network, 2004) 11-12.

¹⁰ See FAO- Regional Office for Asia and the Pacific, 'Thailand Forestry Outlook Study' (Asia- Pacific Forestry Sector Outlook Study II- Working Paper Series No. APFSOS II/WP/2009/22, FAO, 2009) 31-33; MD. Abdus Salam, Toshikuni Noguchi and Rachanee Pothitan, 'Community forest management in Thailand: current situation and dynamics in the context of sustainable development' (2006) 31(2) *New Forests* 273, 287-288; Lasimbang and Luithui, above n 2, 43-45; Fujita Wataru, 'Dealing with Contradictions: Examining National Forest Reserves in Thailand' (2003) 41(2) *Southeast Asian Studies* 206; Louis Lebel, 'Institutional Dynamics and Interplay: Critical Processes for Forest Governance and Sustainability in the Mountain Regions of Northern Thailand' in Uli M Huber, Harald K M Bugmann and Mel A Reasoner (eds), *Global Change and Mountain Regions: An Overview of Current Knowledge* (Advances in Global Change Research, vol 23, Springer, 2005) 531, 533-537.

¹¹ Suree Bhumibhamon, 'Forest and Poverty Alleviation in Thailand' in *Proceedings of the Workshop on Forests for Poverty Reduction: Changing Role for Research, Development and Training Institutions* (RAP Publication, 2005) 188.

¹² The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), 'Thailand's National Parties Self-Assessment: United Nation Convention to Combat Desertification' (ONEP and UNDP, 2010) 32.

forest areas, thus with restrictions to rights to forest resources they depend upon.¹³ Such categorisation of forestlands meant that by 2000, there were approximately two million ha of forest areas illegally occupied.¹⁴

This thesis aims to propose feasible reform directions for forest governance in Thailand that will provide greater social and environmental benefits from forestry and help overcome identified forest governance deficiencies.

The overarching research question posed in this thesis is:

How can Thailand's forest governance system be reformed to help overcome identified forest governance deficiencies?

To respond to this question, this research begins by conducting a literature review of the forest governance issues confronting Thailand, including an examination of the legislation guiding the governance system. With this background to the system, the research moves on to deriving a set of criteria that could be used for determining how reform can be achieved. The criteria are a distillation of issues that have been raised by various international forest governance organisations.

The discussion in this thesis is focused on providing sufficient detail to ensure that policy makers will be able to understand the issues and background of the forest governance in Thailand. It is also focused on providing a sound rationale for examining the current forest governance system and establishing where reform can feasibly be carried out.

1.2. Significance of the research

The research conducted for this thesis will add to the knowledge-base of how best to preserve Earth's forests, especially those of Thailand; this thesis contributes to the policy literature on good governance as well as to forest literature. Developing proposals that are likely to be effective on how losses can be reduced is vital. Developing a well-functioning governance system will help to ensure sustainable forest management that will significantly benefit Thailand's environment and those who depend upon the country's forests. In addition, this thesis demonstrates the applicability of a mixed methods approach to research on legislative and governance reform.

The significance of the research will be further discussed in Chapter 9.

¹³ International Centre for Environmental Management (ICEM), 'Thailand National Report on Protected Areas and Development' in *Review of Protected Areas and Development in the Lower Mekong River Region* (ICEM, 2003) 49.

¹⁴ Korn Manassrisuksri and Weerawat Sangkrajang, 'Forestland Management in Thailand' in *Country Reports on Forest Tenure in Asia and the Pacific: Proceedings of APFNet Workshop on Forest Tenure* (APFNet, 2011) 125, 131.

1.3. Structure and content of the thesis

The thesis comprises nine chapters. This first chapter provides a brief background on the origins of the motivation for the research, the research problem, its focus and importance, and its purpose. This section provides information on the structure of the thesis.

Chapter 2 discusses the research methodology and how the research question will be ‘unpacked’. The research used a mixed-methods approach, utilising:

1. Doctrinal methods and documentary analysis, which involved reviewing literature from a wide range of sources. The discussion in Chapter 3 and 4 contain most of the detail of this review, which is again utilised in the final chapters of the thesis.
2. Engaged policy methods. This step involved identifying and interviewing stakeholders. Three sets of consultations were carried out in the course of the research. The first two sets were interviews of stakeholders to ‘ground-truth’ findings from the literature review and analysis. The third set of consultations was conducted to discuss draft recommendations for forest governance reform with key stakeholders.
3. Systems thinking, which helped analysis of findings. Throughout the thesis, and particular in Chapter 8, systems maps are used to illustrate the linkages between issues and how these links can be influenced to bring about reform of forest governance.
4. Comparative analysis, to aid in providing insights into possible solutions to the identified problems and to add validity to findings. Given the scope of the subject matter and the time frame in which the research needed to be completed, the different approaches were used to triangulate findings to add validity to them and confidence to the recommendations.

Chapter 3 and Chapter 4 are closely associated. Chapter 3 provides the background and context of the forest governance system in Thailand. It discusses forest authorities, forest laws and the international obligations that Thailand has agreed to. Chapter 4 discusses (a) the history and evolution of forest governance and (b) criteria for good forest governance against which to measure Thailand’s forest governance system. The Chapter provides the rationale for the derivation of ten criteria that could guide analysis of Thailand’s current forest governance system and guide action for reform of the system. The nature of the discussion in Chapter 3 was, in part, informed by the criteria discussed in Chapter 4. With the criteria in mind, it was possible for the researcher to develop a systems map to help understand the relationships within the governance systems and to identify key stakeholders within the system. The published article, included in Chapter 3, (*Country Report: Thailand-Recent Developments of Forest-Related Law (Plantation Act)*), which is a detailed study of the operation of the Thailand’s amended, forest plantation laws and illustrating how aspects of the legal system impact the forest governance system, utilises the criteria in its discussion. Chapter 4 includes the published

paper, *'Country Report: Thailand Recent Development in Forest Rights in Thailand'*, which particularly utilises Criterion 7 – Fairness and Equity, and Criterion 10 – Stakeholder relationships, as guidelines for investigating forest laws broadly, particularly the *Community Forest Bill* in Thailand.

Chapter 5 details findings of the first set of interviews. The interviews aimed to verify the validity of the ten criteria for good forest governance derived in Chapter 4 for both diagnosing forest governance problems in Thailand and to provide insights into potential solutions to identified problems. The Chapter also includes a paper *'A systems perspective on forest governance failure in Thailand'*, authored by the researcher that uses the criteria to examine the forest governance system in Thailand.

Chapter 6 details findings from the second set of interviews. Analysis of the results of the first set of interviews together with findings from the literature review indicated that reform of the current forest governance system would require changes to the property rights system over forests. To obtain further information about the operation of the property rights system over forests, a second set of interviews was conducted.

Chapter 7, supported by details in Appendix 4, explores the experiences of forest governance in an international context. The Chapter contains two articles, which explore possible options for reform from a wider, international perspective. The first paper, *A System Perspective on Forest Governance Failures and the Implications for the Western Ghats, India*, provides information about forest governance failures from a variety of sources and jurisdictions. The paper considers comparable experiences from other jurisdictions to better inform forest governance in the Western Ghats. This international data informs the key reform issues for Thailand, outlining the framework of international developments in forest governance. This paper has been accepted for publication.

The second paper, *REDD+ Implementation in Thailand – Legal and Institutional Challenges*, provides additional information about the standards of forest governance expected by the international community if Thailand is to participate in the economic opportunities associated with new, international, environmental markets. This paper has been accepted for publication.

Chapter 8 focuses on how the range of issues challenging good forest governance in Thailand, might be addressed. Both the paper by Phromlah, *'Reforming Governance for Sustainable Forest Management in Thailand'*, included in Appendix 5, and the article by Phromlah and Martin, *'REDD+ implementation in Thailand – legal and institutional challenges'* included in Chapter 7 discuss a number of the recommendations. Ten recommendations were drafted and, in keeping with the engaged research methodology adopted for this research, the recommendations were discussed with key stakeholders before finalisation. Chapter 8 lists the recommendations, provides a rationale for the inclusion of each and summarises feedback received from consulted stakeholders.

Finally, Chapter 9 summarises the content of the thesis before listing the final recommendations. Chapter 9 also discusses: the significance of the research, the limitations of the research and methods used to minimise the effects of the limitations; and further research that could be carried out to further develop this study's findings.

1.4. Conclusion

This chapter has provided an overview of the importance of the topic of forest governance in Thailand. The thesis aims to examine why reforms to the forest governance system have, to date, been ineffective and what directions exist for reform.

This chapter also explains how the thesis discussion will be organised in following chapters. Chapter 2 lays the groundwork for the thesis discussion and conclusions by explaining the methodology used in the research.

CHAPTER 2: METHODOLOGY

2.1. Introduction

This chapter provides an overview of how the research was conducted. As explained in Chapter 1, forests in Thailand continue to degrade in spite of government efforts to stop the degradation. As will be further discussed in Chapter 3, legislation to protect the forest is apparently strong. However, the institutional and social support for the implementation of legislation and of government programs, that is, the governance system, is weak.

Research on Thailand's forest governance system is relatively sparse, generally based on case studies of specific issues, and more than a decade old.¹⁵ The researchers employed combinations of desk research and surveys to collect data.¹⁶ Siangsai studied the issue of the participation of community leaders in forest governance in 2003. He employed a doctrinal approach and a questionnaire to collect data from community leaders within two districts of one province in the Northeast Thailand.¹⁷ Sritanatorn (2009) and Jinarat (2007) studied public participation. As with Siangsai's work, Sritanatorn conducted desk research of documents supported by interviews with four forest communities.¹⁸ Jinarat studied the *Community Forest Bill* and employed both a documentary method and interviews for collecting data; he interviewed 11 people who were involved in the drafting the *Community Forest Bill*.¹⁹

An FAO study endeavoured to investigate Thailand's whole forest governance system. The researchers studied documents and used data from a working group meeting to gather data. Participants in the meeting were limited to those involved in the RFD and the Department of National Parks, Wildlife and Plant Conservation (DNWPC).²⁰

Like the FAO study, this study endeavours to look at the whole system of forest governance in Thailand but to include the views of a broad range of stakeholders. To do so, the study employed an engaged policy research approach, aimed at understanding the context and nature of the social issues

¹⁵Thailand Library Integrated System, *Thai Theses Online* (2013) Science and Technology Knowledge Services (STKS) <<http://thesis.stks.or.th/>>; NSTDA, *Thai Thesis Database* (2009) NSTDA <http://www.thaithesis.org/search.php?fld=keyword&p=1&search_mode=simple&s=forest>; Chiang Mai University (CMU), *e-Theses* (2013) CMU <http://library.cmu.ac.th/digital_collection/etheses/index.php?word=%BB%E8%D2%E4%C1%E9&check_field=TILE&select_study=&condition=2&search=9&philosophy=&master=&page=1#>.

¹⁶Weerawut Siangsai, Community Leaders' Participation in The Prevention and Suppression of the Forest Resource Destruction (Master Thesis, Mahidol University, 2003); Pornthep Sritanatorn, Sustainable community forest management in local development : community practice, people participation and the success of forest conservation (PhD Thesis, National Institute of Development Administration (NIDA), 2009) 51-54 and 317; Nuthawut Jinarat, The process of public policy formulation: A case study of the Community Forest Bill BE 2550 (2007) (PhD Thesis, Ubon Ratchathani University, 2010) 86-87, 294; FAO- Regional Office for Asia and the Pacific, above n 10, 5-6.

¹⁷Siangsai, above n 16.

¹⁸Sritanatorn, above n 16.

¹⁹Jinarat, above n 16.

²⁰FAO- Regional Office for Asia and the Pacific, above n 10.

concerning forest governance, and incorporating the views, values and capabilities of stakeholders. The objective of the approach is to derive meaningful recommendations for change.

To obtain an understanding of the context of the problem the researcher first conducted a literature review then verified the findings from the review by interviewing a range of stakeholders, analysing data from the interviews and checking back with stakeholders in three steps.

The following three sections explain the theoretical underpinning of the research methodology, beginning with an explanation of the engaged policy research method used to guide the research strategy, followed by an outline of how systems thinking helped to map the data. Section 2.3 outlines the method for the literature review. Section 2.4 discusses the method for interviews and describes how findings were verified. Section 2.5 describes the employing of comparative study in this thesis. The Chapter ends with a brief discussion of the validity of the methodology adopted in this thesis.

2.2. Engaged policy research

An engaged policy research approach was employed in this thesis aimed at understanding the context and nature of social issues and incorporating the views, values and capabilities of stakeholders, and then deriving meaningful recommendations for change. The overarching research question is:

How can Thailand's forest governance system be reformed to help overcome identified forest governance deficiencies?

There are also two sub-questions:

1. To what extent do laws and institutions in Thailand ensure a feasible forest governance system?
2. How can laws and institutions in Thailand be reformed to overcome identified forest governance deficiencies?

Basically the research question deals with the effective implementation of policies. Typically, policy research is characterised by mixed methods, aiming to suggest systematic and transparent changes to policy.²¹

Although there are various types of research processes for social problems, policy research is unique in focusing on *action-oriented* recommendations – implying that, in an attempt to provide decision makers with useful recommendations, many possible actions for resolving fundamental problems are submitted to examination and those actions that are the most appropriate are recommended. Thus, policy research is mostly focused on creating pragmatic courses of action for solving complex social

²¹Ann Majchrzak, *Methods for policy research* (Sage, 1984)12-13.

problems. The policy research focus for this thesis, therefore, requires a strategy based upon a realistic understanding of the context and the resources available in Thailand to make such strategy work.²²

For policy research, existing laws are only one of many inputs to a policy decision. Other inputs include: the views and wishes of constituencies, colleagues and superiors; staff opinions; existing policies; and preconceived attitudes. The ability of the policy researcher to indicate to decision makers why the recommendations proposed are worthwhile to be implemented is also important.²³

Policy research often deals with social problems that are complicated and not easily resolved. As a result, social problems can generally only be resolved through a series of successive approximations in which policies are continually suggested, implemented, evaluated, and revised. Policy research is able to provide the empirical evidence to support this series of successive approximations – it is gradually collaborated by numerous actors operating at different policy-making levels and using different policy mechanisms with different intended consequences.²⁴ Engaged policy research is an approach that serves a practical purpose and is grounded in the ‘real’ lives of the society. It is a process that brings academic intellectual capital to bear on social need by engaging stakeholders to jointly scope and identify potential resolutions of a social problem.²⁵

By employing an engaged research approach, the researcher is able to draw upon a variety of forms and sources of intelligence to support inferences addressing legal/doctrinal issues, institutional arrangements, and social and environmental policy. In this study, the researcher employed pragmatic methods, drawing upon systems thinking, purposeful policy enquiry, key informant interviews, and legal and institutional analysis (both of governance arrangements in Thailand and forest governance arrangement in other jurisdictions). The applied policy approach in this thesis allowed the researcher to consider the ‘voices’ of different stakeholders in defining the problem and exploring feasible solutions to problems. Applied policy research generally requires a substantial use of inference from viable evidence, rather than proof based upon deduction. The researcher has attempted to overcome the limitations of subjectivity by obtaining data from various sources, including benchmarking and comparative studies of other countries, to ‘triangulate’ findings, and help with the analysis of the issues and the justification of recommendations.²⁶

There is a growing trend for employing engaged research in social science and humanities research. The emergence of ‘engaged scholarship’ in the early 21st Century strengthened the combination of

²²Paul Martin and Miriam Verbeek, *Sustainability Strategy* (The Federation Press, 2006) 66-67.

²³Majchrzak, above n 21, 14-15.

²⁴Ibid.

²⁵Daniel J. Buckles and Jacques M. Chevalier, *Participatory Action Research: Theory And Methods For Engaged Inquiry* (Routledge, 2013) 65; Jeffrey C. Bridger and Theodore R. Alter, ‘The Engaged University, Community Development, and Public Scholarship’ (2006) 11(1) *Journal of Higher Education Outreach and Engagement* 163; Malika Roman Isler and Giselle Corbie-Smith, ‘Practical Steps to Community Engaged Research: From Inputs to Outcomes’ (2012) *Journal of Law, Medicine, and Ethics* 904, 909.

²⁶Terry Hutchinson, *Research and Writing in Law* (Lawbook Co., 2006) 64.

innovative practices and methodologies to build knowledge and benefit society. Enhanced collaboration within and, especially, across disciplines is an increasingly important approach that is helping to transform the way that scholarship is conceived to build successful cultures of innovation in dealing with a social problem.²⁷ In August 2012, the National Sciences Foundation in the United States (US) reported that the percentage of research funds passed by US universities to the private sector for the purposes of research collaboration increased from 10 per cent in 2000 to over 15 per cent in 2009.²⁸ This reflects a growing focus on engaged industrial research by scholarly institutions.

Similarly, in Canada, as research questions have become more complex and practical research findings ever more in demand, researchers are more likely to employ engaged research to enable greater synergy among university, civil society and community within complex research inquiry. A 2008 survey conducted by the Social Sciences and Humanities Research Council (SSHRC) found that only five per cent of researchers in the social sciences and humanities described their work as 'exclusively disciplinary'. A 2012 cross-disciplinary study of more than 1400 projects funded by the Canada Foundation for Innovation revealed that, between 2008 and 2011, over 80 per cent of projects included linkages with 'partners'. Of these, 76 per cent of projects involved collaborations with the academic sector, 26 per cent counted partners in the public and not-for-profit organisations, and 29 per cent involved partnerships with the private sector.²⁹

Engaged policy research is also increasingly employed for human resource development (HRD) and health service management. An example is a study by Tsui in 2013 who reported that engaged research was adopted to effectively understand the nature of stress. This research project engaged stakeholders from the US workforce to share their experience of stress and to discuss how stress influences the capacity of workers to learn and adopt change in the workplace.³⁰ Tsui noted that, in China, there have also been calls to employ engaged research methods for development of HRD policy. The rationale is that by employing engaged research in HRD, views and feedback of managers and employees can be obtained to help overcome human resource problems. The belief is that engaged research will produce research that is more scientifically sound and more meaningful.³¹

Isler and Corbie-Smith noted that engaged research is being increasingly driven by the recognition that inclusion of diverse perspectives in multidisciplinary teams is necessary to address complex social problems in responding to issues of health equity.³²

²⁷ Ted Hewitt, *Examining the Growing Trend of Engaged Research in the Social Sciences & Humanities* (2013) Federation for the Humanities and Social Science <<http://www.congress2013.ca/examining-growing-trend-engaged-research-social-sciences-humanities>>.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Anne S. Tsui, 'Making Research Engaged: Implications for HRD Scholarship' (2013) 24(2) *Human Resource Development Quarterly* 137, 138.

³¹ Ibid, 140-142.

³² Isler and Smith, above n 25, 906-907.

In relation to natural resource management, Ojha et al report that, in 2012, engaged research was conducted in different areas of four countries: Bangladesh, Ecuador, Nepal and Zimbabwe. This research combined different systems of knowledge related to agriculture and natural resources management, ranging from farmer field schools, to floodplain management and community forestry in a way that generated and maximised innovation and the translation of research into practice. The research aimed to discover solutions that responded to the social and biophysical complexity of natural resource systems.³³

2.2.1. Systems thinking

Pursuing sustainable natural resource management involves consideration of a complex set of variable, issues and relationships. It involves consideration of ways to change behaviours. This demands an understanding of how social and economic systems shape that behaviour. Martin and Verbeek propose that there are two controllable factors influencing the behaviour of individuals: flows of information (from the senses, sciences, communications, literature, and media), and the flow of resources (providing individuals with incentives or disincentives to behave in certain ways).³⁴ In other words, to change behaviour, the only tools available to the change agent are those that adjust the flow of resources and information that influence how people make their decisions.

A useful method for determining the nature of flows of information and resources is to identify or map relevant transactions. Transactions occur whenever there is a decision by an actor (including an organisation) that has the effect of changing either or both of the two flows – information and resources flow. Transactions can occur between people and other people, such as when buying and selling or communicating with one another (such as a negotiation to purchase the forest products); or between people and their environment (for instance, harvesting, cutting down, or removing the trees). In natural resource management, there is a large number of relevant transactions, for example informal or social transactions, such as: when a group of people get together to plant trees or to advocate for protection of a forest; market transactions, such as trading transactions within environmental markets; regulating and policing, such as the enforcement of a policy against tree clearing; and issuing permits for limiting natural resources consumption.³⁵

Patterns of transacting are shaped by incentives and disincentives. Problems in transactions may include differences in aims of the parties (such as conflicts of expectations and interest), bureaucratic impositions, as well as challenges associated with the number of stakeholders and the necessary decision-making process to maximise their interests from natural resource consumption. These

³³Hemant Ojha, Andy Hall and Rasheed Sulaiman V (eds), *Adaptive Collaborative Approaches in Natural Resource Governance Rethinking Participation, Learning and Innovation* (Routledge 2012).

³⁴Martin and Verbeek, above n 22, 29.

³⁵Paul Martin, Jacqueline Williams and Christopher Stone, 'Transaction costs and water reform: the devils hiding in the details' (CRC IF Technical Report No. 08/08, CRC for Irrigation Futures 2008) v; Martin and Verbeek, above n 22, 34.

problems increase the costs of transactions by, for instance, increasing the need for more information or time to implement the transaction, or more time for negotiation.³⁶ This thesis uses these basic tenets of systems thinking.

From the system analysis viewpoint, it would, arguably, be possible to uncover all elements in a system and to identify the connection between those elements. Behaviour change is the crucial constraint on achieving sustainable natural resource exploitation, which requires individuals to change their decisions and actions to maximise environmental welfare, economy, and social equity. Effective natural resource legislation must recognise the complex nature of changing human behaviour and must acknowledge the existing societal structure and norms for behaviour and how these are adjusted by legislation.³⁷

Systems thinking about policy problems requires information from a variety of perspectives to identify the elements and the dynamic interactions.³⁸ A systems approach is more complex than a static or limited evaluation (for example a doctrinal analysis of legal instruments, or a cultural perspective on forest practices). However, the result of an investigation using systems thinking is likely to be more holistic, and the proposals for reform more likely to simultaneously address different aspects of the problem being examined. This should generate a more reliable and relevant reform program than that arising from a more limited approach.

Path dependence theory³⁹ highlights that piecemeal reform of part of a social system is likely to be resisted by other, un-reformed, elements of that system. For example, reforming legal instruments is unlikely to be effective unless there is resourcing for implementation of the reformed instrument. Nor is reform likely to occur without a reduction of the power of those who are opposed to reform, who are likely to frustrate the creation or implementation of reforms. For this reason, the proposition underpinning this thesis is that systemic reform is essential to address deep-rooted governance system failings.

The holistic method employed in systems thinking enables a researcher to identify uncertain sets of outcomes (risk) that may result from proposed change strategies.⁴⁰ Strategies implemented without understanding how they may impact a system, such as creating a structure for statutes and other rules for natural resources management without taking into account aspects of how the social system operates and how law is implemented, may lead to failures of implementation. For example: laws that

³⁶ Martin, Williams and Stone, above n 35.; Martin and Verbeek, above n 22, 45-47, 126.

³⁷ Paul Martin and Miriam Verbeek, 'Cartography for Environmental Law: Finding new paths to effective resource use regulation' (Research Report, Land and Water Research and Development Corporation, 2000) 14.

³⁸ Martin and Verbeek, above n 22, 28-35.

³⁹ Michael Howlett, M. Ramesh and Anthony Perl (eds), *Studying Public Policy: Policy Cycles & Policy Subsystems* (Oxford University Press 3ed, 2009) 191-201.

⁴⁰ Paul Martin and Jacqueline Williams, 'Policy Risk Assessment' (Technical Report 03/10, CRC for Irrigation Futures 2010) 1.

merely focus on conservation of natural resources, such as the forest, but ignore forest dependants, can fail to be implemented, because forest dependent people may resist implementation; having a law but not providing agencies with capacity (such as money, or technology, or sufficient staff) to implement the law, can also lead to the failure of implementation; and creating laws which are very complex may lead to reluctance by people to comply.

Understanding the forest management system, therefore, is a key aspect of formulating effective forest strategies. In particular, understanding the system helps to clarify the position law has in the system and the best opportunities for law reform. A systematic understanding of the system includes consideration of stakeholders in the forest management system, the interaction between them, the decision-making roles served by them and the factors influencing decision-making.

The systems map and further discussion of the Thai governance system is in Chapter 3.

2.3. Literature review

The researcher reviewed literature⁴¹ on forest governance issues in Thailand and other jurisdictions, as well as literature on the evolution of the understanding of effective forest governance. The literature used was diverse: policy research papers; government reports; journals; newspapers; websites; and books about forest management, governance, law and institutions. The literature review aimed to: inform the researcher about the key issues of forest governance; how forest laws affect the forest governance system (for example: have the goals of laws changed over time; are the goals lip-service or are they intended to create a real change; to what extent do laws address forest governance issues; the successes and failures of legislation; and how legislation was enforced and implemented, and who has been affected). The researcher also sought information about the public agencies and other key stakeholders in the forest governance system in Thailand. This information was used to guide the researcher in who should be consulted.

Importantly, the literature allowed the researcher to develop a set of criteria that established a foundation for: the issues to discuss with stakeholders; guiding analysing of stakeholder responses; and guiding the formation of recommendations. The derivation of these criteria are discussed in Chapter 4 and further explored in the published papers included in this thesis.

As will become more evident in Chapter 3, there have been several attempts to improve the forest governance system in Thailand. However, encroachment into and destruction of forestlands still occur. This suggests that whilst there may be a body of rules for forest governance, implementation is failing, at least to some degree – particularly lack of sufficiently accommodating the values of stakeholders in the forest governance system. This type of failure is far from unique to Thailand. The

⁴¹ Victor Minichiello, Rosalie Aroni and Terrence Hays, *In-depth interviewing: principles, techniques, analysis* (Pearson Education Australia 2008) 28-32.

researcher used opportunities to learn from other countries about challenges and solutions, to better inform forest governance.

2.4. Interviews and consultation

Two sets of interviews and a consultation exercise were carried out to verify and add to findings from the literature review:

1. First interview set

The first set of interviews was carried out to verify the applicability of criteria on good forest governance derived from the literature review (discussed in Chapter 4).

2. Second set of interviews

Based on findings from the first set of interviews and further literature reviews, the researcher concluded that further information was required regarding the operation of rights to forest resources. Therefore, a second set of interviews with stakeholders who could provide information on this issue was conducted.

3. Consultation: Finalising recommendations

As a final exercise in engaging with stakeholders, those who would be responsible for implementation – or could influence implementation – of recommendations arising from this research were consulted.

This section begins with a discussion of the interview method used before describing how each set of interviews and consultation was carried out, and how data from the interviews was analysed.

2.4.1. The interview method

There are a number of methods of data collection in social science research. The interview is commonly used in applied policy research.⁴² An interview is defined as a face-to-face verbal interchange to obtain information from stakeholders⁴³ and it enables the researcher to obtain practical information⁴⁴ – insight into the experiences, concerns, interests, beliefs, values, knowledge and ways of seeing, thinking and acting – from interviewees⁴⁵.

Interviews can be face-to-face, by telephone or via Internet.⁴⁶ Telephone and Internet interviews are helpful to overcome the constraints of time, costs and geographic distances that may inhibit face-to-face meetings.⁴⁷

⁴²Majchrzak, above n 21, 36, 62.

⁴³Minichiello, Aroni and Hays, above n 41, 47, 55; Andrea Fontana and James H. Frey, 'The interview: From Structured Questions to Negotiated Text' in Norman K. Denzin and Yvonna S. Lincoln (eds), *The handbook of qualitative research* (Sage Publications, 2nd ed, 2000), 645-646.

⁴⁴Fontana and Frey, above n 43, 646.

⁴⁵John Schostak, *Interviewing and representation in qualitative research* (Open University Press, 2006) 5, 10.

⁴⁶Andrea Fontana and James H. Frey, 'The Interview: From Neutral Stance to Political Involvement' in Norman K. Denzin and Yvonna S. Lincoln (eds), *The Sage handbook of qualitative research* (Sage Publications, 3 ed, 2005), 721; Minichiello, Aroni and Hays, above n 41, 47, 55.

In this thesis, two sets of predominantly face-to-face interviews were conducted, the first to scope the nature of the forest governance issues in Thailand, the second to verify findings.

Telephone interviews were kept to a minimum because of a concern that it may be more difficult to establish rapport with faceless participants. However, there is sufficient evidence for the validity of information obtained in telephone interviews to have it included as an interview technique. One study comparing face-to-face and telephone interviews gathered data from union representatives and human resources management staff at four Australian Universities. The study showed that there was no difference in maintaining rapport between interviewers and participants between telephone and face-to-face interviews.⁴⁸ The Central Co-ordinating Team (CCT) of the European Social Survey (ESS), in collaboration with Gallup Europe and the University of Essex studied the likely impact on data quality of a switch from face-to-face to telephone interviewing. The study found no evidence that using telephones influenced response quality, either positively or negatively. However, the research found that telephone respondents were more likely to give socially desirable responses across a range of indicators.⁴⁹

2.4.2. Interview sample

The sample population for the research was selected purposefully. A purposeful sampling method enables the researcher to target representatives most likely to be able to provide relevant information.⁵⁰ For example, in medical research, a targeted portion with a specific medical ailment (sample) of an entire group (population) is recruited to provide information about a specific ailment.⁵¹ In ethno botany research the sample might be people willing to impart their knowledge and experiences with plants.⁵² In social research, purposive sampling has been used to gather information about the utility and benefits of environmental enforcement networks. For example, in one study, the viewpoints of eight senior managers who represented seven countries closely involved in a number of environmental networks were interviewed.⁵³ In 2013, purposive sampling was employed to interview only knowledgeable people in a study of factors that influence community participation and

⁴⁷ Internet interview can be referred to using computer mediated communication (CMC) to obtain data from respondents such as using asynchronous CMC - electronic mail, for sending message and getting reply from interviewees or applying synchronous CMC that allows interviewer to gather information from interviewees through chat room, see Chris Mann and Fiona Stewart, 'Internet Interview' in Jaber F. Gubrium and James A. Holstein (eds), *Handbook of interview research : context & method* (Sage Publication, 2002) , 603-604.; Fontana, and Frey, above n 46, 721; Minichiello, Aroni and Hays, above n 41, 56-59.

⁴⁸ Amanda Leigh Kennedy, Exploring individualism and collectivism within Australian Universities: procedural, substantive and process elements of the academic employment relationship (PhD Thesis, University of New England, 2006) 105-110.

⁴⁹ Annette Jäckle, Caroline Roberts and Peter Lynn, 'Telephone versus Face-to-Face Interviewing: Mode Effects on Data Quality and Likely Causes' (ISER Working Paper 2006-41, ISER, 2006) 1.

⁵⁰ Ray Cooksey and Gael McDonald, *Surviving and Thriving in Postgraduate Research* (TILDE University Press, 2011) 462, 465-466.

⁵¹ D Simkiss et al, 'Sampling' in D Simkiss et al (eds), *Oxford Journals: Medicine Journal of Tropical Pediatrics* (Oxford University Press, 2012) 40.

⁵² Ma. Dolores C. Tongco, 'Purposive Sampling as a Tool for Informant Selection' (2007) 5 *A Journal of Plants, People, and Applied Research* 147, 147.

⁵³ Grant William Pink, *Environmental Enforcement Networks: A Qualitative Analysis* (Master of Arts Thesis, Charles Sturt University, 2010) 15.

participatory patterns in water and waste environment management in the Manawa District of Samut Songkram Province of Thailand.⁵⁴

The initial literature review for this thesis revealed that it would be necessary to interview three key groups of stakeholders (central government; local government; and forest communities) to ensure that data gathered from interviews would provide the greatest insights into how stakeholders value forest governance characteristics and the problems of forest governance that occur at all levels of forest governance in Thailand.

2.4.3. First interview set

The first set of interviews was to verify issues identified in the literature review and to open up opportunities to contact other relevant experts.

2.4.3.1 Interviewee selection

Ten ‘front-line’ participants from central government, regional and local government and community groups were recruited for the first set of interviews, as shown in Table 2.1. The names and contact details of these interviewees were found from public information and records.

The Central Government authority interviewees provided information about and highlighted the values relevant to forest governance from the Central Government’s perspective. Officials at the regional and local government levels are those who are charged with implementing forest laws and policies set by the Central Government and provided information about issues regarding forest governance at the level of implementation.

Interviewees from community groups involved in forest governance were also chosen. These participants enabled the researcher to explore issues concerning the successes and limitations of the implementation of forest governance, particularly at the local level, because communities are directly involved in the day-to-day management of forests.

2.4.3.2 Interview technique

A set of questions (see Appendix 1) for the first set of interviews was established in consultation with research supervisors, based on findings from the literature review, which derived the good forest governance criteria (see Chapter 4). A semi-structured interview style was chosen to provide the researcher with the flexibility to fit the characteristics of the interviewees’ expertise. In a semi-

⁵⁴ Srisuwan Kasemsawat, 'Participatory Patterns of Community in Water and Waste Management: a Case Study of Municipality in Amphawa District, Samut Songkram Province' (2013) 73 *World Academy of Science, Engineering and Technology* 89, 89-90.

structured interview, the researcher is able to explore the issues raised, as well as clarify issues as they arise.⁵⁵

Ethics clearance for conducting the research was obtained from the UNE Research Ethics Committee (see Appendix 1).

Initial contact was made with each potential participant using an introductory telephone call to provide an overview of the research and to ask for cooperation. Each participant was told that participation in the research was voluntary and that they could clarify or withdraw any data provided during the course of the interview. After the initial call, interviewees were emailed supplementary documents to assist them in making their final decision regarding cooperation. The documents provided were (see Appendix 1): a formal letter on university letterhead from both the University Of New England and Mahasarakham University (the researcher's sponsoring university in Thailand); an information sheet; a consent form; and a list of the research questions to be discussed in the interview. Interview times and location were then agreed to.

Interviews were conducted between 18 June and 6 July 2011 in Thailand. The first set of interviews was conducted in face-to-face sessions by the researcher at a location nominated by the participants. Interviews ranged from half-an-hour to one hour.

At the start of each interview, participants were again provided with a letter on Mahasarakham University letterhead and signed by the Head of School. Information on the research, the research questions, and details about the length of time and scope for interviews was also reiterated. This information included telling the interviewee about the researcher's background and obtaining permission to record the interview. Also discussed was how interview data would be used; that is, that the identity of respondents would be kept confidential and only paraphrased information would be used in published material. Each interviewee was then asked to sign the consent form, which the researcher collected.

To increase reliability of information from the interviews, all interviews were recorded, using an electronic recorder, and the researcher took notes and discussed answers to questions to clarify the answers.⁵⁶ Some interviewees elected to answer questions sequentially according to the questionnaire previously provided. Other interviewees used the questionnaire as a stepping-stone for a more wide-ranging response.

⁵⁵Pink, above n 53, 14.; Colin Robson, *Real world research: a resource for social scientists and practitioner-researchers* (Blackwell Publishers, 2002) 270, 275-278.

⁵⁶ Cooksey and McDonald, above n 50, 481-482.

Table 2.1: List of first set of interviews

Interviewee group	Code
Policy makers from the Central Government	P1 P2 P3 P4
Local government	L1 L2
Forestry community	C1 C2 C 3 C4

2.4.4. Second interview set

The researcher mapped the issues relevant to forest governance issues (such as the stakeholders and their relationship to each other, and the incentives and disincentives that shape the relationship) that influence sustainable forest management in Thailand (see Figure 3.4). The initial interviews verified the criteria for evaluation of the forest governance system in Thailand (see Chapter 4). As discussed in the Paper ‘Thailand Country Report on Current Forestry Rights Arrangements’ (see Chapter 4), the first set of interviews highlighted additional legal issues, as well as the significance of the community’s lack of trust of government and the divergent views of stakeholders. The second set of interviews was conducted to explore the issues in more detail.

The conduct of interviews in the second interview set followed the same pattern as in the first interview set: a set of questions was constructed, ethics clearance was sought and provided by UNE Ethics Committee; request for participation was initially made by telephone; then information regarding the research and interview were emailed, together with the questionnaire, to the interviewees (see Appendix 2). There were 17 participants for the second set of semi-structured interviews. Table 2.2 provides information about interviewees, their backgrounds and organisation. Three interviewees had participated also in the first set of interviews. The other interviewees were either selected based upon recommendations by the first-set of interviewees or as a result of publicly available information. Ten interviews were conducted face-to-face. Seven interviews were conducted by telephone.

The second set of interviews was conducted between 7 March and 30 April 2012. As with the first set of interviews, at the start of the interview, supplementary documents were provided, the interview process was explained, consent form collected, and interviews recorded and notes taken. Those who were interviewed by telephone were asked to provide verbal consent; the consent was recorded.

Table 2.2: Participants in the second set of interviews

Participant code	Background	Organisation
1^a	25-years experience on management of rights on forestland	Central Government
2	Leading role in Community Forest management.	Central Government
3^b	Leading role in community forest management in the Northern Region of Thailand, 33-year experience in forest management.	Regional Government
4	Leading role in community forest management in the Northeast of Thailand.	Regional Government
5^b	Retired official from the RFD. 37-year experience in forest management, including: forest village project; allocation of forestland for poor people (Kor Jor Kor); community forest in Thailand; and direction for development. Consultant to RFD regarding reforestation and community forest policy, as well as private commercial plantations.	Consultant for forest governance
6	Retired official from RFD. 21-year experience of forest management, particularly the advocacy of common property for forest management. Key advocate for Community Forest Law in Thailand since 1979.	Consultant for forest governance
7^a	Working in reserved forestland management and more than 30-year experience with management of reserved forestland and community.	Central Government
8^b	19-year experience in forest management, including community forests in the northeast of Thailand. PhD thesis focused on community forests.	Regional Government
9	Thailand country program coordinator of an international forest organisation. Coordinates and conducts research in support of effective property rights on forestland, including encouraging community forest management. Directly supporting more than 100 communities in setting up community forest sites in 19 subdistricts. Collaborates with governments, universities, private sector, local NGOs, and international bodies to strengthen and help advance Thailand's community forest movement. Has played a leading role in the expansion of community forest in Thailand for more than two decades.	Non-government organisation (NGOs), forest Activist
10^b	Advocates for the education and retention of the basic culture of indigenous people. Focus is on the rights of people, particularly indigenous, who live in forest areas to participate in forest management 25-year experience on the issues of indigenous people and natural resources management in Thailand.	NGO, forest activist
11^b	17- year experience in land reform and forest management issues Received award for a research project on land reform and forest management (provided by The Thailand Research Fund (TRF) Part of a team of lawmakers for land title deed.	Forest scholar
12^a	The head of a forest community in the northeast of Thailand	Community
13^b	Project coordinator of Community Forest Network	Community
14	The head of a community forest network (Northeast of Thailand)	Community
15^b	The head of community and the head and coordinator of Community Forest	Community
16	Consultant to a community forest program	Community
17	Project Coordinator and the head of Community Forest Network (the west of Thailand) Coordinator for the UN in the issues of small-scale community forest.	Community

Notes: ^a The interviewee also participated in the first interview set of interviews. ^b The interviewee was interviewed by telephone.

2.4.5. Finalising recommendations

The researcher evaluated the validity of findings and the practicality of resultant recommendations by listing draft recommendations and discussing them with stakeholders who would be potentially able to influence governance decisions.⁵⁷

Influencers of decisions can be: those who have resources, such as money, volunteers, contacts, or information, that are helpful to decision makers in progressing particular recommendation; people who have sufficient influence on social action – such as stakeholders who are strong and dedicated leaders of highly centralised groups with committed members; and stakeholders who have the power to access the decision makers, and share information and opinions directly with decision makers.⁵⁸

Of the interviewees who participated in interview sets one and two, a subset of 13 people fitted this category of stakeholders, as summarised in Table 2.3.

Eight consultants were classified as decision makers and were from relevant agencies. As described in Table 2.3, they occupy different roles, including lawyers, foresters, planner, academics and community developer. A number had been involved in implementing and reforming laws and regulations in forest management for nearly 25 years. Some had been working for community forest projects for nearly 30 years.

Influencers were front-line stakeholders from various organisations. Consultant 9 has had 21-years experience in forest management, particularly in advocating for the application of common property for forest management and Community Forest Law in Thailand. Consultant 10 has worked as the coordinator of forest management between government and community and has 19-years experience in forest management, including in property rights to forest and Community Forest.

Consultant 11 has worked for over two decade for an international forest organisation, which has played a leading role in the expansion of community forest in Thailand. This interviewee coordinates and conducts research and supports effective property rights allocation on forestland, including encouraging community involvement in forest management. The organisation is involved in directly supporting more than 100 communities, setting up Community Forest sites in 19 subdistricts of Thailand. It also collaborates with governments, universities, local NGOs and international bodies to help communities to advance Thailand's Community Forest movement. In the past, Participant 11 worked as the coordinator of the first 'Policy Dialogue on Forest and Land Tenure Review and Reform' in Bangkok. Attendees at the Dialogue included high-level policymakers, academics and representatives from civil society and community forest networks, who all agreed on the urgent need

⁵⁷Majchrzak, above n 21, 77.

⁵⁸Ibid, 77-78.

for policy reforms to ensure fair and sustainable management of shared natural resources.⁵⁹ This interviewee was able to provide updated and comprehensive information to help to verify the feasibility of the reform directions proposed in this thesis.

Table 2.3: Participants consulted with regard to recommendations

Consultant code	Role influencing final decision of forest governance
1	<i>Decision maker.</i> Leading role in Community Forest management.
2	<i>Decision maker.</i> Leading role in Community Forest management in the Northeast of Thailand.
3	<i>Decision maker.</i> Working for reserved forestland management more than 30-year experience with management of reserved forestland and community.
4	<i>Decision maker.</i> Leading role in community forest management, particularly for forest policy planning.
5	<i>Decision maker.</i> 25-years experience in management of rights on forestland.
6	<i>Decision maker.</i> 37-year experience in forest management, including: Forestry village project; allocation of forestland for poor people (Kor Jor Kor); community forest in Thailand: direction for development.
7	<i>Decision maker.</i> Leading role in drafting community forest law and allocating forestland and community forest management.
8	<i>Decision maker.</i> Leading role in community forest management.
9	<i>Influencer.</i> 21-years experience in forest management, particularly in advocacy for the application of common property for Thailand forest management and Community Forest Law.
10^b	<i>Influencer.</i> Has worked as the coordinator for forest management between government and community and has 19-years experience in forest management, including in property rights.
11	<i>Influencer.</i> More than 20 years working for an international forest organisation, which has played a leading role in the expansion of community forest in Thailand. Coordinates and conducts research and supports effective property rights allocation on forestland, including encouraging community involvement in forest management.
12^b	<i>Influencer.</i> 25 years working to protect the rights of indigenous people, including their rights to forest resources, participate in forest governance. Advocate for people who have traditionally protected forest. Coordinator in a number of international organisations for protecting and developing indigenous people's rights.
13^b	<i>Influencer.</i> 17-years experience in conducting research on forest and land management, particularly in projects of communal land title deed, for reform direction for the government.

Notes: ^b The participant was consulted by phone.

Similarly, Consultant 12 had worked for 25 years to protect the rights of indigenous people, including their rights to forest resources, to participate in forest governance, and to be respected as people who have been traditionally protecting forests. This participant had been a coordinator in a number of international organisations for protecting and developing indigenous people's rights. This participant was able to provide in-depth and comprehensive information.

The information provided by Consultants 11 and 12 helped to identify the feasibility of recommendations, particularly of opportunities for Thailand to be recognised internationally.

⁵⁹ Estelle Srivijittakar, *Thai Experts Push for Forest and Land Tenure Policy Reforms* (2012) RECOFTC <<http://www.recoftc.org/site/resources/Thai-Experts-Push-for-Forest-and-Land-Tenure-Policy-Reforms-.php>>.

Consultant 13 had 17-years experience on conducting research on forest and land management – particularly in relation to communal land title deeds – to ascertain reform directions the government should take.

All Consultants were emailed a document detailing (in Thai) the draft recommendations and reform directions derived from the study, and asked for feedback. A week after this document was sent, the researcher discussed the proposed recommendations and reform directions with the eight decision-maker stakeholders in a face-to-face group session in a government office in Bangkok. The discussion was recorded and the researcher also made notes.

Discussions with stakeholders who were ‘influencers’ also occurred a week after they received their documentation. Consultants 9 and 11 were interviewed in face-to-face sessions in their offices. The discussions were recorded and the researcher took notes. Discussions with Participants 10, 12, and 13 were conducted over the telephone. The telephone conversations were also recorded and the researcher took notes.

The feedback was then considered as a whole, and conclusions and recommendations amended, as discussed in Chapter 8.

2.4.6. Data analysis

Data from the two sets of interviews was subjected to thematic analysis. Such an approach is commonly used for analysing qualitative data, particularly research that employs interviews as the method of data collection.⁶⁰ Discussion from the consultation regarding recommendation was simply sorted.

2.4.6.1 Interviews set 1 and 2

All forms of thematic analysis require interpretation by the researcher, giving rise to problems of validity, with the possibility that the researcher selectively imputes meaning. To reduce subjectivity, the researcher analysed interview data using the predetermined theory that emerged in the literature review⁶¹ – that is, the criteria and principal components discussed in Chapter 4. The first set of interviews was based on criteria derived from the literature review. Applicability of the criteria was also verified in the first set of interviews. The second set of interviews were also analysed using the criteria but particularly focused on issues found to be significant governance issues in Thailand. This method of utilising criteria allows new inquiries to benefit from and build on previous insights.⁶²

⁶⁰Maggie Walter (ed), *Social research methods: an Australian perspective* (Oxford University Press, 2006)271;Greg Guest, Kathleen M. MacQueen and Emily E. Namey, *Applied Thematic Analysis* (SAGE Publication, 2012)10-11.

⁶¹H. Russell Bernard and Gery W. Ryan, *Analysing Qualitative Data: Systematic Approaches* (Sage, 2010)62-63.

⁶²Elizabeth H. Bradley, Leslie A. Curry and Kelly J. Devers, 'Qualitative Data Analysis for Health Services Research: Developing Taxonomy, Themes, and Theory' (2007) 42 *Qualitative Data Analysis for Health Services Research* 1758, 1761-1763.

In an attempt to ensure that data from the interviews was correctly interpreted, the researcher maintained good communication with interviewees and discussed those issues that appeared unclear as analysis progressed.⁶³

The researcher took the following steps to ensure that the data was accurate:

1. All interviews were transcribed verbatim by the researcher into the Thai language, which is the language in which interviews were conducted. Transcripts were checked against recordings for accuracy and with interviewees for clarification.
2. The verbatim texts in Thai were read through as a whole to provide a general sense of the information and to provide an opportunity to reflect on the overall meaning of the information, and the general ideas provided by the interviewees.
3. Each part of individual interviews was given equal attention in the coding process in order to organise the data and uncover and document additional links within and between concepts and experiences described in the data. The information was then sorted into the 10 criteria of good forest governance. The method employed for coding was:⁶⁴
 - a) Text was bracketed (sentences or paragraphs) and organised into categories that represented the criteria derived from the literature review and verified in the first set of interviews.
 - b) The themes were then checked against one another and against the original transcripts.

Quotes in the text are translated from Thai.⁶⁵

2.4.6.2 Consultation re recommendations

The discussion with stakeholders was not subject to thematic analysis since the issues raised (the recommendations) were quite specific. Comments regarding the issues were sorted by the researcher into the relevant drafted recommendations categories (see section 8.2). Because consultants 1 to 8 provided their comments in a group session, the Researcher's notes are used, instead of verbatim quotes.

2.5. Comparative analysis

Implementation failure of forest governance is far from unique to Thailand. Other countries have researched and implemented various methods for overcoming forest governance problems. To benefit

⁶³Cooksey and McDonald, above n 50, 419.

⁶⁴Joseph A. Maxwell, *Qualitative research design: an interactive approach* (Sage Publication, 3 ed, 2013) 105-115; John W. Creswell, *Research Design: Qualitative, Quantitative, and mixed methods approaches* (Sage Publication, 4 ed, 2013)194-201; Christine J. Yeh and Arpana G. Inman, 'Qualitative Data Analysis and Interpretation in Counselling Psychology: Strategies for Best Practices' (2007) 35 *Counselling Psychologist* 369, 389-392; Virginia Braun and Victoria Clarke, 'Using thematic analysis in psychology' (2006) 3(2) *Qualitative Research in Psychology* 77, 96; Walter, above n 60, 271.; Bernard, and Ryan, above n 61,55-63.

⁶⁵ Although, this was not the language in which the thematic analysis was conducted in.

from international experience, the problems and experiences of other countries were compared to those of Thailand. In addition the researcher studied experiences resulting from international efforts to curb deforestation, such as through Reducing Emissions from Deforestation and Forest Degradation (REDD). Details of the comparative study and international expectation (such as through REDD+) are the subject of Chapter 7, supported by Appendix 4. However, use of the finding in the main text of the thesis is integrated generally into the discussion. The information is also extensively used to support the draft recommendations in Chapter 8.

2.6. Issues of validity

Validity refers to whether the research generates accurate and credible data and conclusion.⁶⁶ In this study, the researcher has sought to ensure validity of results through: using established theories of good forest governance to guide research questions, analysis and recommendations;⁶⁷ ensuring accuracy of data from interviews by careful transcription of recording and note-taking in interviews, and by verifying unclear information with the relevant interviewee;⁶⁸ ‘triangulation’⁶⁹ of data by comparing the findings from literature reviews with information from interviewees and with information from comparator countries.⁷⁰

2.7. Conclusion

This Chapter provides the conceptual framework for how this research was conducted. An engaged policy research methodology was employed, enabling the researcher to use multiple methods, and to draw upon a variety of forms and sources of intelligence to obtain information and derive conclusions. The methods used draw upon systems thinking and purposeful policy enquiry, key informant interviews, and legal and institutional analysis (of both governance arrangements in Thailand and forest governance in other countries). The methods helped the researcher to obtain insights into important forest governance issues, and the likely impact and feasibility of recommendations.

⁶⁶ Robert M. Lawless, Jennifer K. Robbennolt and Thomas S. Ulen, *Empirical Method in Law* (Aspen Publishers 2010) 36.

⁶⁷ Bernard, and Ryan, above n 61, 55-63.

⁶⁸ Cooksey and McDonald, above n 50, 419.

⁶⁹ Fontana, and Frey, above n 46, 722.

⁷⁰ Lawless, Robbennolt and Ulen, above n 66, 39-40.; Matthew B. Miles and A. M. Huberman, *Qualitative data analysis: an expanded sourcebook* (Sage Publications, 1994) 131-133.

CHAPTER 3: FOREST GOVERNANCE IN THAILAND

3.1. Introduction

Chapter 1 briefly outlined the reasons why forests are important to Thailand's environmental and social wellbeing. This Chapter begins with a more in-depth discussion of how those who have traditionally relied on forest resources have cared for forests in the past and how they have been impacted by current forest governance structures. Section 3.3 describes the governance structure in Thailand, how laws are made and who is responsible for implementation and enforcement.

Section 3.4 discusses the laws that apply to forest governance, how they impact the current forest system and whom the laws impact. The section shows how impediments to good forest governance have arisen as a result of the evolution of laws that have different and, at times, competing objectives, causing gaps and overlaps in the setting of forest boundaries and rights to forest resources, and institutional complexity.

Section 3.3.4 discusses what is influencing changes to the forest governance system in Thailand, what changes are occurring and who is leading the change effort. In this section the possible impact of Thailand's international obligations on forest are also discussed. The Chapter concludes by examining the social consequences of the *Plantation Forest Act* and discussion of the impacts of changes upon forest governance.

In line with the systems thinking approach, the discussion focuses upon key transactions and stakeholders influencing the forest governance system. Identifying the key transactions, the influencers and those who are most affected by the governance system helps to define problems and possible solutions.

The reader should keep in mind that the structuring and findings reported in Chapters 3 and 4 were iterative processes in the research, even though the two discussions are reported separately.

3.2. The importance of forest resources

As noted in Chapter 1, Thailand's forests are key to the country's economy, environment (with an important role in safeguarding biodiversity) and the everyday livelihoods of its rural population. In 2009, approximately 31 per cent of Thailand was covered in forests. This forest cover represented approximately eight per cent of total flora and fauna habitats around the world, the highest level among the countries of Indo-China, with approximately 25,000 species of vascular plants, including around 15,000 species of ferns, flowering plants and orchids, some 4,591 species of animal – consisting of 302 species of mammals, 982 bird species, 350 species of reptiles, 137 amphibious

animal species, and more than 2820 fish species.⁷¹ In addition to the importance of intact forests to maintain this rich biodiversity, about 1 out of 6 Thai people depend on forests for livelihood.⁷²

As noted in Chapter 1, in the 1990s, there were approximately 11 million people (over 20 per cent of total Thai people) settled in protected forest areas.⁷³ By 2000, there were approximately two million ha of forest areas illegally occupied. In 2007 the RFD found that 480,426 households lived in forest areas.⁷⁴ Many Thai people believe that forests are integral to their lives and that forests are important for ensuring social harmony. This is particularly the case for forest communities, such as those who live in the highlands who are referred to as the 'Hill Tribes'. They include the Karen, Hmong, Lahu, IU Mien (Yoa), Lisu, Akha, Lua (Lawa), H'tin (Kachin), Khamu, and Mlabri. In 2006, the total population of Hill Tribes was approximately 1.2 million, with the Karen making up the largest group. The Hill Tribes exist in fifteen provinces in the northern and western parts of Thailand. Their communities are often the poorest and most vulnerable community sector in Thailand. They use and manage forests based on their beliefs, and have done so for hundreds of years, though their management regimes vary from region to region.⁷⁵

The 'Chao Khao', who live predominantly in the mountainous area in the northern and western regions, practice agriculture in the forest by growing crops such as rice, vegetables and corn on cleared slopes in the upper watershed. The Karen grow rice on terraces along narrow valleys adjacent to streams, which they use for irrigating the crop. They also collect wild forest products, such as ant eggs during summer, various kinds of mushrooms and honey, for sale.⁷⁶

The Hill Tribes of the north have traditionally divided forests into different types based on topography, climate, humidity, vegetation and altitude.⁷⁷ Karen, based on climate and physical characteristics, classify forests into three types: the 'ker ner meu' (mountain evergreen forest), the 'ker ner pa' (evergreen forest) and the 'kaw be kho'. According to belief, Karen also classifies forests as the Taboo Forest that the community has declared as taboo and cannot be used to perform any activities that will intentionally disturb the ecology. This type of forest area includes forest with powerful spirits, the ritual areas forest and the burial sites. People are not allowed to perform any activities in these areas; otherwise they are associated with unpleasant events that occurred to them. Forests are also classified for use, such as the areas for constructing house, collecting forest products,

⁷¹ ICEM, above n 13, 26.

⁷² Bhumibhamon, above n 11.

⁷³ ICEM, above n 13.

⁷⁴ The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), above n 12.

⁷⁵ 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 (IMPECT, 2006) 8, 15; Lasimbang and Luithui, above n 2, 1; Mark S. Flaherty and Vesta R. Filipchuk, 'Forest management in northern Thailand: a rural Thai perspective' (1993) 24(3) *Geoforum* 263, 265; Minna Hares, 'Forest Conflict in Thailand: Northern Minorities in Focus' (2009) 43(3) *Environmental Management* 381, 383.

⁷⁶ Lasimbang and Luithui, above n 2, 1; Kanjan and Kaewchote, above n 9, 11-12; IMPECT, above n 75, 15-16, 24-25

⁷⁷ Lasimbang and Luithui, above n 2, 8; IMPECT, above n 75, 30-31

swidden, gardens and wet rice field.⁷⁸ The Karen people in Ban Pa Gluay-Pong Lom Rang categorises forest into three types: sacred forests, headwater forests, and multiple use. The sacred forests are used as a holy place for rituals, while headwater forests are managed as watersheds, and the multiple use forests are used for harvesting forest food and forest products. People believe that the headwater forests should be protected to ensure water for agriculture and daily living. This kind of forest is called 'Paa Khun Nam' by the Mae Tha community,⁷⁹ and the Karen community call it 'Paa Tikomeh'. The sacred forests are protected because the communities believe that any use of these forest areas or harm to the trees in such areas could result in illness or bad luck. Each year, the Karen hold a ceremony and offer sacrifices to the forest spirits, and pray for good luck and protection.⁸⁰ Villagers in the Mae Tha Community in the north of Thailand make offerings of food to the watershed spirit of the forest, praying for abundant water and prosperity.⁸¹ The Lisu Hill Tribe, who traditionally carry out nomadic land use, identify forest areas in which they can grow their crops. Forests can only be cleared for planting after a ceremony, handed down from generation to generation, which respectfully asks permission from the forest spirit residing in that forest.⁸²

The Karen have a large body of knowledge and local wisdom about living in the forests, such as the practice of rotational swidden agriculture, managing sacred forests, taboo forests and religious-use forests. Many of their customs are relevant and appropriate to forest management. They use traditional rules and conventions for controlling, conserving and using forest resources in a sustainable manner.⁸³

Each Ban (village or group) of the Karen establishes its own rules based on its beliefs and traditions. For example, the Ban Pa Gluay-Pong Lom Rang has a rule that sale of timber to outsiders is strictly prohibited; cutting trees for sale or for lumber or for household use is only allowed upon approval by the Village Committee. Hunting wild animals is not allowed and will be punished. This rule was set based on the belief that hunting causes forest fires that can damage the village. Such forest fires may occur when poachers burn areas in order to drive animals out of hiding. To deal with forest fires, each year every household sends one member of the family to join in constructing a firebreak, and the community uses controlled fires every year to help reduce weeds and control pests in the forests.⁸⁴

In the northeast and central regions of Thailand, and along the east and south coasts, rural populations depend on the forests for forest foods such as bamboo shoots, mushrooms, ant eggs, wild fruits, honey

⁷⁸ Lasimbang and Luithui, above n 2,8; IMPECT, above n 75, 30-34.

⁷⁹ Pearmsak Makarabhirom, 'Traditional Forest Management in Mae Tha Community, Northern, Thailand' in IGES Forest Conservation Project (ed), *A Step toward Forest Conservation Strategy(1)* (IGES, 1998) 198,198, 202.

⁸⁰ Kanjan and Kaewchote, above n 9, 19; IMPECT, above n 75, 31-37.

⁸¹ Makarabhirom, above n 79, 204.

⁸² Lasimbang and Luithui, above n 2,8.

⁸³ Andrew Walker, 'The 'Karen Consensus', Ethnic Politics and Resource-Use Legitimacy in Northern Thailand' (2001) 2(2) *Asian Ethnicity* 145, 150-151; IMPECT, above n 75, 8and31-37; Kanjan and Kaewchote, above n 9,3.

⁸⁴ Kanjan and Kaewchote, above n 9, 27.

and wild animals for meat. They also harvest forest products including wood for fuel (mangroves along the coast are harvested for fuel and charcoal), medicinal herbs, vegetables and rattan to make baskets and brooms. The leaves of some trees, such as the *Dipterocarpus tuberculatus*, are harvested to make the roofs of houses.⁸⁵ Rural people in the northeast region, such as the Dong Yai communities of Ubon Ratchathani Province, collect forest products (for example, grasshopper, honey, and mushroom) for local consumption or sale.⁸⁶

The Dong Kum Kam Village Community in the northeast was established more than a century ago in the Ubon Ratchathani Province in the northeast of Thailand. It occupied 30,477 rai⁸⁷ of forest area. It has traditionally managed forest through rules created by members of the community based on their belief and cultures. The elderly people are normally the mediators for the settlement of forest disputes. The community have classified the ages and species for harvesting timber. These practices are passed on to generation to generation.⁸⁸

Thailand, in general, is an agriculture-dependent country that is transitioning to an industry-based economy.⁸⁹ To accelerate its economic development, forests were targeted as a significant resource for sale on the international market. The Thai government issued two sets of commercial logging concessions in the 1960s to public and private enterprises. The first set of logging concessions were granted for harvesting timber in the north of Thailand and allowed logging in around 40 per cent of the region. In 1968, the government issued a second set of concessions that allowed logging throughout the country. The result is that deforestation accelerated at the rate of almost 4 per cent per year, which was among the highest in tropical countries.⁹⁰

Deforestation has devastated Thailand's biodiversity. The Thailand *National Report on the Implementation of the Convention on Biological Diversity (2009)* by the Office of Natural Resources and Environmental Policy and Planning (ONEP), Ministry of Natural Resources and Environment (MNRE) revealed that, because of considerable forest degradation, many species are threatened. The Siamese Tiger Fish has become extinct in Thailand. Twelve species of mammals, 43 species of birds, 11 species of reptiles, and 18 species of fish have also become significantly endangered.

⁸⁵See Jonathan Rigg, 'Forests and Farmers, Land and Livelihoods, Changing Resource Realities in Thailand' (1993) 3(4/6) *Global Ecology and Biogeography Letters*; Suchitra Changtragoon, 'Opportunities in using the conservation of biodiversity to alleviate poverty in Thailand' (Paper presented at the workshop on forests for poverty reduction: opportunities with Clean Development Mechanism, Environmental Services and Biodiversity Seoul, Korea 2003) 168-169; Kritsanarangsarn and Thaiying, above n 1, 1-2.

⁸⁶Poffenberger and McGean, above n 3.

⁸⁷1 hectare (ha) is 6.5 rai, see Lasimbang and Luithui, above n 2, 15.

⁸⁸Mongkol Dantanin et al, *Community Forest in Thailand: Guideline for Development* (Community forest in the Northeast) (Local Development Institute (Thailand), 1993) 146, 163.

⁸⁹Manassrisuksri and Sangkrajang, above n 14, 126.

⁹⁰Poffenberger and McGean, above n 3; Philip Hirsch, 'Forests, Forest Reserve, and Forestland in Thailand' (1990) 156(2) *The Geographical Journal* 166, 170; Keith Barney, 'At the Supply Edge: Thailand's Forest Policies, Plantation Sector, and Commodity Export Links with China' (Asia Pro Eco Programme- China and Forest Trade in the ASIA-Pacific Region: Implications for forests and livelihood, Forest Trends, 2005) 10.

Approximately 1957 plant species have been categorised as rare, endangered or extinct. One species, which has become extinct in Thailand's forest, is the Pride of Burma (*Amherstia nobilis* Wall).⁹¹

Communities who depend on the forest have also been significantly affected. Large numbers have lost their means of livelihood. Use of forestlands, as well as forest products have become more restricted; communities find it increasingly difficult to openly collect forest resources and become more impoverished because of the decline in sources of food and other products traditionally obtained from forests. For example, communities in a village in Roiet Province in the northeast of Thailand claim that diminishing forestlands have made droughts last longer and food harder to find.⁹²

The significant loss of national forest cover has led to a shift of national forest governance towards forest conservation. In 1985, the Thai Government attempted to implement a range of measures to halt and reverse the alarming rate of deforestation, but the measures have proven to be largely ineffective.⁹³ In 1991, Thailand had only approximately 26 per cent of national forest cover remaining. In 2011, Thailand was ranked eighth out of ten for its percentage of forest cover among the South East Asian countries.⁹⁴

3.3. Governance structure in Thailand

The term 'governance' refers to the way in which institutions and laws are arranged to provide public services and manage natural resources including forests.⁹⁵

Thailand is a unitary state⁹⁶ with a civil law system dependent upon statute or code law.⁹⁷ However, the common law system has significantly influenced development of laws, particularly commercial law, procedural law and the law of evidence.⁹⁸

The *Constitution of the Kingdom of Thailand* ('*Constitution*') forms the basis for the formulations of laws in the country. It is the supreme law of Thailand. If the provisions of a law are inconsistent with those of the *Constitution*, those of the *Constitution* prevail.⁹⁹

⁹¹The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), above n 1, 13.

⁹²Rigg, above n 85.

⁹³Lakanavichian, above n 7.; FAO- Regional Office for Asia and the Pacific, above n 10, 82-83; Poffenberger and McGean, above n 3.

⁹⁴National Information Center (NIC): Thailand, *Forest Situation* (2010) National Information Center (NIC): Thailand <<http://www.nic.go.th/gsic/uploadfile/forest.pdf>>.

⁹⁵Sophie Higman et al, *The Sustainable Forestry Handbook: A Practical Guide for Tropical Forest Managers on Implementing New Standards* (Earthscan, 2012) 6-7.

⁹⁶*Constitution 2007* s 1 (Thailand).

⁹⁷Thailand Central Intellectual Property and International Trade Court, 'The Judicial System in Thailand: An Outlook for a New Century' (Asian Law Series Report No. 6, Institute of Developing Economies: Japan External Trade Organization, March 2001) 3; Tithiphan Chuerboonchai, 'Legal System in Thailand' (Paper presented at the Learning from Each Other: Enriching the Law School Curriculum in an Interrelated World, Soochow University, Kenneth Wang School of Law, Suzhou, China, 17-19 October 2007) 1.

⁹⁸Michael Ramirez, 'Thailand' in *The International Comparative Legal Guide to: Product Liability 2010* A practical cross-border insight into product liability work (Global Legal Group, in association with Commercial Dispute Resolution (CDR), 2010) 293,294; Thailand Central Intellectual Property and International Trade Court, above n 97,3.

Figure 3.1 illustrates the structure of government in Thailand. The *Constitution* establishes three arms of Government: Legislature, Executive and Judiciary. The Legislature has the power to create legislation,¹⁰⁰ and is called ‘the National Assembly’.¹⁰¹ It is equivalent to a parliament such found in countries operating under the Westminster System.¹⁰² The House of Representatives is normally where legislation is introduced and initially considered (a Bill),¹⁰³ and the Senate is usually charged with scrutinising the Bill before it is passed into law.¹⁰⁴ Bills can be drafted and introduced by Cabinet, by twenty or more Members of House of Representatives, by the Judiciary and by independent entities, such as the Election Commission, the National Anti-Corruption, and the Ombudsman or when 10,000 or more electors request a Bill to be considered by the National Assembly.¹⁰⁵

The Executive (Central Government) consists of the Cabinet, Ministries, Government Departments, and some organisations, bureaus, or other independent entity such as the Office of Human Rights Commission and the Office of Natural Resources Council. Offices of the Central Government are located mainly in Bangkok. Their functions include policy development, manpower planning, and financial and budgetary management.¹⁰⁶ Executive power is exercised through the Cabinet, which is charged with the implementation of Acts, Codes, Emergency Decrees, subordinate laws, government policy and the Cabinet resolutions.¹⁰⁷ The Cabinet comprises a Prime Minister, who is the leader of the party that wins the majority of votes to the legislature¹⁰⁸ and is appointed by the King;¹⁰⁹ five Deputy Prime Ministers; Ministers and Deputy Ministers from all Ministries.¹¹⁰ Governments serve a four-year term with a limited consecutive period not exceeding eight years.¹¹¹ Other parts of the Executive provide administrative support for the Office of the Prime Minister and the Ministries.¹¹²

⁹⁹ *Constitution 2007* s 6 (Thailand); Biorn Dbessel, 'Thailand's elusive quest for a workable constitution, 1997-2007' (2009) 31(2) *Contemporary Southeast Asia* 296, 296; Chuerboonchai, above n 97, 1; Thailand Central Intellectual Property and International Trade Court, above n 97, 5.

¹⁰⁰ *Constitution 2007* s 90 and s 143- s153 (Thailand).

¹⁰¹ *Constitution 2007* s 3 and s 42 (Thailand).

¹⁰² Commonwealth of Australia, *About Parliament of Australia* (2012) Commonwealth of Australia <http://www.aph.gov.au/About_Parliament/Work_of_the_Parliament>.

¹⁰³ *Constitution 2007* s 146 (Thailand).

¹⁰⁴ *Constitution 2007* s 146 (Thailand).

¹⁰⁵ *Constitution 2007* s 142 (Thailand).

¹⁰⁶ Aim-on Aramkul, 'Administrative Reform in Thailand' in The UN (ed), *Administrative Reforms: Country Profiles of five Asian countries* (The United Nations Department of Economic and Social Affairs in cooperation with the International Institute of Administrative Sciences and The Institute of Administrative Management (Japan), 1997) 122, 126-127.

¹⁰⁷ *Constitution 2007* s 3 (Thailand); The UN, 'The Kingdom of Thailand' (Public Administration: Country Profile United Nations, 2004) 5-6; Lasimbang, and Luithui, above n 2, 13; Don Hammond, 'Commentary on forest policy in Asia-Pacific region: A Review for Indonesia, Malaysia, New Zealand, Papua New Guinea, Philippines, Thailand and Western Samoa' (Working Paper No: APFSOS/WP/22, FAO, 1997), 69.

¹⁰⁸ *Constitution 2007* s 171 (Thailand); Central Intelligence Agency (CIA), *The World Factbook: East and Southeast Asia: Thailand* (2013) CIA <<https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>>.

¹⁰⁹ *Constitution 2007* s 171 and 172 (Thailand).

¹¹⁰ Office of Prime Minister, *The authority of the Office of Prime Minister* (2012) Office of Prime Minister <<http://www.opm.go.th/opminter/mainframe.asp>>.

¹¹¹ *Constitution 2007* s 172 (Thailand).

¹¹² *The State Administration Act B.E. 2534 (1991)* (Thailand) s 9 and 10.

Executive power operates through three levels of government: central, provincial and local governments.¹¹³

Often Bills are drafted by government agencies and passed on to Cabinet for initial consideration. For example, the *Forest Plantation Act* was drafted by the RFD, passed on to Cabinet, which tabled it for consideration and debate by the National Assembly. A Bill becomes an Act of Parliament (Act) when both Houses agree to pass it – by majority votes.

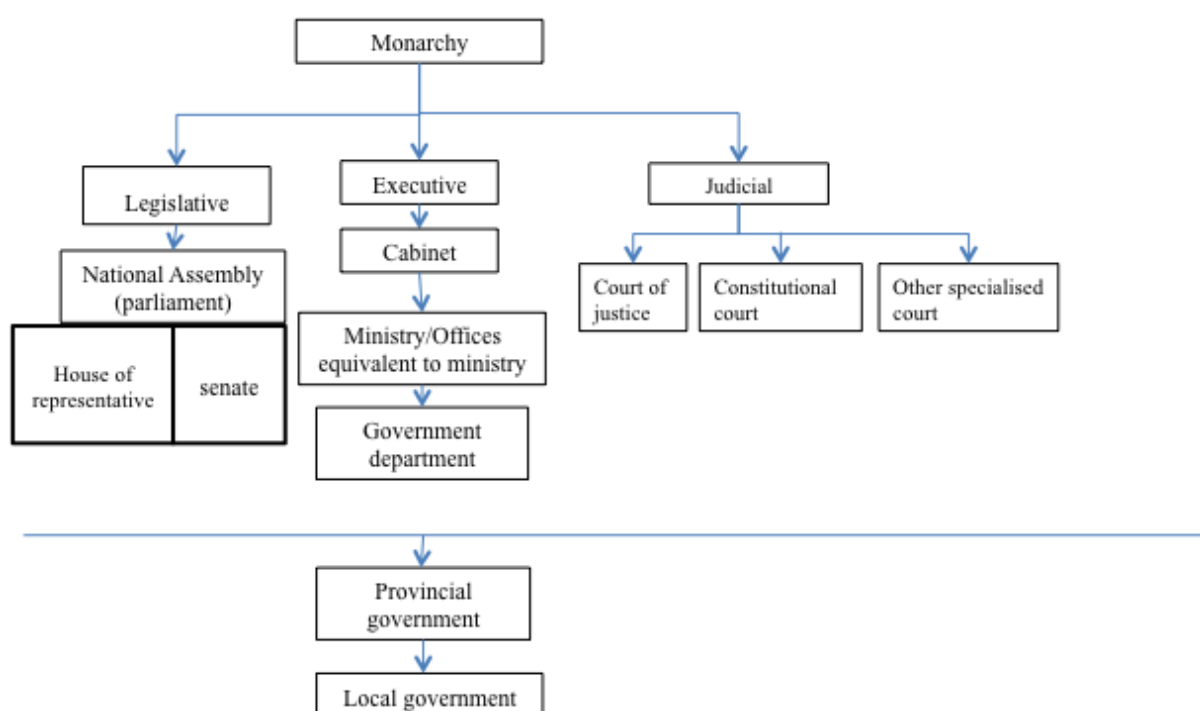


Figure 3.1: Governance structure, Thailand

Acts and Emergency Decrees provide the Executive, Cabinet and/or other agencies comprising the Executive with the authority granted to create subordinate laws, such as regulations, policies and strategies. Cabinet can also pass Cabinet Resolutions, which deal with the implementation of Acts, Codes, Emergency Decrees, subordinate laws and the policy of the government.¹¹⁴ Cabinet Resolutions are not classified as law and they cannot contradict the provisions of Acts, Codes and Emergency Decrees or subordinate laws. However, Cabinet Resolutions bind officials of Ministries and Agencies.¹¹⁵

The Central Government delegates power to Regional Governments (Provincial Governments), which serves a coordinating role between the Central Government and Local Governments. Provincial Governments are a territorial extension of the Central Government and have neither administrative

¹¹³ Aramkul, above n 106, 125; *The State Administration Act B.E. 2534 (1991)*(Thailand) s 4.

¹¹⁴ The Office of Secretary of Cabinet (Thailand), *Question and Answer about the Cabinet Resolution* (The Office of Secretary of Cabinet (Thailand), 2010), 1.

¹¹⁵ *Ibid*, 2-3.

autonomy nor authority.¹¹⁶ There are 77 Provinces in Thailand, each headed by a Provincial Governor.¹¹⁷ The Provinces are administratively divided into Districts headed by a District Governor.¹¹⁸ Each District consists of subdistricts called ‘Tambons’ – which are headed by Subdistrict Chiefs called ‘Kamnans’ – and a number of villages, headed by Village Heads.¹¹⁹

Local Government was introduced into Thailand’s government system when the absolute monarchy system was abolished and a democratic system adopted in 1932. Local Governments were introduced to decentralise government. They were enshrined in the *Constitution* of 1997¹²⁰ and again adopted in the current *Constitution* (2007).¹²¹ Local Governments operate through Local Assemblies (Councils) and Local Administrative Committees.¹²² Local Councils, made up of a Head and Councillors, are responsible for promulgating local legislation, and Administrative Committees administer such legislation.¹²³ Local legislation must be in accordance with Thailand’s *Constitution* and *Acts*.¹²⁴ The Local Assembly and Local Administrative Committee are elected by voting members of the local communities.¹²⁵

Although Local Governments have been granted some autonomy under the *Constitution*, they remain under the strict control and supervision of the Central Government’s Ministry of Interior (MOI) through the Department of Local Administration (DLA). The MOI intervenes to control and supervise Local Governments by imposing regulations that control budgets and local regulations. Development Plans put forward by Local Government are subject to approval by the Provincial Governor and District Officers. In addition, the MOI, Provincial Governors and District Officers have the power to dissolve Local Councils and dismiss the Head and Councillors.¹²⁶ Figure 3.2 illustrates the hierarchical structure of the Local Governance in Thailand.

There are five forms of Local Government in Thailand:¹²⁷

¹¹⁶Aramkul, above n 106, 125; Fumio Nagai, Tsuruyo Funatsu and Kazuhiro Kagoya, ‘Central-Local Government Relationship in Thailand’ in Fumio Nagai, Nakharin Mektrairat and Tsuruyo Funatsu (eds), *Joint Research Program Report No.147 on Local Government in Thailand—Analysis of the Local Administrative Organization Survey*, Joint Research Program (Institute of Developing Economies: Japan External Trade Organisation, 2008) 1, 4-5.

¹¹⁷Nagai, Funatsu and Kagoya, above n 116, 5.

¹¹⁸*The Organisation of State Administration Act 1991* (Thailand) s 61 and s 62.

¹¹⁹Lasimbang, and Luithui, above n 2, 27; Nagai, Funatsu and Kagoya, above n 116, 5.

¹²⁰*Constitution* (1997), s 282 -290.

¹²¹*Constitution* (2007), s 281-290.

¹²²*The Constitution 2007* s 284 (Thailand).

¹²³Office of Sonkhla Province Election Commission (Thailand), *The Local Election* (2012) Office of Sonkhla Province Election Commission (Thailand) <<http://www2.ect.go.th/about.php?Province=songkhla&SiteMenuID=3193>>.

¹²⁴*The Constitution 2007* s 284 (Thailand).

¹²⁵*The Constitution 2007* s 284 (Thailand); Manassrisuksri and Sangkrajang, above n 14, 130.

¹²⁶Nagai, Funatsu and Kagoya, above n 116, 1, 8-11; *The Determining Plan and Process of Decentralisation to Local Government Organisation Act BE 2542* (1999) (Thailand) s 6 and 12; *Ministerial Regulation on Administrative Divisions of Department of Local Administration, Ministry of Interior 2008* (Thailand) s 2; *The Municipal Act 1953 (amended 2000)* (Thailand) s 71-74; *The Tambon Council and Tambon Administrative Organisation Act 1994* (Thailand) s 90-92.

¹²⁷Nagai, Funatsu and Kagoya, above n 116, 1; *The Determining Plan and Process of Decentralisation to Local Government Organisation Act BE 2542* (1999) (Thailand) s 4.

- Bangkok Metropolitan Administration (BMA), which is controlled by MOI, provides public services within the Bangkok area under the Bangkok *Metropolitan Administration Act 1985*.¹²⁸
- The City of Pattaya Local Government provides public services within Pattaya City. It is monitored by the Provincial Governor who regulates the Province within which Pattaya City is located, with the approval of MOI under the *Pattaya City Administrative Organisation Act 1999*.¹²⁹
- The Provincial Administrative Organisation (PAO) is the main form of Local Government of Thailand at a provincial level. Every Province, other than Bangkok, consists of one PAO. Pursuant to the *Provincial Administration Organisation Act 1997*, the PAO is empowered to provide public services within its Province.¹³⁰ It is monitored by the Provincial Governor and the DLA under the MOI to ensure that the PAO complies with laws.¹³¹
- Under the *Municipal Act 1953 (amended 2000)* the Municipality governs urban areas in each province. There are three sizes of municipality: city, town and sub-district. The designation of the municipality is based on population and annual income, such as the city municipality consists of at least 50,000 people. Each municipality is responsible for providing public services within its territory.¹³²

The type of supervision of a municipality varies with its size. The smallest unit, the Subdistrict Municipality, is monitored by the District Chief, the Provincial Governor and the DLA under the MOI. Town and city municipalities are monitored by the Provincial Governor and the DLA under the MOI.¹³³

- The *Tambon Council and Tambon Administrative Organisation Act 1994*, provides for another form of local government, the Tambon Administrative Organisation (TAO), at a sub-district level.¹³⁴ Each TAO is responsible for providing public services within its territory and is monitored by the district chief and the provincial governor to ensure that the TAO complies with laws.¹³⁵

The jurisdiction of the PAO overlaps with the jurisdiction of the Municipality and the TAO. Public service activities beyond the jurisdiction of Municipalities and TAOs are under the jurisdiction of the PAO.¹³⁶

¹²⁸*The Bangkok Metropolitan Administration Act 1985* (Thailand).

¹²⁹*The Pattaya City Administrative organisation Act 1999* (Thailand)

¹³⁰*The Provincial Administration Organisation Act 1997* (Thailand)

¹³¹ Nagai, Funatsu and Kagoya, above n 116, 8-9.

¹³²*The Municipal Act 1953 (amended 2000)* (Thailand).

¹³³ Nagai, Funatsu and Kagoya, above n 116, 8-9.

¹³⁴ Nagai, Funatsu and Kagoya, above n 116, 8-9.

¹³⁵*The Tambon Council and Tambon Administrative Organisation Act 1994* (Thailand)

¹³⁶*The Provincial Administration Organisation Act 1997* (Thailand) s 45; *The Determining Plans and Process of Decentralisation to Local Government Organisations Act BE 2542 (1999)* (Thailand) s 17.

Laws are also enforced and implemented through the Judiciary, through the court system. Three kinds of courts are concerned with environmental cases: the Court of Justice,¹³⁷ the Constitutional Court¹³⁸ and the Administrative Court.¹³⁹

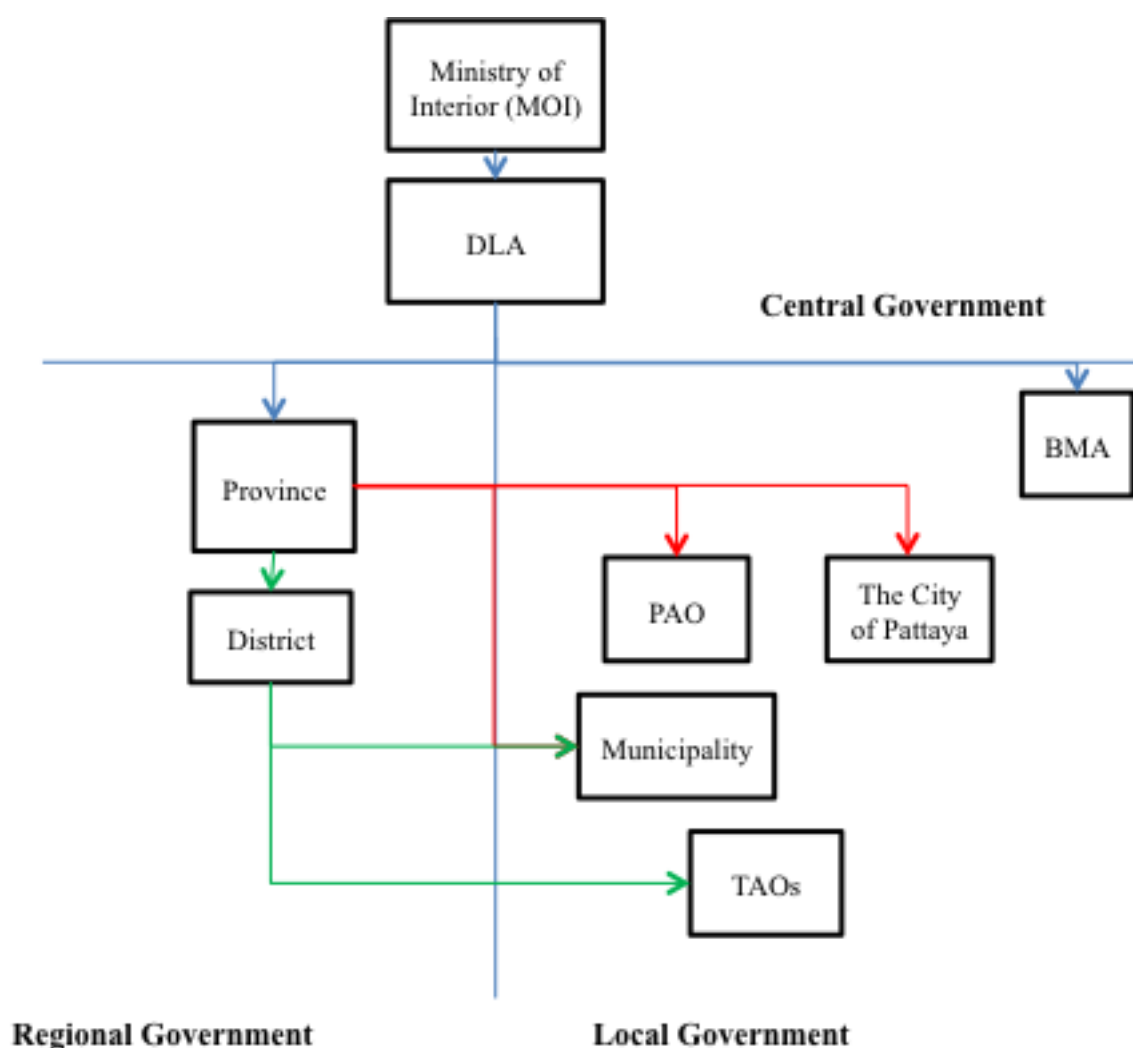


Figure 3.2: The structure of Local Government, Thailand¹⁴⁰

The Court of Justice has three levels: Court of First Instance, Appeal Court and Supreme Court.¹⁴¹ It adjudicates cases and uses Alternative Dispute Resolution (ADR) methods according to the laws pertinent to civil cases.¹⁴²

¹³⁷The Thailand Central Intellectual Property and International Trade Court, 'Dispute Resolution Process in Environmental Problems' in Institute of Developing Economies: Japan External Trade Organisation (ed), *Alternative Dispute Resolution in Thailand*, Asian Law Series (Institute of Developing Economies: Japan External Trade Organisation, 2002) 186, 196.

¹³⁸FAO, 'Reforming forest tenure: Issues, principles and process' (Forestry Paper 165, FAO, 2011) 39.

¹³⁹Laura Kay Roddan, *To defend ourselves: common Property management of forests in Northern Thailand* (Master Degree Thesis, The University of British Columbia, 1993), 6, 40-44; Jinarat, above n 16, 104-106

¹⁴⁰Adapted from Nagai, Funatsu and Kagoya, above n 116, 7.

¹⁴¹Aramkul, above n 106.

¹⁴²Thailand Central Intellectual Property and International Trade Court, above n 137, 188, 196.

The Constitutional Court has power and duties to rule on cases where there is a contradiction and/or inconsistency between the *Constitution* and a Bill or Act.¹⁴³

The Administrative Court is responsible for those cases where government agencies and/or public officials are accused of either misusing their power, delaying in undertaking their duties, or failing to perform their duties in relation to administrative duties.¹⁴⁴

3.3.1. Forest regulatory instruments

Thailand has many laws, from the *Constitution* down to Cabinet Resolutions that ought to have secured social and environmental interests in forests. Figure 3.3 shows the categories of law that are relevant to the protection of forests.

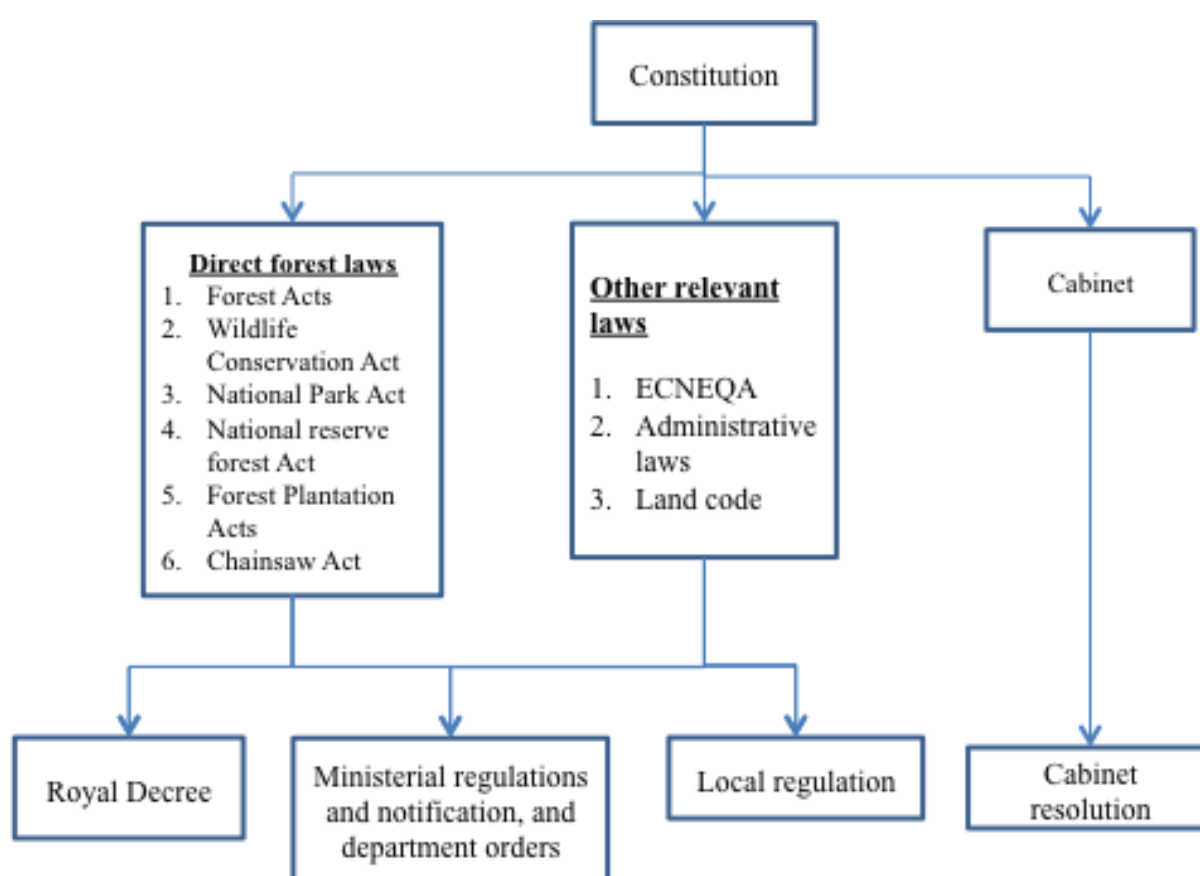


Figure 3.3: The current forest regulatory system

3.3.1.1 The Constitution of the Kingdom of Thailand (2007)

The *Constitution* recognises the rights of native communities to preserve their customs and to participate in the management, maintenance, and exploitation of natural resources:¹⁴⁵

¹⁴³*Constitution 2007* s 6, s 154-155, and s 211 (Thailand).

¹⁴⁴Thailand Central Intellectual Property and International Trade Court, above n 137, 196.

¹⁴⁵*Constitution 2007*s 66-67, s 85 and s 87 (Thailand)

- **Section 66:** The community was given the right to preserve traditional knowledge and to participate in natural resource management in a balanced and sustainable fashion.¹⁴⁶
- **Section 67:** The rights of people to participate with the community and the state in natural resource management shall be protected as appropriate. Environmental impact assessment, public consultation, and expert consultation have to be undertaken prior to conducting any activity which may severely affect the natural resources in the community. The community has the right to sue the government to force it to comply with this section.¹⁴⁷

These rights were reinforced by provisions in relation to rights and liberties contained in Chapter Three of the *Constitution*:¹⁴⁸ the rights to information and to petition;¹⁴⁹ the rights to freely express ideas,¹⁵⁰ and the rights to legal services to be protected in judicial procedures.¹⁵¹

Forest communities also have rights to be protected based on international agreements in section 82 of the *Constitution*. The State must comply with international agreements, which can include the international agreements related to forests.¹⁵² These rights are also provided in sections 85 and 87 of the *Constitution*. Section 85 requires the state to implement policies pertaining to land, natural resources and environment in ways that will be consistent with natural resources and environment conditions in each community, including safeguarding community livelihoods. Section 87 requires that the State promote public participation in the formulation of policies on economic and social development, public service and monitoring state action by strengthening public capacity in politics through a fund to subsidise people in political activity and encouraging people to express their ideas, as well as educating people about the parliamentary democracy with a constitutional King as the Head of State, and encouraging people to vote in national parliamentary elections.¹⁵³ These provisions enable the community to introduce laws, including forest-related laws, to Parliament under section 163 of the *Constitution*, which empowers groups of 10,000¹⁵⁴ or more electors to introduce a draft law to the Parliament.¹⁵⁵

3.3.1.2 Legislation

In relation to forest management laws, there are a number of forest-related Acts. These include Acts that directly govern forest resources, those that provide a framework for environmental management

¹⁴⁶*Constitution2007* s 66 (Thailand).

¹⁴⁷*Constitution2007* s 67 (Thailand).

¹⁴⁸*Constitution2007* s 27-29 (Thailand).

¹⁴⁹*Constitution2007* s 56-60 and s 62 (Thailand).

¹⁵⁰*Constitution2007* s 45 and s 48 (Thailand).

¹⁵¹*Constitution2007* s 81 (Thailand).

¹⁵²*Constitution2007* s 82 (Thailand).

¹⁵³*Constitution2007* s 85 and s 87 (Thailand).

¹⁵⁴ Decreased from 50,000 people contained in *Constitution (1997)*.

¹⁵⁵*Constitution2007* s 163 (Thailand).

including forest management, and administrative laws and land law that influence forest management.¹⁵⁶

3.3.1.3 Acts directly governing forest resources

There are six Forest-related Acts directly affecting forest governance in Thailand:

1. *Forest Act BE 2484 (1941)* ('*Forest Act*'). Before 1985 forest policy in Thailand was focussed on managing forests primarily for commercial timber extraction for domestic and foreign consumption. Teak was the first timber type to have applied to it a harvesting policy. Regulations relating to the management of teak concessions were imposed, for instance, by the *Forest Preservation Order of 1897*. This law regulated the minimum girths, cutting circle, and block sizes of teak to be logged.¹⁵⁷ In 1941, the *Forest Act, BE 2484 (1941)* was passed and replaced the *Forest Protection Act 1913*, which had been the first attempt to regulate non-teak forest products. It set out the principles for long-term exploitation of forest for the benefit of the state.¹⁵⁸ The *Forest Act of 1941* strengthened state ownership of forests by declaring that any land not privately acquired under the Land Law would be considered as state-owned forest.¹⁵⁹ The *Forest Act* is mainly concerned with the collection of forest products, seeking to regulate activities within the forest (such as how to fell preserved species of timber, firing and land clearing).¹⁶⁰ One outcome of the clarification of state ownership of forests under the *Forest Act* was the expansion of logging concessions to eligible private sector and State enterprises¹⁶¹ to harvest timbers for export.¹⁶²
2. *National Reserved Forest Act BE 2507 (1964)*. Because of rapid deforestation resulting from excessive logging concessions under the *Forest Act*, the government passed three Acts: *Forest Preservation and Conservation Act (1938)*, *Wild Animals Reservation and Protection Act BE 2503 (1960)*, and *National Park Act BE 2504 (1961)* that aimed to encourage forest conservation.¹⁶³ The *Forest Preservation and Conservation Act* provided the first legal framework for forest area conservation. This Act categorised forestland into preserved and reserved forest.¹⁶⁴ Because of insufficient funding, designations of preserved and reserved forests were slow under the *Forest Preservation and Conservation Act* and it was replaced by

¹⁵⁶FAO- Regional Office for Asia and the Pacific, above n 10,87-88; Lasimbang and Luithui, above n 2, 15-23.

¹⁵⁷Wataru, above n 10, 210.

¹⁵⁸Lakanavichian, above n 7; Wataru, above n 10, 210; Jin Sato, 'Public land for the people: the institutional basis of community forestry in Thailand' (2003) 34(02) *Journal of Southeast Asian Studies* 329,160.

¹⁵⁹Lasimbang, and Luithui, above n 2,17; Masaki Matsumura, 'Coercive conservation, defensive reaction, and the commons tragedy in Northeast Thailand' (1994) 18(3) *Habitat International* 105, 109.

¹⁶⁰Lasimbang, and Luithui, above n 2,17; RRI, above n 1, 16.

¹⁶¹Wataru, above n 10, 222.

¹⁶²Kanjan and Kaewchote, above n 9,10.

¹⁶³Theresa Wong, Claudio O. Delang and Dietrich Schmidt-Vogt, 'What is a forest? Competing meanings and the politics of forest classification in Thung Yai Naresuan Wildlife Sanctuary, Thailand' (2007) 38(4) *Geoforum* 643, 647.

¹⁶⁴Wataru, above n 10, 209-210.

the *National Reserved Forest Act (1964)*.¹⁶⁵ The 1964 Act enables the determination of National Reserved Forest area, and the control and maintenance of such areas.¹⁶⁶ This Act aims to prohibit further encroachment on forest reserves by farmers.¹⁶⁷

3. *The Wildlife Conservation and Protection Act, BE 2535 (1992)*. After a ban was placed on logging in 1989, management objectives of forest policy focused on conservation. The National Forest Policy, adopted in 1985, was amended in 1989 to increase conserved forest areas from 15 per cent to 25 per cent. In 1992 the Government announced a policy to expand national forest cover from an estimated 26 per cent to 40 per cent of the Kingdom's land area. The *Wild Animals Reservation and Protection Act, BE 2503 (1960)* was replaced by the *Wildlife Conservation and Protection Act, BE 2535 (1992)*.¹⁶⁸ This law provides for the establishment of wildlife sanctuaries and non-hunting areas, and the establishment of a Protection Committee which has the power to designate wildlife conservation areas and to identify protected wildlife species. The previous 1960 law provided total protection to nine species, prohibiting hunting of these species. This was increased to 15 species by the 1992 law.¹⁶⁹
4. *National Park Act, BE 2504 (1961)* also resulted from the forest conservation policy. It enables national parks to be established, a National Park Committee and the regulations for the protection and maintenance of National Parks.¹⁷⁰
5. *Forest Plantation Act, BE 2535 (1992)*. An alternative to exploitation of native forest is to utilise trees from forest plantations. A policy to support this type of forestry was initiated through the *Forest Plantation Act, BE 2535 (1992)*. By implementing this Act, the Government aimed to achieve 40 per cent forest-cover areas target and support recovery of forest areas lost as a result of extensive logging concessions.¹⁷¹ This Act specifies which areas must be reforested, provides for private reforestation rights, ownership and exemption from royalties on forest products from reforested areas.¹⁷²
6. *The Chainsaw Act BE 2545 (2002)* results from the *Forest Plantation Act*, regulating the use and importation of chainsaws for logging.¹⁷³

Even though the *Constitution (2007)* has aspects that might help recognise the rights of community to forest management, in practice communities have not been able to take advantage of this law.

¹⁶⁵Ibid, 212 -213.

¹⁶⁶ FAO- Regional Office for Asia and the Pacific, above n 10, 10.

¹⁶⁷ Matsumura, above n 159, 109.

¹⁶⁸ Lasimbang, and Luithui, above n 2,20; Lakanavichian, above n 5, 330; The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), 'Thailand's National Parties Self-Assessment: Convention on Biological Diversity ' (ONEP, 2010) 23.

¹⁶⁹ Lasimbang, and Luithui, above n 2,20.

¹⁷⁰ FAO- Regional Office for Asia and the Pacific, above n 10, 10, 18.

¹⁷¹ Lakanavichian, above n 7.; Matsumura, above n 159, 110.

¹⁷² FAO- Regional Office for Asia and the Pacific, above n 10, 10.

¹⁷³ Ibid, 88.

Communities have rights to participate, as stated by law, but the final decision is made by the State. The government in fact enforces restrictive forest laws. All forest practices conducted by community are subject approval by the RFD and the DNWPC. Issues concerning community forest management in Thailand are directed by the Community Forest Management Bureau (CFMB), which is under the umbrella of the RFD. The CFMB implements four laws that are pertinent to the involvement of communities in forest management:

1. *State Administration Act (No. 5) BE 2536 (1993)*, especially section 32;
2. *The Ministerial Regulation on the Organisation of the RFD, Ministry of Natural Resources and Environment BE 2547(2004)*;
3. *The National Reserved Forest Act*; and
4. *The Forest Act*.

The *State Administration Act* and the *Ministerial Regulation* are linked. The former provides the administrative power for the *Regulation*. The *Ministerial Regulation* specifies that the RFD is responsible for promoting forest planting; community forest management; and commercial forest plantation and so on. Article 32 of the *State Administration Act* emphasises that the RFD President under MNRE has powers, as stated in the *Ministerial Regulation* to take control of any affair in the RFD. Concurrently, section 19 of the *National Reserved Forest Act* and sections 17 and 32 of the *Forestry Act* empowers the President to appoint staff to conduct their roles as specified in the *Ministerial Regulation*. The President of the RFD relies on these administrative powers to approve projects for forest restoration, one of these being the restoration of Community Forest.

3.3.1.4 Act setting the framework for environmental management

The Enhancement and Conservation of the National Environmental Quality Act BE 2535 (1992) establishes the standards for the maintenance and conservation of environmental quality including forest resources. Issues addressed include public participation, environmental funds, liability and penalties for violations of the *Act*.¹⁷⁴

3.3.1.5 Relevant Administrative laws

Local governments promulgate local legislation to manage forest within their area.¹⁷⁵ The legal framework for doing so is:

- The *State Administration Act BE 2534 (1991)*, which divides the administration of Thailand into three levels: Central; Regional; and Local, and specifies the responsibility of those three administrative levels.¹⁷⁶

¹⁷⁴Lasimbang and Luithui, above n 2,23.

¹⁷⁵*Constitution 2007 s 284* (Thailand).

¹⁷⁶*The State Administration Act BE 2534 (1991)* (Thailand).

- The *Reorganisation of Ministries and Departments Act BE 2545 (2002)* specifies the details of governmental agencies and their responsibilities.¹⁷⁷
- *Determining Plans and Process of Decentralisation to Local Government Organisation Act BE 2542 (1999)*. This Act establishes a committee of the central government. The committee called ‘The Determining Plans and Process of Decentralisation to Local Government Organisation Committee’ has the power to initiate decentralisation plans and identify public-service activities (including natural resource management) that local government should be responsible for in their own administrative districts.¹⁷⁸ In spite of this Act, the power to manage forests is still under the control of the Central Government’s MOI through the DLA.¹⁷⁹
- *Official Information Act, BE 2540 (1997)* requires that the Government make certain information on the environment and health available to the public.¹⁸⁰
- *The Bangkok Metropolitan Administration (‘BMA’) Act 1985* empowers staff of BMA to manage natural resources, including forests, within the Bangkok area.¹⁸¹
- *The Pattaya City Administrative Organisation Act 1999* empowers the City of Pattaya to manage natural resources, including forests, within Pattaya City.¹⁸²
- *The Provincial Administration Organisation (‘PAO’) Act 1997* empowers the staff of the PAO to manage forests within its province.¹⁸³
- *The Municipal Act 1953* empowers Municipalities to manage natural resources, including forests, within its territory.¹⁸⁴
- *Tambon Council and Tambon Administrative Organisation Act 1994* empowers the staff of the TAO to manage forest within each sub-district territory.¹⁸⁵

3.3.1.6 Land law

The *Land Code 1954* and *Land Code Promulgation Act 1954* are administered by the Land Department (LD). The Act has its most important bearing on the question of land ownership in Thailand. The Act aims to formalise title deeds,¹⁸⁶ and is relevant to private land. Forestland is

¹⁷⁷The *Reorganisation of Ministries and Departments Act BE 2545 (2002)*(Thailand).

¹⁷⁸The *Determining Plans and Process of Decentralisation to Local Government Organisation Act BE 2542 (1999)* (Thailand) s6, s12; Lasimbang and Luithui, above n 2,28.

¹⁷⁹Nagai, Funatsu and Kagoya, above n 116,8-9; *Ministerial Regulation on Administrative Divisions of Department of Local Administration, Ministry of Interior BE 2551 (2008)* (Thailand) s 2.

¹⁸⁰*The Official Information Act BE 2540 (1997)* (Thailand)

¹⁸¹*The Bangkok Metropolitan Administration Act 1985* (Thailand).

¹⁸²*The Pattaya City Administrative organisation Act 1999* (Thailand)

¹⁸³*The Provincial Administration Organisation Act 1997* (Thailand)

¹⁸⁴*The Municipal Act 1953*(Thailand)

¹⁸⁵*The Tambon Council and Tambon Administrative Organisation Act 1994* (Thailand)

¹⁸⁶Gershon Feder et al, *Land policies and farm productivity in Thailand* (Johns Hopkins University Press for the World Bank, 1988) 11; Lasimbang and Luithui, above n 2, 20; Xavier Gine, *Land security in rural Thailand: Evidence from a property rights reform* (World Bank, Development Research Group, Finance Team, 2005) 5-6.

classified as public land under the *Forest Acts* administered by the RFD.¹⁸⁷ However, formalising title deeds may affect forest areas, such as when land classified under the *Land Code* overlaps with forestland.¹⁸⁸

3.3.1.7 Decrees

There are many subordinate laws concerning forest management, such as the *Royal Decree Logging Ban 1992*¹⁸⁹ and other Royal Decrees declaring protected forest areas.¹⁹⁰

3.3.1.8 Cabinet resolutions

A number of Cabinet Resolutions are relevant to forest governance, such as that of: 10 August 2004 regarding initiating a ‘New Plan of Forest Villages Project’; 17 January 1989 (Order number 32/2532) revoking all logging licenses in natural forest and effectively banning all forms of logging, particularly in the uplands; and 30 June 1998 (BE¹⁹¹ 2541) entitling ‘the approved opinion about measures for the forestland problems’.¹⁹²

3.3.2. Stakeholders in the regulatory system

Forest governance in Thailand is carried out through the interactions of the Government, the community, and activists (mainly NGOs). The regulatory system has a significant impact on the operation of the governance system and attempt, in turn, to affect the governance system. This section discusses how the forest regulatory system works and who the key stakeholders are within that system. The discussion is summarised in Figure 3.4 in the form of a systems map that shows the entities involved in forest governance, the sources of their power (eg legislation) and how they interact and influence forest governance. The map incorporates the entities involved (government and non-government organisations) and the source of power of these entities that enable them to influence other actors in the system. A significant source of power for government departments is the legislation they administer, but, as the map demonstrates, there are other sources of power, such as exerting influence through building or denying capacity – such as through education, budgets, and research and development.

¹⁸⁷ Gine, above n 186, 5.

¹⁸⁸ The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), Executive Summary of Draft Strategy for Land Management: Land Tenure; Land Preservation for Allocation; and Land Preservation for Common Use (ONEP, 2008) 24.

¹⁸⁹ Ibid.

¹⁹⁰ The Royal Forest Department (Thailand), ‘National Report to the Fifth Session of the United Nations Forum on Forests: Thailand’ (National Report to UNFF 5, Ministry of Natural Resources and Environment (Thailand), 2005) 11.

¹⁹¹ In Thailand, the name Buddhist Era (BE) is a year numbering system which is 543 years ahead of the Gregorian year. For example Year 2013 in Europe is year 2556 in Thailand.

¹⁹² Lasimbang and Luithui, above n 2, 25; Tim Curtis and Naomi Doak, *Report on the Mission to Dong Phrayayen – Khao Yai Forest Complex, Thailand from 28th February to 6th March, 2012* (UNESCO, 2012) 10.

3.3.2.1 Central Government

The Government authorities involved in forest governance can be categorised as: those with direct responsibility; those with indirect responsibility; and agencies with general responsibilities that influence forest management.

Direct responsibility

Two Central Government authorities (coded green in Figure 3.4) are charged with implementing the six keys forest-related Acts. These are the RFD, and the DNWPC. Both authorities are under the supervision of the MNRE. Other authorities play a supporting and monitoring role, such as establishing relevant policies and standards, or conducting research for development of forest management, or allocating national budgets for forest management.

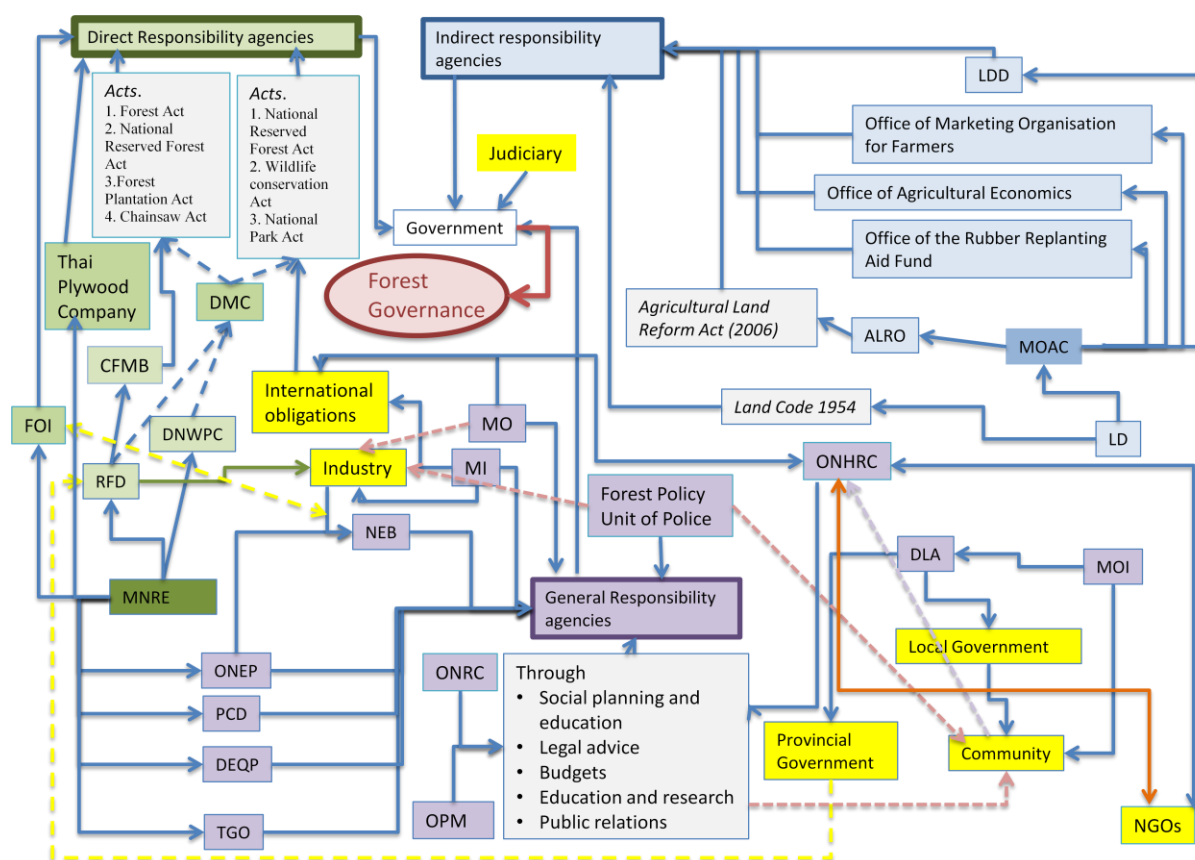


Figure 3.4: The regulatory system influencing forest governance in Thailand (Highlight in yellow show other influencers)

MNRE

MNRE manages national environmental resources including forests.¹⁹³ Under the MNRE, five agencies have direct responsibilities for forest management.

¹⁹³The Thailand Ministry of Natural Resources and Environment (MNRE), 'the Forest Carbon Partnership Facility (FCPF): Readiness Plan Idea Note (R-PIN) Template- The Kingdom of Thailand' (FCPF R-PIN Template Version of March 8, Forest Carbon Partnership Program Organisation 2008) 13.

1. RFD is directly responsible for forest practices in forest areas classified as general forest and reserved forest.¹⁹⁴ The RFD implements the *Forest Act BE 2484 (1941)*; the *National Reserved Forest Act BE 2507 (1964)*; *Forest Plantation Act, BE 2535 (1992)*; and the *Chainsaw Act BE 2545 (2002)*.¹⁹⁵
2. DNWPC is directly responsible for forest practices within the reserved national parks and wildlife sanctuaries.¹⁹⁶ The DNWPC implements the *National Reserved Forest Act BE 2507 (1964)*; the *Wildlife Conservation and Protection Act, BE 2535 (1992)*; and the *National Park Act, BE 2504 (1961)*.¹⁹⁷

There is an overlap in functions between the RFD and DNWPC in spite of *Royal Thai Law Decree No 119/99 Kor of 2/10/2002*, which mandates the separation of DNWPC from the RFD. On 10 July, 2012, the Cabinet proposed a merge of the two agencies. This is currently being considered by Parliament.¹⁹⁸

3. Department of Marine and Coastal resources (DMC) is appointed by the RFD and the DNWPC to implement the six forest-related *Acts* focusing on conservation and rehabilitation of coastal flora and fauna including mangrove forests.¹⁹⁹
4. Forest Industry Organisation (FIO) is responsible for commercial forest plantations, reforestation and silviculture, conducting forest industry research, and raising public awareness of the importance of forest conservation.²⁰⁰
5. Thai Plywood Company Limited has the role of rationalising the use of wood resources using the latest technology and encouraging people to use low quality wood to produce standard products to decrease the utilisation of more valuable wood such as teak.²⁰¹

¹⁹⁴FAO- Regional Office for Asia and the Pacific, above n 10, 11, 77; *The Royal Decree of Transferring the Royal Forest Department from the Ministry of Agriculture and Cooperatives to the Ministry of Natural Resources and Environment and of adjustment the responsibility of Department of Marine and Coastal Resources; Royal Forest Department; and the National Park, Wildlife and Plant Conservation Department 2003* (Thailand) s 3; *Ministerial Regulation on the Organisation of the Royal Forest Department, Ministry of Natural Resources and Environment BE 2547 (2004)* (Thailand) s 1.

¹⁹⁵The Royal Forest Department (Thailand), *Law -related to Royal Forest Department* (2013) Royal Forest Department (Thailand) <http://www.forest.go.th/forestry_law/index.php?option=com_content&view=article&id=337&Itemid=491&lang=th>.

¹⁹⁶FAO- Regional Office for Asia and the Pacific, above n 10, 11, 78; The Ministry of Natural Resources and Environment (Thailand), *About Ministry: Organisation Info* (2011) The Ministry of Natural Resources and Environment <http://easyweb.mnre.go.th/ewt/monre_eng/ewt_news.php?nid=5>.

¹⁹⁷ Department of National Parks, Wildlife and Plant Conservation (Thailand), *Law-related to the Department of National Parks, Wildlife and Plant Conservation (Thailand)* (2013) Department of National Parks, Wildlife and Plant Conservation (Thailand) <http://www.dnp.go.th/Dnplaw_main.asp>.

¹⁹⁸Confirmed December 2013; Prasit Tangprasert and Samatcha Hunsara, 'Forest and parks departments to be merged in a year', *The Nation* (Bangkok, Thailand), 12th July 2012; Apinya Wipatayotin, 'Forest dept merger backed: Encroachers easier to tackle with one agency', *Bangkokpost* (Bangkok, Thailand), 12th July 2012.

¹⁹⁹FAO- Regional Office for Asia and the Pacific, above n 10, 11; *The Reorganisation of Ministries and Departments Act BE 2545 (2002)*(Thailand) s 23; Law Division of the Department of Marine and Coastal resources (DMC): Thailand, *The Responsibility of Department of Marine and Coastal resources (DMC)* (DMC, 2009), 5-36.

²⁰⁰FAO- Regional Office for Asia and the Pacific, above n 10, 11.

²⁰¹The Ministry of Natural Resources and Environment (Thailand), above n 196.

Indirect responsibility

The Ministry of Agriculture and Cooperatives (MOAC) and the MOI play a key role in land use management and agricultural development. They can indirectly affect forest areas through their sub-agencies (coded blue in Figure 3.4):

MOAC

- The Land Development Department (LDD) is responsible for land-use planning. Several categories of forestland uses are included in its land-use-related work.²⁰²
- The Agricultural Land Reform Office (ALRO). Cabinet resolutions on the 10th and 17th March 1992 classified forest areas, totalling 23.52 million ha, in 63 Provinces of Thailand into three types: conservation, economic and agricultural zones.²⁰³ The agricultural zone (deforested areas suitable for agriculture) was transferred to the ALRO under the MOAC.²⁰⁴ The ALRO allocates agricultural lands to farmers who are landless or have insufficient land, as stipulated with the *Agricultural Land Reform Act (2006)*.²⁰⁵
- The Office of Agricultural Economics collects statistics and conducts economic studies concerning agricultural crops, as well as information on forests.²⁰⁶
- The Office of the Rubber Replanting Aid Fund is responsible for the development of rubber plantations.²⁰⁷
- The Office of Marketing Organisation for Farmers is responsible for developing possible alternative markets for forest products.²⁰⁸

MOI

The LD surveys forest areas nominated as public land, and issues land title deeds and certificates of land use to people who are landless.²⁰⁹ The LD operates under the *Land Code 1954*. The LD, through the *Land Code*, can issue the land title on forest areas. On 30 November 1954, the *Land Code* provided an option for anyone occupying forestland to receive a land use claim certificate providing he/she can prove his/her claim within 180 days. The *Land Code* also declared 50 per cent of the country as technically forest and under the management of the RFD.²¹⁰ The MOI itself also has a crucial role in classifying forest areas. For example, Cabinet Resolutions were proposed by the MOI

²⁰² FAO- Regional Office for Asia and the Pacific, above n 10, 12.

²⁰³ Pearmsak Makarabhirom, 'People's participation in forest management in Thailand: constraints and the way out' (Paper presented at the 3rd IGES International Workshop on Forest Conservation Strategies for the Asia and Pacific Region, 1999) 174.

²⁰⁴ Gine, above n 186, 10; Sato, above n 158, 162.

²⁰⁵ The Thailand Agricultural Land Reform Office (ALRO), 'Agrarian Reform and Rural Development in Thailand' (National Report, ALRO, 2006) 16; Gine, above n 186, 10.

²⁰⁶ FAO- Regional Office for Asia and the Pacific, above n 10, 12.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ FAO, 'Forestland for the people - A forest village project in Northeast Thailand' (Report Number 489E02, FAO, 1998); A. Awang, 'Land Ownership in Thailand' (1993) 4(2) *Buletin Ukur* 40.

²¹⁰ Lasimbang and Luithui, above n 2, 20-21.

in 1961 and 1962 to define ‘permanent forest’ and thus enable their classification for conservation.²¹¹ Land classifications to support the issue of land title deeds are also conducted by the LD. In 1976, Cabinet authorised the LD to issue ‘No So 3’ land titles (which would create a category of landownership with less security than an irrevocable title deed because it can be revoked if the land has not being used within the first ten years)²¹² in national forest reserves. However, No So 3 was strongly opposed by the RFD because the titled lands were created in national forest reserves. The land titling system was withdrawn and ‘No So 3’ titles already issued were revoked.²¹³

General responsibilities

The authorities listed below have general administrative responsibilities, but their role can influence forest management (coded purple in Figure 3.4).

MNRE

As outlined above, five agencies under MNRE have direct responsibility for forest management. The following agencies, also operating under MNRE, have general responsibility that can affect forest management.

1. ONEP develops and manages plans and policies for natural resources, environmental enhancement and conservation, including of forests.²¹⁴ The National Environmental Board (NEB), which is meant to formulate policy and coordinate natural resource management, including of forests, is also administered under ONEP.²¹⁵
2. The NEB Board is chaired by the Prime Minister and consists of the heads of all relevant ministries whose roles affect natural resource management, experts on natural resources and environment and the private sector.²¹⁶ To formulate plans and policies on natural resource management, the NEB submits draft policies and plans to the Cabinet for approval.²¹⁷ The NEB is also responsible for delivering policy recommendations to the National Economic and Social Development Board (NESDB). Then NESDB prepares and submits the National Economic and Social Development Plan (NESDP) to Cabinet, which can include forest issues on a five-year cycle.²¹⁸

The NEB also has the power to establish environmental standards, to approve the National Environmental Quality Management Plan including the action plan proposed by Provincial

²¹¹ The Cabinet Resolution of the 14 November, 1961 and 1962 (Thailand); The letter of the Ministry of Interior number 9911/2504 signed by 23rd June 1961.

²¹² Lakanavichian, above n 5, 335.

²¹³ Wataru, above n 10, 230.

²¹⁴ FAO- Regional Office for Asia and the Pacific, above n 10, 11.

²¹⁵ Lasimbang and Luithui, above n 2, 13.

²¹⁶ *Enhancement and Conservation of National Environmental Quality Act 1992* (Thailand) s 13.

²¹⁷ Lasimbang and Luithui, above n 2, 14.

²¹⁸ The Thailand National Economic and Social Development Board (NESDB), *History and Role of the National Economic and Social Development Board (NESDB)* (2012) The National Economic and Social Development Board (Thailand) <<http://eng.nesdb.go.th/Default.aspx?tabid=72>>.

Governments. It also has the power to recommend amendments to natural resource and environmental laws, enforce the laws and monitor whether sector-related agencies are complying with the laws.²¹⁹

3. The Pollution Control Department (PCD) regulates, co-ordinates, evaluates, and controls potentially polluting activities.²²⁰
4. The Department of Environmental Quality Promotion (DEQP) conducts research to help improve environmental quality and raise awareness of the necessity of protecting and sustaining the environment.²²¹
5. The Thailand Greenhouse Gas Management Organisation (TGO) is a newly established public organisation under the MNRE. This agency has a role in greenhouse gas (GHG) emission reduction in Thailand through promoting low carbon activities, providing GHG-related information, approving carbon sequestration projects, and taking a role as the Designated National Authority (DNA) for the CDM (Clean Development Mechanism) office in Thailand. The TGO can influence forest practices including reforestation and afforestation to accomplish GHG emission reduction.²²²

MOI

Two authorities have general administrative responsibility in general, which can affect forest management:

1. The DLA. The everyday operations of provincial and district forest officers of the RFD are supervised by the office of the Provincial Governors, under the Local Administration Department of the MOI. In addition, the DLA has an active role through local government to help local communities develop integrated sustainable resource management plans, including plans for forest practices.²²³
2. The Community Development Department (CDD) under MOI also plays a key role in efforts to help local communities to be involved in sustainable resource management, including forest activities.²²⁴

²¹⁹ Lasimbang, and Luithui, above n 2, 14.

²²⁰ FAO- Regional Office for Asia and the Pacific, above n 10, 11.

²²¹ Ibid.

²²² The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), 'Thailand's National Capacity Self-Assessment: United Nations Framework Convention on Climate Change' (ONEP, 2010) 10-11; Thailand Greenhouse Gas Management Organisation (Public Organisation), *About TGO* (2011) Thailand Greenhouse Gas Management Organisation (Public Organisation) <http://www.tgo.or.th/english/index.php?option=com_content&view=category&id=25&Itemid=28>.

²²³ *Ministerial Regulation on Administrative Divisions of Department of Local Administration, Ministry of Interior 2008* (Thailand) s 2; *The Ministerial Regulation of Bureaucrat Division of the Department of Local Administration BE 2552 (2009)* (Thailand) s 2; ICEM, above n 13, 46; FAO- Regional Office for Asia and the Pacific, above n 10, 12.

²²⁴ *The Ministerial Regulation of Bureaucrat Division of the Community Development Department BE 2552 (2009)* (Thailand) s 2.

The Ministry of Industry (MI) and the Ministry of Commerce (MC) promotes forest-based industries, and their internal and overseas trade.²²⁵

The Office of the Prime Minister (OPM)

This authority carries out the general administrative work of the Prime Minister and the Cabinet. Its responsibilities include general administration and proposing policies regarding national economy; society; politics; security; and it issues Cabinet Resolutions dealing with forest practices.²²⁶

Agencies under the OPM also have a role in influencing forest practices, including:

- The NESDB prepares and submits the NESDP to Cabinet, which can include forest issues on a five-year cycle. These plans are implemented through action plans by various ministries including forest ministries. An example is the forest master planning process that needs to be coordinated with NESDP approved by NESDB.²²⁷ At present, Thailand is working through the *Eleventh National Economic and Social Development Plan (2012-2016)*.²²⁸
- The Budget Bureau is responsible for drawing up the annual government statement of expenditure for submission to Parliament. The Bureau also makes budgetary allocations to all government agencies, thereby influencing expenditure on forest practice.²²⁹
- The Office of the Council of State (Thailand) prepares the draft laws as instructed by the Prime Minister and the Cabinet, and provides legal advice to government agencies, the Prime Minister and the Cabinet as well providing support for making, amending, and repealing laws.²³⁰
- The Office of the Permanent Secretary has a delegated authority which may affect forest practices through the Office of Community Land Title. This office was established in 2010 to support land distribution and to deal with the issue of landless people. Large areas of land that was supposed to have been distributed to landless people under the community land title deeds are the responsibility of this Office.²³¹

²²⁵ FAO- Regional Office for Asia and the Pacific, above n 10, 12.

²²⁶ *The Reorganisation of Ministries and Departments Act BE 2545 (2002)* (Thailand) s 6; Office of Prime Minister, above n 110; Lasimbang, and Luihui, above n 2, 25-26; Curtis and Doak, above n 192, 10.

²²⁷ FAO- Regional Office for Asia and the Pacific, above n 10, 81-82; The NESDB, above n 218.

²²⁸ The Thailand NESDB, 'Summary of the Eleventh National Economic and Social Development Plan (2012-2016)' (The Thailand NESDB, 2012) i-ii.

²²⁹ The Thailand Bureau of the Budget, *Thailand Bureau of the Budget* (2012) The Thailand Bureau of the Budget <<http://www.bb.go.th/bbhomeeng/page.asp?option=viewdetail&dsc=&ifmid=0150000315002001%2F481012%2D00001>>; Krungthep turakij, 'Budget cut: threaten to insecurity of three hundred thousand forest rangers', *Krungthep turakij* 2nd September 2010'.

²³⁰ *The Office of the Council of State Act BE 2522 (1979)* (Thailand) s 7; The notification of the Office of the Council of State No. 197/ BE 2535 entitling 'The Legal Case about illegal logging and forest clearing in the protected areas'; The notification of the Office of the Council of State No. 434/ BE 2536 entitling 'the forest areas as prescribed by the cabinet resolution on 14th November BE 2505'.

²³¹ Christian Erni, *Community land title law passed in Thailand* (2010) International Work Group for Indigenous Affairs (IWGIA) <http://www.iwgia.org/news/search-news?news_id=128>; The Thailand Government Public Relations Department, *Inside Thailand: Issuance of Community Land Title Deeds in an Effort to Push for Land Distribution* (2010) The Thailand Government Public Relations Department <http://thailand.prd.go.th/view_news.php?id=5134&a=2>; *The Regulation of the Prime Minister Office on the Issuance of Community Land Title Deeds* BE 2553 (2010) (Thailand).

- The Office of Knowledge Management and Development (Public Organisation) (OKMD) encourages people to develop their knowledge to keep pace with the rapid development of society. The responsibility of the OKMD influences forest management by encouraging people to learn and develop their knowledge regarding forest practices.²³²
- The TRF is supervised by Office of Prime Minister but operates independently. The TRF is responsible for allocating funds and supporting research aimed at establishing a knowledge base to help the country overcome its problems. The TRF can affect forest practice by providing funding and supporting forest-related research.²³³
- The Mass Communication Organisation of Thailand (MCOT) is formerly a state enterprise under the umbrella of Office of Prime Minister. The MCOT was established to produce and distribute media, including television programs and documentaries. The MCOT can therefore, influence forest practices through mass media.²³⁴
- The Government Public Relations Department (Thailand) (PRD) has the role of communicating and distributing information to people to promote mutual understanding and to maintain sound relationship between people in Thailand. The PRD can influence forest practices through communicating information about forest practices.²³⁵

The Forest Policy Unit of the Police Department assists in forest protection and control of illegal activities.²³⁶

The Office of National Research Council of Thailand (ONRC) plays a key role in extension. It is responsible for proposing policy recommendations to Cabinet about issue that need to be researched, and then proposals to the Research Council. The ONRC also facilitates research and allocates funds for research.²³⁷ The role of ONRC, thus, can influence forest research (such as research in how to apply the ‘wet firebreak’ method, initiated by His Majesty the King, to prevent forest fires).²³⁸

²³²The Royal Decree on Establishment of Office of Knowledge Management and Development (Public Organisation) BE 2547 (2004) (Thailand) s 7; Naewna Newspaper, 'Opening of the exhibition of Forestry Film raising the awareness of conservation for Thai people', *Naewna Newspaper* (Thailand) 22nd February 2012.

²³³Research Endowment Act BE 2535 (1992)(Thailand) s 4; The Thailand Research Fund (TRF), *The Thailand Research Fund (TRF)* (2010) TRF <http://www.trf.or.th/index.php?option=com_content&view=article&id=47&Itemid=122>; The Thailand Research Fund: TRF (Thailand), *List of Research Projects on Climate Change* (2009) TFR<http://www.trf.or.th/index.php?option=com_wrapper&view=wrapper&Itemid=233>.

²³⁴Office of Prime Minister, above n 110; Mass Communication Organisation of Thailand (MCOT), *Company's Business* (2012) MCOT<<http://mcot.listedcompany.com/business.html>>; Mass Communication Organisation of Thailand (MCOT), *Government set to launch mass reforestation plan* (2012) MCOT <http://www.mcot.net/cfcustom/cache_page/388624.html>.

²³⁵Ministerial Regulation of the Divided Authorities of Government Public Relations Department BE 2545 (2002) (Thailand) s 1; The Thai Government Public Relations Department, *Inside Thailand* (2004-2012) The Thai Government Public Relations Department <http://thailand.prd.go.th/column_search_result.php?searchstring=forest+>.

²³⁶FAO- Regional Office for Asia and the Pacific, above n 10, 12.

²³⁷*The Research Council Act BE 2502 (1959)* (Thailand) s 11.

²³⁸The Thailand Government Public Relations Department, *Inside Thailand: Creating Wet Firebreak against Forest Fires and Haze* (2012) The Thailand Government Public Relations Department<http://thailand.prd.go.th/view_news.php?id=6226&a=2>.

Office of the National Human Rights Commission of Thailand (ONHRC) is an independent authority enshrined in the *Constitution*.²³⁹ This authority is responsible for protecting human rights,²⁴⁰ by monitoring and reporting compliance with laws regarding human rights, as well as examining compliance with international human rights obligations ratified by Thailand. In case of violation of laws, the ONHRC has the power to propose remedial measures including reporting non-compliance to the Parliament. This power includes: providing suggestions to the Cabinet and Parliament on how to implement international human rights agreements ratified by Thailand, conducting cases (also on behalf of complainants) in the Constitutional or the Administrative Courts concerning provision in legislation or administrative acts that affect human rights in violation of the Constitution. In addition, the ONHRC is charged with promoting respect for human rights domestically and internationally; providing an annual report on the country's human rights situation to the Parliament and the Cabinet; providing recommendations for the revision of laws, rules or regulations, and policy to the Parliament and the cabinet for promoting and protecting human rights; promoting education; research; and knowledge about human rights; collaborating and coordinating with government agencies, NGOs and other human rights organisations.

A division of the ONHRC is the Subcommittee on Land and Forests. This subcommittee works to protect human rights regarding land and forest management. In 2006, this subcommittee investigated the expansion of the factory area in Prajuab Kirikhun Province. The areas of proposed expansion included national reserved forestland that a number of people relied upon for their livelihoods. The people took their claim to the Subcommittee of Land and Forest under the ONHRC requesting that the expansion be disallowed. However, on 15 August 2012 the Administrative Court decided that the expansion of the factory was valid.²⁴¹

3.3.2.2. Provincial Government

In relation to forest management, the RFD and the DNWPC have regional offices throughout the country. These offices are directed by the RFD and the DNWPC²⁴² and are supervised by the Office of the Provincial Governor under DLA. The DMC delegates its power to its regional offices to manage mangrove forest.²⁴³

²³⁹ *Constitution 2007* s 256 (Thailand).

²⁴⁰ *Constitution 2007* s 257 (Thailand); *The National Human Rights Commission Act BE 2542 (1999)* (Thailand) s 15 and 32.

²⁴¹ Sunee Chairas, 'The case of expansion of the Sahaviriya Cast Iron Factory and the Conflict regarding state policy and the communal rights', *Matichon* (Thailand) Sunday, May 20 2007; Regional Correspondence team, *Administrative Court is making decision on the case of industrial estate land at Bang Sapan today* (2012) Office the National Human Rights Commission of Thailand (ONHRC) <http://www.nhrc.or.th/2012/wb/th/print_news_detail.php?nid=717>; National Public Health Foundation, *Jintana Kaewkoa persistently claiming to court for protecting the watershed* (2012) National Public Health Foundation <<http://ppvoice.thainhf.org/?module=article&page=detail&id=1136>>.

²⁴² The Thailand Ministry of Natural Resources and Environment (MNRE), above 193, 3.

²⁴³ Department of Marine and Coastal resources (Thailand), *Department of Marine and Coastal resources: The Responsibility* (2012) Department of Marine and Coastal resources (Thailand) <<http://www.dmc.go.th/dmcr2009/digram.php>>.

3.3.2.3 Local Government

Five forms of local government under the supervision and control of the MOI manage forest resources within their own jurisdictions regulated by their individual Acts (as previously discussed).²⁴⁴

The jurisdiction of the PAO overlaps with the jurisdiction of the Municipality and the TAO. Forests beyond the jurisdiction of Municipalities and TAOs are under the jurisdiction of the PAO.²⁴⁵

3.3.2.4 Judiciary

Decisions made in the Court of Justice,²⁴⁶ the Constitutional Court,²⁴⁷ and the Administrative Court²⁴⁸ impact the implementation of forest laws.

The Court of Justice has three levels: the Court of First Instance, the Appeal Court and the Supreme Court.²⁴⁹ The Court of Justice adjudicates forest cases, for example the claim for compensation as a result of unfair eviction from forest areas.²⁵⁰

In 2007, it was claimed that the provisions of the *Community Forest Bill*, which was passed by the Parliament, contradict the provision of *Constitution*. This issue was brought to the Constitutional Court.²⁵¹ The court has made the decision that the *Community Forest Bill* was invalid because the process of drafting this Bill does not comply with the provision of the *Constitution*, which requires at least half of the ad hoc committee members to refer a Bill to the parliament.²⁵²

The Administrative Court hears cases in which members of government agencies and/or public officials are accused of misusing their power, delaying in undertaking their duties, or failing to perform their duties. For example, the Administrative Court hears cases in which the government arguably failed to follow the law regarding issuing the concession for commercial plantation. Those who believe they have been unfairly affected by issuing the plantation concession can bring their cases to the Administrative Court seeking to have the government decision reversed.²⁵³

²⁴⁴*Constitution 2007 s 281* (Thailand).

²⁴⁵*The Provincial Administration Organisation Act 1997* (Thailand) s 45; *The Determining Plans and Process of Decentralisation to Local Government Organisations Act BE 2542 (1999)* (Thailand) s 17.

²⁴⁶Thailand Central Intellectual Property and International Trade Court, above n 137, 196.

²⁴⁷FAO, above n 138, 39.

²⁴⁸Thailand Central Intellectual Property and International Trade Court, above n 137, 196.

²⁴⁹Aramkul, above n 106, 124.

²⁵⁰Thailand Central Intellectual Property and International Trade Court, above n 137, 188, 196.

²⁵¹FAO, above n 138, 39.

²⁵²Pattama Soobkambung, *Introducing law by public: the lesson from past to the rights that could be implementable* (2013) King Prajadhipom's Institute

<http://www.kpi.ac.th/kpith/index.php?option=com_content&task=view&id=250&Itemid=214>

²⁵³Roddan, above n 139, 6, 40-44; Jinarat, above n 16, 104-106.

3.3.3. Impact of legislation

Forest governance in Thailand has been developed on the basis that use, access and management of forests is largely determined by the State. Privately owned forests are mostly plantation forest, which comprise a small percentage of total forest area.²⁵⁴ Thus, implementing forest laws in Thailand affects, particularly, the rights of those whose livelihoods rely on forests.

3.3.3.1 The Forest Act, National Reserved Forest Act

The RFD was established in 1896 and is the sole manager of public forest areas throughout Thailand. Its focus is a policy of ‘cutting and processing timber for export’.²⁵⁵ The *Forest Act of 1941* further strengthened State ownership of forests by declaring that any land not privately acquired under the *Land Law* will be considered as State-owned forest.²⁵⁶ The *Forest Act* is mainly concerned with the collection of forest products, seeking to regulate activities within the forest (such as how to cut down the preserved species of timbers, firing and land clearing). For example section 54 of the *Forest Act* prohibits the clearing, burning, occupation or possession of forestland. Contravention of this section carries a penalty of between 50,000-100,000 baht and possible imprisonment for between two and 15 years.²⁵⁷

The *National Reserved Forest Act*, also administered by the RFD, affects the rights of those people who live in areas designated to be reserved or preserved forest. Under the *Act*, prior investigation of local people’s usufruct rights before designating areas is not necessary. Only a geographical survey is required for designation. The protection of local people’s usufruct rights is determined only after appeal by people who claim such rights and only monetary compensation is available, resulting in an acceleration of forest classification. Between 1962 and 1966, almost 26 million ha were classified as permanent forests and gazetted as reserves. People were no longer allowed to stay in these gazetted areas. The RFD had the legal authority to prohibit farmers from cultivating reserved land and to evict them from such land. The key sections of this *Act* are sections 14 to 16 which specify that within the National Reserved Forests, no one can occupy, possess and exploit reserved land. Logging, collection of forest products and logging of protected timber species may be carried out after obtaining permission from the Director General of RFD.²⁵⁸

²⁵⁴SeeFAO - Regional Office for Asia and the Pacific, above n 10,15; Lakanavichian, above n 5, 326; Wataru, above n 10, 209.

²⁵⁵See Lasimbang, and Luithui, above n 2, 17; Matsumura, above n 159, 109; Sato, above n 158, 160; Kanjan and Kaewchote, above n 9,1.

²⁵⁶Lasimbang, and Luithui, above n 2,17; Matsumura, above n 159, 109.

²⁵⁷Lasimbang, and Luithui, above n 2,17.

²⁵⁸Wataru, above n 10,213 -214; Matsumura, above n 159,109; Lasimbang, and Luithui, above n 2,18;R.J. Fisher, 'Thailand's Forest Regulatory Framework in Relation to the Rights and Livelihoods of Forest Development People' in Henry Scheyvens (ed), *Critical review of selected forest-related regulatory initiatives: applying a rights perspective*, Forest Conservation Project (Institute for Global Environmental Strategies (IGES), 2011) 69, 71.

Critics of the *National Reserved Forest Act* claim that the real purpose of the *Act* was to facilitate commercial logging. It reduces the need to consult the community and leaves the power of decision making on such issues as logging permits to government.²⁵⁹

3.3.3.2 National Parks Act

The concept of national parks in Thailand largely reflects the model used for Yellowstone National Park in the US. The *National Park Act* has 30 sections, and is the law under which people who live in or nearby forestland, such as the Hill Tribes people, are most likely to be arrested and detained. The key section of this law is section 16, which prohibits a number of activities within a national park. The *Act* also imposes penalties for violations; fines vary from five hundred baht to imprisonment not exceeding five years.²⁶⁰

3.3.3.3 Wildlife Conservation and Protection Act, Forest Plantation Act

The *Wildlife Conservation and Protection Act 1992* significantly impacts upon the rights of people whose livelihoods traditionally rely on forestlands through, for example, hunting and gathering forest products. The relevant sections under the *Wildlife Conservation and Protection Act 1992* with regard to forestlands are:

- a. Section 36: No person can hunt wildlife, collect or endanger any nest within a wildlife sanctuary except for educational purposes and then only with permission.
- b. Sections 37 and 38: No person can enter, possess or occupy land, construct, cut, fell, clear, burn or destroy trees within such wildlife sanctuaries.

The three forest conservation Acts: *the Wildlife Conservation and Protection Act, the National Park Act, and the National Reserved Forest Act* are outcomes of protected area system (PA) policy adopted in Thailand and reflect a philosophy that people and forests are incompatible. It has become increasingly evident that the implementation of such an approach is difficult in a country where a great number of people rely on forest resources, and live inside protected areas. The efforts to enlarge protected areas have raised concerns at the local level over livelihoods. In particular, the intention to evict people who rely on the forest for their livelihoods from protected forest areas has caused conflicts between the government and such people.²⁶¹

The implementation of the *Forest Plantation Act* is also problematic. For example, in order to establish forest plantations in the Northeast of Thailand, farmers living in national forest reserves who had not obtained land titles or certificates for the land, were classed as ‘illegal’ encroachers, and were

²⁵⁹ Wataru, above n 10, 222.

²⁶⁰ Lasimbang, and Luithui, above n 2, 18-19; FAO- Regional Office for Asia and the Pacific, above n 10, 19; Reiner Buergin, 'Shifting frames for local people and forests in a global heritage: The Thung Yai Naresuan Wildlife Sanctuary in the context of Thailand's globalisation and modernisation' (2003) 34(3) *Geoforum* 375, 379; RRI, above n 1, 16.

²⁶¹ Buergin, above n 260, 379; Matsumura, above n 159, 106.

violently evicted –often by the military – from land intended for plantations. Farmers who did have certificates of title continued to live in national reserves, but with the risk of eviction as determined by Government.²⁶²

Planting under the *Forest Plantation Act* is mostly for commercial plantations. Private companies who have enough money to invest in industrial plantations can benefit, but communities who rely on forests rarely benefit.²⁶³ In addition, the planting of commercial trees, such as *Eucalyptus*, can cause secondary problems – the *Eucalyptus* species have deep roots and compete for water necessary for adjacent crop growing. As a consequence, affected local people have protested against the plantation program and called for the *Act* to be repealed.²⁶⁴ The *Forest Plantation Act* was amended in 2011 as a consequence of Thailand's ratification of the *Kyoto Protocol*. Section 3.4.6 further discusses the operation of the amendments to the *Act*, and the impact of the *Act* on forest communities.

3.3.4. Efforts to change Thailand's forest governance system

The forest governance system in Thailand has contributed to an ongoing loss of forest cover and negatively impacts on rural communities and indigenous people whose livelihoods rely on forests. As a result, there have been efforts by both the Government and the community – supported by NGOs, to change the governance system.

This section discusses efforts that are being made, who has or is leading the change effort, and who is resisting change and why. The section also discusses the possible impact of Thailand's international obligations on forestry.

Community efforts have been motivated by the successful actions of various groups and the actions of NGOs to help communities realise their potential and have those enshrined in recognised governance structures. The discussion under the subheadings begins by describing the nature of communities, their use of the lands they have traditionally lived in, their traditions for caring for the land and their interactions with government agencies. The discussion then outlines the history of community actions to gain greater participation in forest management and governance.

Government efforts have been alternatively motivated by requirements for economic gain of forests and needs for protecting the environment. Funding issues and lack of capacity have significantly impacted on the ability of the government to deliver on its objectives – though the government's

²⁶²Matsumura, above n 159, 106-110.

²⁶³Hirsch, above n 90, 170; Lakanavichian, above n 5, 330.

²⁶⁴The information in this section relies upon several sources: see Ubukata Fumikazu, 'The Expansion of Eucalyptus Farm Forest and Its Socioeconomic Background: A Case Study of Two Villages in Khon Kaen Province, Northeast Thailand' (2001) 39(3) (December, 2001) *Southeast Asian Studies* 417, 418; Alice Sharp and Nobukazu Nakagoshi, 'Rehabilitation of degraded forests in Thailand: policy and practice' (2006) 2(2) *Landscape and Ecological Engineering* 139, 142; Pornpana Kuaycharoen, 'Plantations are not Forests Commercial Tree Plantations in the Mekong Region: Commercial Tree Plantations in Thailand: Flawed Science, Dubious Politics and Vested Interests' (2004) 9(3) *Towards Ecological Recovery and Regional Alliance (TERRA)*; Brenner et al, above n 7, 16; Hirsch, above n 90, 170.

often-unclear objectives have also played a part in impeding good governance outcomes. The section of government efforts shows how attempted modifications have been both pushed by and stymied by community efforts and, significantly, by international requirements – discussed in the final part of this sub-section.

3.3.4.1 Community efforts

A push for change to the forest governance system in Thailand started with in Ban Huay Kaew, a village located in the Kaew sub-district of Chiang Mai Province, of northern Thailand. The village is partly located in a forest reserve area and its people rely heavily on the forest for their livelihoods. The Huay Kaew community manage the forest based on tradition. A Village Irrigation Committee is the traditional institution governing the use of forest resources. The committee is elected by villagers and has the role of coordinating and overseeing rules that are jointly made by members of the villages. These rules are not written but are understood by members of the villages. However, the rules have been gradually breaking down due to the fact that villagers hold no real authority and are not able to enforce the rules to exclude outsiders.

In February 1989, the government had classified forest areas in Huay Kaew as degraded and leased land to an affluent investor from Chiang Mai for a commercial plantation. The Huay Kaew villagers protested against this concession and took the case to the Court of Administration, with the support from NGOs and academics. In December 1989, the Court cancelled the concession and declared that that Ban Huay Kaew has common property rights over the conflicted lands, making the Huay Kaew community the first group to have recognised common property rights to conflicted forestlands.²⁶⁵

In 1990, a Village Forest Conservation Committee was appointed by the Head of the District to formalise a local level institution for forest management.²⁶⁶ The Huay Kaew Village Forest Conservation Committee defines who the members of the community are and who are allowed to utilise forest resources. Outsiders can only extract forest resources, such as bamboo, upon permission from the Committee. Firewood is restricted for home use and villagers cannot sell firewood to outsiders. Violation of these rules results in a monetary fine and confiscation of the illegitimately obtained forest products. In decision-making on forest management, members of Huay Kaew Village pool their energy, working with the significant support of a NGO.²⁶⁷

²⁶⁵ Roddan, above n 139, 6, 40-44; Jinarat, above n 16, 104-106.

²⁶⁶ Roddan, above n 139, 55-56.

²⁶⁷ Ibid, 38-66.

The northeast region, the largest and most populous region of the country, as a whole had become degraded between 1960 and 1990, losing approximately 12 per cent of its forest cover, predominantly because of concessions for logging and commercial plantations by Thai government.²⁶⁸

In 1992, a small village in Tambon Na Pho Klang sub-district of the Khong Chiam district of Ubon Ratchani Province was affected by excessive logging concessions in Nong Song Hong Reserved Forests, nearby. The legislation at that time prevented their use of the forest. The affected villagers together claimed rights to rehabilitate the degraded forestlands, in the hope that the forest would serve their livelihood in the long term. After extensive negotiations, villagers and the RFD agreed to allow those who had been living in the disputed forest areas long before the forest preservation was announced to remain there. They had to prove their capacity to sustainably manage the lands.²⁶⁹

The Dong Na Tam Community in Ubon Ratchatani Province inhabits an area of 82,536 rais (approximately 12,698 ha) of forestlands. In 1995 forest community committees were established to coordinate efforts and to impose regulations for preventing forest fires and ensure sustainable forest exploitation. Forest authorities from the RFD became facilitators and technical supporters the forest communities. In 1995, spurred by the success of the Tambon Na Pho Klang, the forest communities mobilised and set up as the Dong Na Tam Community Forest Network. Eventually, the network of Dong Na Tam community forest encompassed 36 communities in three districts of Khong Chiam, Si Muang Mai and Pho Sai.

Each forest community had its own management arrangements, reflecting the conditions and needs of the people, but all practise sustainable forest management. For example, the Ban Chat community forest committee adopted a forest management approach similar to the one observed by their ancestors. They classified forest areas into three zones: reserved forest (known as Pa Phee Puu-Taa) where cutting trees and extracting of forest product were strictly forbidden; utility forest (known as Pa Cha) where tree felling is not allowed but people could collect wood products; and animal farming forest where people could graze their animals, collect forest products and harvest trees with permission.²⁷⁰

The Dong Yai Community Forest management system is another example of how forests residents are involved in the governance of their forest. The subdistrict headquarters of Dong Yai is in Srang To Noi, Ubon Ratchatani Province. The Dong Yai Community was established over 150 years ago. It comprises twelve villages with a total population of 7,500 people. The people are mostly poor. Their major occupation is lowland paddy farming. In the last hundred years, the forestlands of Dong Yai have been periodically cleared and used with few controls. In the 1960s and 1970s, the RFD began

²⁶⁸Dantanin et al, above n 88, 11-12.

²⁶⁹Kritsanarangsana and Thaiying, above n 1,7.

²⁷⁰Kritsanarangsana and Thaiying, above n 1,7.

providing logging concessions on Dong Yai's 'multiple use' forest. Fifty per cent of upland forestlands in Dong Yai were also cleared for kenaf (a plant used to make paper) cultivation by its twelve villages.²⁷¹

In 1989 the RFD had revoked the logging concession in Dong Yai forest areas and reclassified the lands as reserved forest. This classification impeded villagers' rights to benefits from the forest or and took away any authority to make decisions relevant to forest exploitation. However, the RFD regional officers encouraged villagers to participate in the protection of the reserved forests. The Tambon Council also supported village committees to informally request each household to assume responsibility for forest protection of small areas. The Tambon Council played a coordinating role between the RFD regional officers, academics and villagers to establish a forest management system.²⁷² The Kamnan, the leader of a sub-district and a member of the Tambon Council were especially influential in developing the forest management system. As the forestland began to revive, wood and non-timber forest products flourished. The Dong Yai forests were then threatened by overexploitation of forest resources by neighbouring districts. The Kamnan called for a Tambon meeting to raise community awareness and discuss the increasing problems of forest overexploitation. This led the Dong Yai communities to adopt a more organised, proactive role in forest management. The Kaman also led the community in developing an improved fire management system, including the use of controlled fires, cutting down weeds to create fire breaks, and spraying with water extinguishers and sand. The Kamnan provides materials and logistical support for fire fighting.²⁷³

With the support of regional forest officers and several forest professors from Kasetsart University, village leaders (puyaibans) were provided with a training course on effective forest management. Village leaders were then expected to transfer their training to members of their communities.

The Dong Yai forest community formed a 'Forest Protector Group' elected by villagers with a decision-making role for forest management in the community. The Group establishes rules such as requiring patrols throughout the community and for extracting non-forest resources, such as non-timber forest products, which remain open to all (including outsiders). The Forest Protector Group is formally recognised by the RFD and are given rights and responsibilities and supported with funds from the Provincial Government. This contribution provides a symbolic incentive that acknowledges the importance of the protection work being conducted by the community.²⁷⁴

The Dong Yai community also launched a forest program to raise additional income for people in its community. This program encourages villagers to plant the popular sweet bamboo in reserved forest;

²⁷¹ Poffenberger and McGean, above n 3.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ibid.

bamboo shoots can be sold as food and stems can be sold for construction purposes. However, this action remains controversial since bamboo planting in the reserved forest of Dong Yai is not legal.²⁷⁵

Even though forest communities in Thailand have demonstrated they can successfully apply traditional practices to manage and live in forests in a sustainable way, such practices have not been formally recognised by the State. The livelihoods of forest communities continue to be threatened, in some cases the rules even casting responsible communities as law breakers subject to fines and imprisonment.²⁷⁶ Apart from the examples already discussed, other communities, with the support of NGOs and academic have made a bid to have forest customary activities practiced over the generation formally recognised. Such efforts began in earnest in 1985 when locals in the northeast protested against the establishment of commercial plantations.²⁷⁷

Efforts were further fuelled by severe flooding in 1989 in the south of Thailand, which sent cut logs and uprooted trees crashing down the hills, wiping out houses, bridges and roads, and burying whole communities. Around 300 people were killed. This situation was considered by Thai people to be caused by the dramatic deforestation generated by the State's logging policy. In response, the Government announced a total logging ban in the country.²⁷⁸ The media highlighted the success of the Ban Huay Kaew in gaining rights to manage their forests, giving hope to other forest communities that they could obtain similar rights. With support of academics and NGOs, such communities placed increasing pressure on government (the RFD) to create a Community Forest Law legalising the customary rights of forest dwellers.²⁷⁹

In 1989, NGOs held a national meeting calling on the government to issue a Community Forest Bill.²⁸⁰ The RFD provided the first draft of the *Community Forest Bill* in 1990. It was criticised by NGOs, academics and grassroots groups as being State-centred and inadequate.²⁸¹ In 1993, those NGOs, academics and grassroots groups who opposed the draft RFD *Community Forestry Bill* developed a 'people's' draft that reinforced the rights of local villages to access and exploit forests.

There were significant differences in the views of the RFD, and NGOs, academics and grassroots activists. Different concepts appeared in the RFD and the 'people's' draft *Community Forestry Bill*

²⁷⁵Ibid.

²⁷⁶Soobkabung, above n 252; Supara Janchitfah, 'Grassroots resistance in the forest: Long-time residents in the Bantad mountain region have banded together to oppose efforts by the National Parks Department to prosecute them for encroachment', *Bangkok Post* (Thailand), 2009; Supara Janchitfah, 'Tragedy in the Forest', *Bangkok Post* (Thailand), 2008 <<http://www.aseanbiodiversity.info/News/54001882.htm>>.

²⁷⁷Barney, above n 90, 1; Brenner et al, above n 7, 16.

²⁷⁸Lakanavichian, above n 5, 333; Brenner et al, above n 7, 16; Buergin, above n 260, 381.

²⁷⁹Roddan, above n 139, 6, 40-44; S. Zurcher, 'Public participation in community forest policy in Thailand: The influence of academics as brokers' (2005) 105(1) *Geografisk Tidsskrift, Danish Journal of Geography* 77, 82-86; Jinarat, above n 16, 104-106.

²⁸⁰Brenner et al, above n 7, 16.

²⁸¹Lasimbang and Luithui, above n 2, 36; Craig Johnson and Timothy Forsyth, 'In the Eyes of the State: Negotiating a "Rights-Based Approach" to Forest Conservation in Thailand' (2002) 30(9) *World development* 1591, 1595-1596.

versions.²⁸² As a result, in 1996, the Government (the Banharn Government) requested the NESDB, a policymaking body composed of both government and public sector, to draft a new version of the *Community Forestry Bill* (typically known as ‘Suanbua Version’), with participation of representatives from government, NGOs, academics, and grassroots communities.²⁸³ This version was approved by the Cabinet on 2 June 1996.²⁸⁴ However, not all groups agreed with the *Bill*, with some NGOs believing that community forests should not be established within protected forest areas such as National Parks or specifically identified watershed protection areas.²⁸⁵ The *Bill* was suspended with the change of Government in 1997.²⁸⁶

The new Chavalit Government, driven by the Forum of the Poor,²⁸⁷ continued addressing the issues of the community in the protected areas covered by the *Community Forest Bill*. A public hearing was conducted in 1997 outside parliament in Bangkok. The Government came to the conclusion that communities can be allowed to live in the protected forestlands if they can prove that they had settled in such areas before 1993. This decision was also criticised by some environmental activists who claimed that the decision continued State-centred management of forests and restricted the capacity of forest communities to participate.²⁸⁸

In 1998, the government changed and the new government was led by Chuan Leekpai. There was opposition to recognising the interdependence of forests and the community by the new Director General of the RFD, Plodprasob Suraswadi. He argued that people and forests cannot co-exist. Consequently, the *Community Forest Bill* was substantially redrafted and the controversy continued.²⁸⁹

In 2000, based on concepts from the new *Constitution (1997)*, which allowed, under article 170, for the introduction of Bills to Parliament at the instigation of 50,000 voters, a revised ‘people’s’ version of the *Community Forest Bill* was submitted to the Parliament.²⁹⁰ The key differences between the people’s version of the *Bill* and that of the RFD version related to: whether a community is allowed to live in protected areas; what forest practices are legitimate in community forests; and what ‘community’ means.²⁹¹ In terms of the definition of community, the people’s version states that, in

²⁸²Jinarat, above n16, 109-122.

²⁸³Lasimbang and Luithui, above n 2,36; Yanuar Sumarlan, 'How Participatory Is Thailand's Forestry Policy?' (Policy Trend Report, Institute for Global Environmental Strategies (IGES), 2004), 52-53; Jinarat, above n 16, 123.

²⁸⁴Fisher, above n 258, 74.

²⁸⁵Johnson and Forsyth, above n 281, 1596; Sumarlan, above n 283,53.

²⁸⁶Sumarlan, above n 283, 53-54.

²⁸⁷The wave of evictions of some minority groups from forest areas in northern Thailand in 1994 led to the forming of the Forum of Poor in 1995. It was jointly by a loose Northern Farmers Network; about 180 people's organisations and NGOs in Thailand. This collective action often turns the movements from negative to positive activity, such as opposition to a large dam to proposals and support for a series of smaller, more manageable dams: see Sumarlan, above n 283, 56.

²⁸⁸Jinarat, above n 16,143;Sumarlan,above n 283,56;Fisher, above n 258, 75.

²⁸⁹Johnson and Forsyth, above n 281, 1596; Sumarlan, above n 283, 54.

²⁹⁰Fisher, above n 258, 74.

²⁹¹Johnson and Forsyth, above n 281, 1596; Brenner et al, above n 7,23-25;Sato, above n 158,332-334;Andreas Neef and Rainer Schwarzmeier, 'Land Tenure Systems and Rights in Trees and Forests: Interdependencies, dynamics and the role of

accordance with the *1997 Constitution*, a local community is a social group living in the same locality and having the same cultural heritage. The *Bill* allows that such a group can apply for the status of Forest Community after a minimum of five years' experience in safeguarding forestland. The government version (RFD version) defines 'community' as at least 50 individuals living in proximity to forest, regardless of how long they have been in the area or how the forest is managed. There was concern by the opposition that such a definition would produce a legal loophole enabling any 50 people to establish a community forest and use the forest in in desirable ways; for example, by establishing commercial plantations rather than managing forest in more desirable ways. This could contribute to more deforestation.²⁹²

After much discussion, the Senate made substantial changes that watered down the people's version. This eventually passed in March 2002.²⁹³ However, that legislation did not come into effect because of stakeholder protests.²⁹⁴

With the change of government in 2007, activists hoped that the *Community Forest Bill* passed in March 2002 would be recalled. With the support and coordination of some members of National Legislative Assembly (NLA),²⁹⁵ the *Community Forestry Bill* of March 2002 was finally passed by the Parliament in 21 November 2007.²⁹⁶ However, even though the *Bill* was passed by the Parliament, only requiring endorsement by the King, the *Bill* has not come into effect yet because of an appeal on two counts to the Constitutional Court on the ground that the *Bill* limits the rights of communities to manage forests:²⁹⁷ article 25 limits eligibility to establish community forest to groups that can be proven to have lived in and managed a protected area for at least 10 years prior to promulgation of the CFB, thus denying community forest rights to 20,000 communities living around the peripheries of protected areas; and article 35 prohibits logging within protected community forests, effectively jeopardising indigenous peoples' rights to access forestland, and hindering the use of forest resources where local communities do have access. To date, this case has not been entertained by the Constitutional Court²⁹⁸ on the basis that the process of drafting the *Bill* did not comply with the provision of the constitution and so the purported Act is not lawful (and thus no appeal on its provisions is needed).²⁹⁹

development cooperation-case studies from mainland southeast Asia' (Sector Project: Importance of Land Policy and Land Tenure in Developing Countries, GTZ, 2001), 34.

²⁹²Johnson and Forsyth, above n 281, 1596; Jinarat, above n 16,140.

²⁹³Lasimbang and Luithui, above n 2,36; Sato, above n 158,332; Fisher, above n 258, 74-75.

²⁹⁴Jinarat, above n 16,164-165;Fisher, above n 258, 75.

²⁹⁵ Jinarat, above n 16,164-165, 184.

²⁹⁶RRI, 'The Thailand Community Forest Bill', *RRI* January 03, 2008<<http://www.rightsandresources.org/blog.php?id=34>>.

²⁹⁷Fisher, above n 258, 69, 75-78.

²⁹⁸RRI, above n 296; Jinarat, above n 16,174-176.

²⁹⁹ Soobkabung, above n 252.

3.3.4.2 Government efforts

In addition to community efforts to create a better forest governance system, the Government has also attempted to develop a better system.

In 1961 the NESDB prepared and submitted the first *NESDP* (1961-1966) with a target of 50 per cent forestation. The plan was approved by the Cabinet, but the targeted remaining forest cover has not been achieved. The second *NESDP* (1967-1971) reduced the forest areas target from 50 per cent to 40 per cent.³⁰⁰

The government has attempted two programs in pursuit of this plan. They are the Forest Village Program and the National Forestland Allotment Project. These two projects aimed to help diffuse the conflict between forest communities and the government by legalising the actions of people who have settled in national reserved forest areas.

The Forest Village Program was initiated in 1975. The Program is run by the RFD and aims to locate people who were farming inside forests into villages that are allocated a specific amount of land for cultivation. In addition to land, people were also provided with support, such as extension services, to encourage farmers to adopt agroforestry systems and permanent settlements. The grant of land under this program was valid for five years period (between 1975 and 1980).³⁰¹

The program encountered a number of challenges. There have been difficulties in persuading people to resettle in designated forest villages. This was due to the land allocated being generally less than the areas they already occupied and of marginal quality, such as land with inadequate access to water for irrigation.³⁰² The support provided was also insufficient.

Confusion and conflict over tenure were also the causes of problems with the Forest Village Program. For example, those involved in the Forest Village Project in Phu Hang Village in Dong Mun National Reserve Forest in Kalasin Province in the northeast of Thailand resisted implementation of the project by destroying trees and plants in project areas. Residents claimed that the boundaries declared by the RFD overlapped their land. Nevertheless, the project was implemented. The land claimed by villagers was confiscated for reallocation under the terms of the Program and no compensation was provided. Eligible villagers were allocated land under the Program, while those deemed not eligible were excluded from the land allotment process.

³⁰⁰ Lakanavichian, above n 7.

³⁰¹ Wataru, above n 10,227.

³⁰² James A. Hafner and Yaowalak Apichatvullop, 'Farming the forest: Managing people and trees in reserved forests in Thailand' (1990) 21(3) *Geoforum* 331, 341.

In other projects, people who had been granted project land did not have security over their granted lands. Some residents claimed ownership of land and sold project granted lands to new migrants.³⁰³

Funding problems, the slow progress in establishing Forest Villages, and the high costs of providing support for the Forest Village Project finally led to its cessation and replacement with the National Forestland Allotment Project. This assigned rights to the use forestland to individuals rather than communities.³⁰⁴

The National Forestland Allotment Project, aimed to allocate land and temporary usufruct rights to settlers in existing villages within the forests. In the Thai language, this kind of rights is called ‘Sor-tor-kor or STK’.³⁰⁵ The RFD, with World Bank support,³⁰⁶ launched the National Forestland Allotment Project in 1982 to issue certificates of land titles to cultivate in reserved areas and to provide people with an incentive to refrain from encroaching further into forestlands. With an STK certificate, a holder is permitted up to 2.4 ha of land in a reserved forest. The land is not available to sell; it is only transferable to family members through inheritance. No support services were provided, which meant that the STK project was less costly to implement than the Forest Village Project.³⁰⁷

However, there were also problems with the STK project. The certificates did not guarantee full rights to use of the forestland and farmers preferred a land title deed with full ownership. Many STK rights holders sold their rights, even though, legally, they could not sell the land.³⁰⁸ The STK program ended because, like the project before, it was not consistent with community needs.³⁰⁹

Forest-dependent people have generally been excluded from a role in the design and implementation of the programs that affect them. The planning and implementation of the programs relied solely on the Central Government, which lacked the capacity to respond to the diversity of community needs. The failure of the Government has meant that there is continuing pressure on forestlands.

Even though the Government established the National Forest Policy in 1985³¹⁰ and imposed a logging ban in 1989 (after the floods), logging enterprises continued to harvest timber. Demand for timber continued to be high and timber could be sold internationally for a good price. Table 3.1 shows the quantities of timber exported during the logging ban.

³⁰³ Ibid.

³⁰⁴ Hafner and Apichatvullop, above n 302, 337; J.E.M. Arnold, ‘Case studies of contemporary collective and co-management systems’ in *Managing forests as common property*, Forestry Paper 136 (FAO, 1998) 67.

³⁰⁵ STK stands for ‘Sit-ti-tum-kin’, meaning ‘usufruct rights’.

³⁰⁶ Matsumura, above n 159, 109; Lakanavichian, above n 5, 338.

³⁰⁷ Hafner and Apichatvullop, above n 302, 338; Lakanavichian, above n 5, 337; Matsumura, above n 159, 109; Hirsch, above n 90, 171.

³⁰⁸ Lakanavichian, above n 5, 337-338.

³⁰⁹ Hafner and Apichatvullop, above n 302, 344.

³¹⁰ Lakanavichian, above n 7.

Table 3.1: Quantity of timber exported from Thailand during the logging ban

Year	Timber export (m ³)
1990	48,649
1993	53,806
1995	80,533
1998	108,232
2001	402,903
2002	1,562,222
2003	1,105,894

Source: Royal Forest Department, 2004³¹¹

The logging ban failed because of corruption and incompetence within the Government. For example, there are allegations of officials receiving a five million baht bribe to allow illegal logging in Salween forest. Another reason for the failure of the ban was the lack of Government resources to stop illegal logging.³¹²

In 1992, in compliance with the *National Forest Policy* and the challenge of expansion of human resettlement and cultivation, the government categorized all national forest estates into three zones: the Conservation Forest Zone (Zone C); the Economic Forest Zone (Zone E); and the Agricultural Zone (Zone A). Zone C is the area covered by natural forest that are undisturbed and/or are minimally affected by human activities. Zone E was set aside from arable land suitable for commercial tree plantations for distribution to landless farmers. Zone A was set aside from degraded or deforested areas that were suitable for agriculture.³¹³

In 1993, the government launched two key programs: the Forest-Sector Master Plan and the land reform program. The Forest Sector Master Plan for the long-term conservation of forest and biodiversity both inside and outside protected areas,³¹⁴ and the National Forest Policy (1989) was amended to encourage forest protection.³¹⁵ The Forest Sector Master Plan suggested a limit to the relocation of forest communities to only a few necessary cases and, instead, encouraged people to find alternative livelihoods outside reserved forest. However, the government has never formally implemented the Master Plan.³¹⁶

³¹¹ Chupinit Kesmanee and Prasert Trakansuphakorn, 'An Assessment of the Implementation of the Thai Government's International Commitments on Traditional Forest-Related Knowledge from the Perspective of Indigenous Peoples' (Our Knowledge for Our Survival: Traditional Forest Related Knowledge and the Implementation of Related International Commitments, Akha Heritage Foundation, 2005) 6.

³¹² Human Rights Foundation of Monland - Burma (HURFOM), *Corruption enables illegal logging in Karen State* (2008) Rehmonnya <<http://rehmonnya.org/archives/310>>.

³¹³ Abdulbasit Elmagboul et al, 'Plantation Forestry in Thailand (Teak, Rubberwood, Eucalypt) Case study in Chiang Rai Province' (Viikki Tropical Resources Institute, Department of Forest Science, 2008) 6-7.

³¹⁴ Lakanavichian, above n 5, 334.

³¹⁵ Brenner et al, above n 7.; Lakanavichian, above n 7.

³¹⁶ FAO- Regional Office for Asia and the Pacific, above n 10, 20.

Also in 1993, following the forest-zoning program launched in 1992, the RFD implemented a land reform program allocating degraded forestlands to landless people, preventing them from encroaching forest reserve areas. The RFD transferred 70,848 km² of land from Agricultural Zone to ALRO. Then, the ALRO provided *Sor Por Kor* (SPK 4-01) documents to those settled within the forest transferred, up to a maximum of 15 rai. SPK4-01 certificates provide usufruct rights for farming purposes only; they did not entail full ownership and none of them can be transferred except to descendants. By 1994, SPK 4-01 certificates had been issued over 21 million rai (3.36 million ha, or approximately 14.6 per cent of Forest Reserve areas). The effectiveness of the *Sor Por Kor* land reform program has been limited, in part due to the recalcitrance of the RFD to relax the stipulations for maintaining tree cover in land reform areas and also due to numerous corruption scandals involving the misdirection of land reform certificates to ‘locally influential people’. One such scandal in Phuket province in 1996 led to the fall of the government in that time- the Chuan Leekpai government.³¹⁷

In addition to Government attempts to introduce a *Community Forest Bill*, it has made other positive moves to formally employ common property regimes in forest management. In 1997, the country adopted a new constitution. This is the most democratic in Thailand’s history and is called the *People’s Constitution*.³¹⁸ Article 46 of the Constitution recognises the rights of native communities to conserve their customs and to participate in the management, maintenance, and exploitation of natural resources.³¹⁹ Article 56 also reinforces the right of people to natural resources.³²⁰ Article 56 of the 1997 *Constitution* stipulated the rights of individuals to collaborate with the state and the community to maintain, exploit, and conserve the natural resources.³²¹ Article 59 recognises the right of people to receive information, explanation and reasons from state agencies, state enterprises and local government before permission is given for any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning an individual or a local community. It gives effected people the right to express their opinions on such matters in accordance with the public hearing procedure.³²² Article 79 charges the State to encourage the public to conserve, maintain, and exploit natural resources.³²³

In 2000, the Community Forest Program was established by the RFD. It is intended to involve those whose livelihoods depend on forest in forest management, and enable them to collect firewood and wild fruits. The program enables a group of 50 members of a relevant community to propose the

³¹⁷ Barney, above n 90, 18-19.

³¹⁸ Erik Martinez Kuhonta, 'The Paradox of Thailand's 1997 "People's Constitution": Be Careful What You Wish For' (2008) 48(3) *Asian Survey* 373,374; Sato, above n 159, 329-330.

³¹⁹ *Constitution* 1997s 46, (Thailand).

³²⁰ Actually, the *Constitution of 1974* was the first constitution to recognise this right. The 1997 version then assured this right again see, Kriengkrai Charoentanavat, *The Thai Constitution of 1997: A study on Protection Rights and Liberties* (2006) Public Law Net (Thailand) <<http://www.pub-law.net/publaw/view.aspx?id=872>>.

³²¹ *Constitution* 1997s 56, (Thailand).

³²² *Constitution* 1997 s 59, (Thailand); IMPECT, above n 75,8.

³²³ *Constitution* 1997 s 79, (Thailand).

application accompanied by the forest management plan to the RFD for approval. A group that is approved will be registered by the RFD under the Community Forest Program to co-manage the forest with the RFD. The RFD applies the *National Reserved Forest Act* and the *Forest Act*, which empowers its General Director to approve the community forest project and to appoint staff to work with community.³²⁴

The Community Forest Program:³²⁵

- (a) Aims to involve community in forest management;
- (b) Targets forestlands to be registered as community forests that are:
 - National reserved forest areas according to the the *National Reserved Forest Act*;
 - Forest areas under the *Forest Act*;
- (c) Focuses on areas that are:
 - Located adjacent to villages where the villagers are willing to participate in the project;
 - Not be so small as to restrict effective forest practices;
 - Not located in a national park or wildlife sanctuary;
 - Not occupied by any individuals or any organisations either public and private, unless with written consent of the occupier;
 - Not located in the areas preserved for biodiversity protection as enshrined in legislation.

The Headman of village; or subdistrict; or the president of the TAO, submits Community Forest Form 1 (Por Chor Chor 1) to the Provincial Forest Office. This form proposes the boundary for community forests and lists at least 50 people over the age of 18 as constituting the community.

The process for approval:

- i. The Provincial Forest Office (the Office of Forest Resource Management) considers the application (Community Forest Form 1). At this stage, staff of The Provincial Forest Office, together with other relevant authorities visit, and survey the proposed community forest area. Reports and comments are reported in 'Community Forest Form 2'.
- ii. Community Forest Form 2 is returned to The Provincial Forest Office (the Office of Forest Resource Management) to approve. If not approved, the process is terminated.
- iii. If it is approved, the forest officials help the community to write a community forest plan.
- iv. The community forest plan goes to the community for a public hearing. This step is also used to complete the details of required for Community Forest Form 3 and to nominate Community

³²⁴ The Thailand Community Forest management Bureau, *Community Forest* (2013) The Community Forest management Bureau (Thailand) <http://www.forest.go.th/community_forest/index.php?lang=th>; The Thailand Community Forest Management Bureau, 'The Manual of Implementation of Community Forest Project ' (Royal Forest Department, 2011) 4.

³²⁵The Thailand Community Forest Management Bureau, above n 324, 7, 17.

Forest Project committee. This form is to be ratified by the 50 people listed on Community Forest Form 1.

- v. Community Forest Form 3 is then considered by members of the TAO, district, province, and all authorities that are relevant.
- vi. Community Forest Form 3 is then returned to the Provincial Forest Office to review and to identify the responsible staff.
- vii. The reviewed Community Forest Form 3 is forwarded to the headquarters of the RFD for approval.
- viii. The relevant Provincial Forest Office is notified of an approval.
- ix. The Provincial Forest Office informs the community of the approval. Staff of the Provincial Forest Office monitor and evaluate whether the community manages forestlands as stated in the approval.
- x. The Provincial Forest Office uses Community Forest Form 4 to report progress of the project to the RFD.
- xi. The RFD, on the basis of Form 4, reports and approves continuation of the plan and a works budget for the Provincial Forest Office.
- xii. Forest staff from Local to Central levels work together for preparation of relevant information and advertisements.
- xiii. Forest staffs are responsible for this communication.

The approved Community Forest Project is valid for five years. The project can be extended by repeating steps (i) to (xiii), but the community must demonstrate that they have effectively managed the forest and complied with the conditions of the original approval.³²⁶ By September 2013, 8,256 community forest projects registered under the Community Forest Program of the RFD.³²⁷

The 2007 *Constitution* recognised rights of indigenous people and community to conserve their customs and to participate in natural resource management. Revising the 1997 version, the version of 2007 removed the qualifier ‘as identified by law’. However, in relations to the rights of native communities to participate in natural resource management, maintenance and exploitation, the *Constitution* retains the terms ‘in a sustainable manner’ and for this right to be protected ‘as appropriate’.³²⁸ Overall, the *Constitution* suggests a policy vision of community rights in forests management and resources, but what is not clear is the nature or scope of those rights and the

³²⁶ Ibid, 14.

³²⁷ The Thailand Community Forest management Bureau, above n 324.

³²⁸ The *Constitution 2007* s 66-67 (Thailand).

qualifiers ‘sustainable manner’ and ‘as appropriate’. Constitutional ambiguities are generally resolved through the Constitutional Court or through specific laws that implement Constitutional provisions. Currently, there is no proposed revision of any specific laws that would resolve the constitutional ambiguities.

In 2010 the Government passed the Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds, allowing communities to apply for a Community Land Use Permit administered by the Office of Community Land Title under the Office of the Permanent Secretary.³²⁹ The program aims to support land distribution and to deal with the issue of landless people preventing them from encroaching upon forest areas.³³⁰ This regulation aims to legally allow communities (both highland and lowland people) to collectively manage and use state-owned land for their living. There is no specified size of the group constituting communities, only that they have the mutual objective of sustainable management and development of society, economy, custom, and natural resource and environment. The regulation requires that a community have to periodically renew its land title deed with the respective government agencies that formally own the land. It was reported in February 2013 that 187 communities have submitted applications to be granted communal land title deeds and only 35 communities have been granted the land title deeds; the rest are under consideration. Implementing the communal land title deed faces a number of problems, such as land granted under the project overlapping with forest areas; the process to grant the title deed is slow because of the bureaucratic requirements. There is also misunderstanding of the meaning of ‘title deed’ - communities those who are granted the title deed under this program believe that they have the ownership over the land granted, but actually they have not. The ownership remains with the State; the communities have only the usufruct rights. To deal with this misunderstanding, on 28 May 2013, the government repealed the *Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds* and imposed the *Regulation of the Prime Minister's Office on the Issuance of Certificate of Community Rights*. This regulation removes the term ‘title deed’ and uses the term ‘certificate of community rights’ instead. This regulation is legally binding but has a lower legal status than other laws, so it is vulnerable to administrative change.³³¹

3.3.4.3 The influence of international obligations

Several international obligations that are ratified are relevant to the forest governance system in Thailand.

³²⁹ *The Reorganisation of Ministries and Departments Act BE 2545 (2002) (Thailand) s 7.*

³³⁰ Erni, above n 231, The Thailand Government Public Relations Department, above n 231; *The Regulation of the Prime Minister Office on the Issuance of Community Land Title Deeds BE 2553 (2010) (Thailand).*

³³¹ Boon Saejung, *Round Table Seminar: Policy on Community Land Title Deeds for equity: from theory to implementation* (2013) Social Equity and Health <<http://social-agenda.org/article/1309>>; Thai Post, 'Alert the Trang Governor to divide encroacher from community', *Thai Post* 26 June 2013; Naewna Newspaper, 'Cabinet stop the problem of 'PeeMove': Establishing 'Kor Lor Sor' under the supervision of Chalerm', *Naewna Newspaper* 28 May 2013; Naewna Newspaper, 'PeeMove' face with the officials: Chalerm accepts to take four problems to the Cabinet Meeting', *Naewna Newspaper* 7 May 2013; Thai Post, 'From North to South: reviewing on the Community Land Title Deed', *Thai Post* 1 February 2013.

Convention on Biological Diversity ('CBD')

The *CBD* came into force on 29 December 1993. It aims to conserve biodiversity, to sustain the utilisation of the components of biological diversity, and to equitably share the benefits generated from the use of genetic resources.³³² The *CBD* requires contracting parties to initiate protected area systems for biodiversity conservation, and to respect and preserve traditional knowledge for biodiversity conservation held by indigenous people.³³³

Thailand ratified the *CBD* on 29 January 2004.³³⁴ In relation to forest management, a range of policies, and plans have been adopted as a consequence:

- *The Thai Biodiversity Policy (2009)*, which aims to protect important areas for biodiversity conservation.³³⁵
- *Country Management Plan (2008–2011)*, which aims to balance economic development and biodiversity conservation. This policy seeks to encourage and strengthen communities to conserve biodiversity and to wisely manage biodiversity for poverty reduction.³³⁶
- *Policy, Measure, and Plan for Sustainable Biodiversity Conservation and Utilisation (2008–2012)*, which is intended to secure biodiversity for the further livelihoods of Thai people. In addition, this policy facilitates research on biodiversity economic value and to discover ways to decrease the loss of biodiversity.³³⁷
- Recognising rights of community and indigenous people to conserve their traditional forest-related knowledge in the *Constitution (2007)* section 66.

Agenda 21

Agenda 21 is an international agreement established at the United Nations Conference on Environment and Development (Earth Summit), in Rio de Janeiro in 1992.³³⁸ Thailand ratified *Agenda 21* in 1994.³³⁹ To implement this agreement, the NEB and the NESDB have been instructed to collaborate in environmental policymaking, including forest policy.³⁴⁰ Three agencies under the LD were established to achieve integrated management of land and forests: the Office of Land Development, the Office of Highland Development, and the Office of Coastal Land Development.³⁴¹

³³² UNEP, *The Convention on Biological Diversity (CBD): Introduction* (2011) UNEP <<http://www.cbd.int/intro/default.shtml>>.

³³³ Lawrence C. Christy, *Forest Law and Sustainable Development : Addressing Contemporary Challenges Through Legal Reform* (The World Bank, 2007) 13.

³³⁴ The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), above n 1, 8.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ UN, *Agenda 21- Thailand: Natural Resource Aspects of Sustainable Development in Thailand* (1997) UN <<http://www.un.org/esa/agenda21/natinfo/countr/thai/natur.htm#forests>>.

³³⁹ Matthew J. Mohlenkamp, 'Sustainable Forestry in Thailand: The Effect of Agenda 21 on Forest-Related Non-Governmental Organisations' (2003) 76(3) *Pacific Affairs* 428.

³⁴⁰ UN, above n 338.

³⁴¹ Ibid.

As previously noted, in 1997 Thailand elevated its concern for sustainable forest management in *Thailand's 8th National Economic and Social Development Plan (1997-2001)*.³⁴² This proposed that up to 25 per cent of forest areas would be preserved and rehabilitated, and that mangrove forests would also be maintained at not less than 160,000 hectares. Ratification of *Agenda 21* motivated the Government to aim for a national total forest cover of 40 per cent.³⁴³

The United Nations Convention to Combat Desertification ('UNCCD')

In 1977, the United Nations Conference on Desertification established the UNCCD for dealing with desertification and land degradation.³⁴⁴ Thailand acceded to the UNCCD in March 2001 and the convention came into force in Thailand in June 2001. As a consequence, Thailand has included forest issues in its 9th NESDP. This Plan prioritises 'Conservation and restoration of natural resources and their utilisation, with the aim of no less than 25 per cent of conserved forest and 0.2 Million ha of mangrove forests'.³⁴⁵

International Tropical Timber Agreement ('ITTA')

The *ITTA* addresses the trade of timber and the management of forests in tropical areas.³⁴⁶ Thailand ratified *ITTA* in 1994 and implements the *ITTA* through its RFD. In 1998, this agency proposed criteria and indicators for the sustainable management of the tropical forest to the RFD. The RFD established a committee to develop and implement those criteria and indicators.³⁴⁷

The Convention on Wetlands of International Importance ('Ramsar Convention')

The *Ramsar Convention* is an international agreement that requires contracting parties to maintain and wisely manage areas designated as Wetlands of International Importance.³⁴⁸ Thailand became a contracting party to the *Ramsar Convention* on 13 September 1998. There are now 11 Ramsar wetland areas in Thailand covering approximately 372,800 ha, which include forests.³⁴⁹

³⁴² Ibid.

³⁴³ Ibid.

³⁴⁴ UN, *UNCCD: United Nations Convention to Combat Desertification: About the Convention* (2012) UN <<http://www.unccd.int/en/about-the-convention/Pages/About-the-Convention.aspx>>.

³⁴⁵ Land Development Department, *Kingdom of Thailand: National Action Programme for Combating Desertification* (Ministry of Agriculture and Cooperatives, Thailand, 2004) 5-9, 23.

³⁴⁶ UN, 'International Tropical Timber Agreement' (Report No. 21996A0817(01) UN, 1997).

³⁴⁷ Chudchawan Sutthisrisinn and Adisorn Noochdumrong, 'Asia-Pacific Forestry Sector Outlook Study: Country Report-Thailand' (Working Paper No: APFSOS/WP/46, FAO, 1998).

³⁴⁸ Ramsar Secretariat, *About the Ramsar Convention* (2011) <http://www.ramsar.org/cda/en/ramsar-about-about-ramsar/main/ramsar/1-36%5E7687_4000_0__>.

³⁴⁹ Ramsar Secretariat, *The Annotated Ramsar List: Thailand* (2013) Ramsar Secretariat <http://www.ramsar.org/cda/en/ramsar-pubs-annotlist-annotated-ramsar-16158/main/ramsar/1-30-168%5E16158_4000_0__>; Ramsar Secretariat, *Marshland designated in the northeast region of Thailand* (2010) Ramsar Secretariat <http://www.ramsar.org/cda/en/ramsar-news-rsthailand/main/ramsar/1-26%5E24884_4000_0__>.

United Nations Framework Convention on Climate Change ('UNFCCC') and Kyoto Protocol

The *UNFCCC* was established in May 1992 and came into force on 21 March 1994. This Convention aims to reduce Green House Gas (GHG) emissions to the atmosphere.³⁵⁰ The *Kyoto Protocol* is an international collaboration linked to *UNFCCC* to achieve the objective of *UNFCCC*. It identifies binding targets for developed countries indicated in *UNFCCC* for reducing GHG emissions.³⁵¹

Thailand ratified the *UNFCCC* in December 1994 and ratified the *Kyoto Protocol* in August 2002.³⁵² Although Thailand was not bound to reduce GHG emissions under the *Kyoto Protocol* during the first commitment period (2008-2012), Thailand has already submitted its first national communication required by *UNFCCC*.³⁵³

The Thailand Greenhouse Gas Management Organisation (TGO) was established to take a role in GHG emission reduction and can influence reforestation and afforestation.³⁵⁴ The Thai Government has also created a Climate Change research group.³⁵⁵

Thailand also began its participation in the REDD+ project 2010.³⁵⁶ Thailand is currently establishing the 2013 Readiness Preparation Proposal (RPP) for REDD+ implementation,³⁵⁷ but the process is quite slow as it is needs to be approved by the Cabinet prior to proceed.³⁵⁸ These issues are discussed in the journal article on REDD+ included in Section 7.3.1.

On-ground impact of International Obligations

To implement these international obligations, Thailand has created policies and agendas, as well as established committees and departments. However, at present, these moves are only at the policy or committee stage. For example, to implement the *CBD* Thailand has a policy and plan, and recognises traditional forest-related knowledge in its *Constitution*. However, the policies have only been partly implemented (as discussed above) and there is no specific legislation to give specific effect to the requirements of the *Constitution*. To enable the *CDM* to operate, the *Forest Plantation Act* (1992) has

³⁵⁰ UN, *Background on the UNFCCC: The international response to climate change* (2013) UN <http://unfccc.int/essential_background/items/6031.php>

³⁵¹ UN, *Kyoto Protocol* (2013) UN <http://unfccc.int/kyoto_protocol/items/2830.php>

³⁵² The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), *UNFCCC and Kyoto Protocol Implementation in Thailand* (2011) ONEP <http://www.onep.go.th/CDM/en/unf_work.html>

³⁵³ The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), *UNFCCC and Kyoto Protocol Implementation in Thailand* (2011) ONEP <http://www.onep.go.th/CDM/en/unf_work.html>.

³⁵⁴ Thailand Greenhouse Gas Management Organisation (Public Organisation), above n 222.

³⁵⁵ The Thailand Office of Natural Resources and Environmental Policy and Planning (ONEP), above n 353.

³⁵⁶ REDD+Partnership, *REDD+Partnership Document 2010* (2010) REDD+Partnership <<http://www.oslocfc2010.no/pop.cfm?FuseAction=Doc&pAction=View&pDocumentId=25019>>

³⁵⁷ Theerapat Praurasiddhi et al, 'Readiness Preparation Proposal (R-PP) For Country: Thailand' (Forest Carbon Partnership Facility (FCPF), 2012) 8-12.

³⁵⁸ Asia Indigenous Peoples CCMIN, *REDD+ implementation in Asia and the concerns of Indigenous Peoples* (2011) Asia Indigenous Peoples CCMIN <http://ccmin.aippnet.org/ourpublications/article/236/REDD+%20Implementation%20of%20Indigenous%20Peoples%20in%20Asia%20and%20the%20Concerns_web.pdf>.

been amended (25 October 2011). The objectives of the amendments are to comply with the international agreement. The amended version of this *Act* has limitation, including excessive discretionary power, which is vested in the Government, a lack of consideration of stakeholder needs, particularly community stakeholders. These are detailed in Phromlah 2012³⁵⁹ (this paper is included as part of this Chapter, see Section 3.3.4.4) so they will not be re-iterated here.

3.3.4.4 The social consequences of the Plantation Forest Act

This section incorporates a paper by the researcher published in the International Union for Conservation of Nature (IUCN) Academy of Law eJournal, which discusses, as a case study, the impact of Thailand's international obligations on legislation (specifically, *Plantation Forest Act*) and the possible consequences of the amended *Act* on the capacity of the forest communities to manage their forest areas.

As well as discussing the specifics of the *Plantation Forest Act*, the paper introduces concepts and pre-empts discussion that will be further explored in other chapters of this thesis, particularly in Chapter 4, which explores the concept of good forest governance.

³⁵⁹ Wanida Phromlah, 'Country Report: Thailand- Recent Developments of Forest-Related Law' (2012) (1) *IUCN Academy of Environmental Law e-Journal* 219-227.



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COUNTRY REPORT: THAILAND Recent Developments of Forest-Related Law

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Introduction

Logging of natural forests is banned in Thailand. In order to satisfy the country's need for timber, the Thai government had enacted the *Forest Plantation Act* (1992) to encourage increased investment in plantation forests. However, this Act contained a number of constraints that made it ineffective in achieving its objectives.¹

On 2 August 2002 the Thai Government ratified the *Kyoto Protocol*.² Under Article 12 of the *Protocol*, Thailand, through the Clean Development Mechanism (CDM), can implement emission-limitation projects to earn saleable certified emission reductions credits, which can be counted towards the country's obligations to meet the Kyoto targets. To enable CDM to operate, the *Forest Plantation Act* (1992) has been amended (25 October 2011).³ The objectives of the amendment are to comply with the international agreement and to help further develop the national economy through timber production.

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¹ Regional Office for Asia and the Pacific of Food and Agriculture Organisation, *Thailand Forestry Outlook Study* (2009) Asia-Pacific Forestry Sector Outlook Study II, Working Paper Seires No. APFSOS II/WP/2009/22, 88.

² Office of Natural Resources and Environmental Policy and Planning of Thailand, *UNFCCC and Kyoto Protocol Implementation in Thailand* (2011) (available at <http://www.onep.go.th/CDM/en/unfwork.html>).

³ Secretariat of Cabinet (Thailand), *Cabinet Resolution No. 23495/54 on 25 October 2011* (2011) (available at <http://www.cabinet.soc.go.th>).

This report discusses the amendments to the *Forest Plantation Act*. The report begins with a brief outline of the four main amendments to the Act. This is followed by a more detailed discussion of the benefits of the amendments and the issues that may arise as a result of the amendments. The conclusion to this report identifies research agendas for consideration by the IUCN Academy on Environmental Law.

Amendments to the *Forest Plantation Act*

As already noted, the 1992 Act did not succeed in encouraging increased investment in plantation forests in Thailand. A significant reason for the lack of success was the fact that only teak plantations were allowed. This restriction severely curtailed economic opportunities that might arise from investments in plantations. The 2011 amendments remove the restrictions on the type of tree that can be planted.⁴

Another amendment to the Act is a provision to allow licences to be obtained for timber production on land cleared under section 54 of the *Forest Act* that has been registered for plantation forests.⁵ The Forest Chief Executive may grant a licence for the establishment of a lumber factory on such lands, subject to conditions set by the relevant Minister.⁶

Section 14 of the amended Act exempts plantation timbers from royalties and fees (this is intended to increase the incentives for investing in plantation forests). Section 14(1) also exempts non-timber forests products such as firewood and bamboo from royalties and fees. A fourth amendment enables the imposition of administrative penalties to suspend or revoke the registration of a plantation forest if there is a breach of conditions stated in a permit or under the Act.⁷

Discussion of Amendments

Incentives, especially for the private sector, for investment in plantation forests have been increased by the amendments to the *Forest Plantation Act*. The amendments increase the availability of land for plantation forests and provide opportunities for a greater range of investors to participate - including owners of cleared land who might

⁴ Section 3.

⁵ Section 4.

⁶ Section 10 and section 11(2).

⁷ Section 26(1).

otherwise be unable to invest in forest plantations. They further enable lumber yards to be conveniently established where timber is being harvested and exempt those who sell plantation timber from royalties and fees.

By increasing the land area under forest and better controlling harvesting activities (through enabling the imposition of penalties for breaches of the Act), Thailand appears to be making significant steps towards ensuring a sustainable forest industry that contributes to the economic wellbeing of the country as well as meeting its obligations under the *Kyoto Protocol*.⁸ There are, however, a number of key issues that the amended Act does not address.

Excessive Discretionary Power

Excessive, legislated discretionary power can cause complexity⁹ and enable corruption.¹⁰ Section 11(1) of the Act grants the Forestry Chief Executive and the Forestry Minister significant discretion to create the conditions of approval for establishing a forest plantation and lumber factory on approved cleared land. These powers could be used to impose complex or unnecessary conditions that will allow eligibility to only a minority of 'preferred' parties.¹¹

This potential (ab)use of discretionary power is evident when noting the operation of another Thai law, which aims to grant land to landless people and thereby provide them with the means to stop encroaching on and damaging natural forests. Thus far, the law has met with little success because government agents (often from several government authorities) have imposed complex conditions for the granting of land, which effectively precludes the landless from obtaining land.

⁸ Thailand Greenhouse Gas Management Organization (Public Organization), *Clean Development Mechanism (CDM): CDM Development in Thailand* (2011) (available at <http://www.tgo.or.th/english/>).

⁹ A. Contreras-Hermosilla and G. Witness, *Emerging Best Practices for Combating Illegal Activities in the Forest Sector* (2003) DFID-World Bank-CIDA, 8.

¹⁰ Food and Agriculture Organization, *Reforming Forest Tenure: Issues, Principles and Process* (2011) FAO Forestry Paper 165, 13; and Food and Agriculture Organization and The International Tropical Timber Organization, *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* (2010), 11.

¹¹ Food and Agriculture Organization and International Tropical Timber Organization, *Best Practices for Improving Law Compliance in the Forest Sector* (2005) Forestry Paper No. 145, 12.

The regulation of the forest industry in Indonesia provides a good illustration of how such discretionary power can be abused. Research suggests that some forestry officials exercise their discretionary power over licensing and permits for logging concessions in ways that benefit those operators who are prepared to provide the officials with financial returns.¹²

Conflicting Regulations

The amendments to the *Forest Plantation Act* do not consider and at times contradict the objectives of other Acts. Such conflict in objectives can cause administrative complexity,¹³ high transactions costs and ineffective implementation of effected laws.¹⁴

For example, there are contradictions in the objectives of *Forest Plantation Act* and those of the *Forest Act* (1941). The *Forest Act* has a conservation focus. People may be granted land under the *Forest Act* but only for the conduct of agricultural activities.¹⁵ The *Forest Plantation Act*, on the other hand, has a commercial focus and allows for the planting of any kind of tree (as a consequence of the 2011 amendments) on appropriately registered cleared land. Native forests could, therefore, be cleared to make way for plantation forests and for sites for lumber factories - both activities being counter the objectives of the *Forest Act*.

In addition, by allowing *any* type of tree to be planted, there is an increased danger that native forests will become invaded by weedy tree species. It is also possible that tree species are planted that significantly reduce available natural resources for other activities. For example, there is evidence that some kinds of Eucalyptus trees planted

¹² C. Palmer, *The Extent and Causes of Illegal Logging: An Analysis of a Major Cause of Tropical Deforestation in Indonesia* (2000) CSERGE Working Paper, Economics Department University College London and Centre for Social and Economic Research on the Global Environment University College London and University of East Anglia, 20.

¹³ N. Gunningham, P. Grabosky and D. Sinclair, *Smart regulation: designing environmental policy* (1998) Clarendon Press, 46.

¹⁴ P. Martin and J. Shortle, 'Transactions costs, Risks and Policy Failure (2009)' in C. Soares et al (eds), *Critical Issues in Environmental Taxation: International and Comparative Perspectives* (2010) 8 Oxford University Press, 717.

¹⁵ Section 54.

for timber in Thailand consume vast quantities of water, reducing water availability for crops planted on adjacent lands.¹⁶

Other conflicts between administrative authorities under legislation may also arise. Usually, the power to grant a license for establishing a lumber factory is provided by the Department of Industrial Works (the *Forest Plantation Act* vests this power in the Chief Executive Officer and the Minister of the Department).¹⁷ The Department of Pollution Control is charged with monitoring any pollutants that may arise from establishing the factory,¹⁸ and the local government usually has the power to oversee the operation of factories established in their administrative territory.¹⁹ Together these different authorities can create confusion and potential conflict between agency requirements.

Insufficient Monitoring of Implementation

Although the amendments to the *Forestry Plantation Act* allow for penalties to be imposed for breaches of the Act, there is no requirement to monitor whether permit conditions are, in fact, being implemented. This should be a basic requirement to ensure effective operation of the Act.²⁰ In addition, there should be a requirement to gather data and information that could guide the improvement and development of policies and laws regarding forestry practices.

There is, for example, no requirement to monitor the activities of third parties contracted to plant trees or harvest timber. The contractors might carry out their activities without regard to permit requirements for what and how land should be cleared. There are no impediments to contractors who can do long-term damage to the industry because they are concerned only with the amount of timber they can harvest in their allocated period for harvesting without regard to the maturity of the trees being harvested.²¹

¹⁶ P. Kuaycharoen, 'Plantations are not Forests Commercial Tree Plantations in the Mekong Region: Commercial Tree Plantations in Thailand: Flawed Science, Dubious Politics and Vested Interests' (2004) 9(3) *Towards Ecological Recovery and Regional Alliance*.

¹⁷ Factory Act B.E. 2535 (1992) (Thailand), section 7.

¹⁸ Pollution Control Department (Thailand), *Mission Statement of Pollution Control Department (Thailand)* (2004) (available at http://www.pcd.go.th/about/en_ab_mission.html).

¹⁹ *Thailand Constitution* (2007), section 290.

²⁰ FAO et al (supra note 11), 73.

²¹ Forest Watch Indonesia and Global Forest Watch, *The State of the Forest: Indonesia* (2002) Forest Watch Indonesia and Global Forest Watch, 29.

Lack of Costing of Implementation

There is a lack of evidence that the cost of implementing the Act was appropriately considered before the amendments to the Act were passed. For example, it is unlikely that resources would be available to deal with the administration of a proliferation of lumber factories that may arise as a result of the provisions in the amended Act.²²

Other costs also appear to be overlooked. There is no requirement within the Act to ensure that trees planted in fact return the highest benefit. *Any* tree may be planted, under the Act but one of the objectives of the Act is to increase the economic welfare of the country. The Act should make clear the definition of how such welfare can best be achieved.

Stakeholder Needs

Stakeholders affected by the *Forest Plantation Act* are not effectively considered by the amendments to the Act. As already noted, decisions regarding the granting of permits are vested entirely in the Chief Executive Officer and the Minister. There is no provision to involve the community or other stakeholders who may be impacted by, for example, the establishment of factories.

In addition, there is no scope to enable groups of people to participate in forestry operations. The amendment provisions of the *Forest Plantation Act* theoretically allow for land granted to landless people under the *Forest Act* to be planted out with plantation forests. However, small-scale landholders are unlikely, individually, to be able to afford the expense and time for creating such forests. It may be possible for the landholders to engage in plantation forestry activities as a group, but this possibility is not addressed in the amendments to the Act.²³

²² P. Martin et al, *Developing a Good Regulatory Practice Model for Environmental Regulations Impacting on Farmers* (2007) Research Report, Australian Farm Institute and Land & Water Australia, x.

²³ A. Nawir and L. Santoso, 'Mutually beneficial company-community partnerships in plantation development: emerging lessons from Indonesia' (2005) 7(2) *International Forestry Review* 177.

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 land-use laws and institutions be reformed to achieve effective forest plantations that result in sustainable forest management in Thailand?

Land use systems and deforestation are interrelated: ineffective land-use governance can lead to significant deforestation. Current regulations attempt to protect native forests by providing landless people with land for cultivation to halt their encroachment on the forests, but regulations simultaneously provide for the means to destroy native forests to create timber plantations. There are no clear property rights and obligations for the use of land, and there is little coordination among authorities who approve land allocation.²⁴ The research agenda would be to develop proposals for better land-use governance systems that achieve effective forest plantations and sustainable forest management for Thailand.

Whether co-regulation is an effective method for reducing excessive discretionary power provided in Thailand's Forest Plantation Act²⁵

Forms of co-regulation between industry and government could include mutual contracts or agreements related to plantation and timber management.²⁶ Co-regulation arrangements may also help to ensure that licensees produce timbers of a high standard.

Development of an assessment method to ensure that regulatory objectives are being met

²⁴ S. Lakanavichai, '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 Food and Agricultural Organisation, *Understanding Forest Tenure in South and Southeast Asia* (2007) Vol 14, 341.

²⁵ P. Martin and E. Le Gal, 'Concepts for Industry Co-Regulation of Bio-Fuel Weeds' (2010) (1) *IUCNAEL eJournal*, 7-9.

²⁶ L. Senden, 'Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?' (2005) 9(1) *Electronic Journal of Comparative Law*, 11-14; J. Gray, *Forest Concession Policies and Revenue Systems: Country Experience and Policy Changes for Sustainable Tropical Forestry* (2002) World Bank Publications, 11.

One approach to assessment that may be worth researching further is the Monitor, Evaluate, Report and Improve (MERI) Framework used by many government departments around Australia to assess the effectiveness of natural resource management policies and to promote their accountability.²⁷

What assurance can be built into the logging industry to ensure that timber is legally planted and harvested?

Illegal logging continues to be a significant problem in Thailand. The viability of implementing the European Union's proposed Forest initiative (or other international counterparts such as the *US Lacey Act*, 2008) could be further investigated. This Initiative is a due diligence system that monitors the sourcing of timbers and encourages plantation licensees to go beyond mere compliance by continuously verifying the methods and practices by which timbers are produced.²⁸

Methods to better involve the community

Better methods to involve the community in the forest plantation industry may provide opportunities for those living in poverty to economically gain from the forestry industry. Community-company partnerships may be a mechanism for achieving better involvement.²⁹ Greater community involvement may also encourage a sharper focus on the sustainable production and supply of timber, and on environmental conservation.

A significant component of such research must be how to manage flows of information to the community to enable good decision-making. Without access to accurate and timely information, stakeholders will not be able to effectively engage in achieving outcomes from the timber industry that will go towards meeting the objectives of the *Forest Plantation Act*. A viable model for increasing the flow of

²⁷ Australian Government, *NRM MERI Framework: Australian Government Natural Resource Management Monitoring, Evaluation, Reporting, and Improvement Framework* (2009) Commonwealth of Australia, 3.

²⁸ International Union for Conservation of Nature, *News and Events: Asia-Pacific Forest Week* (2011) (available at http://www.iucn.org/about/work/programmes/forest/fp_news_events/asia_pacific_forest_week_november_2011/?8575/Addressing-illegal-logging).

²⁹ World Bank, *Sustaining Economic Growth, Rural Livelihoods and Environmental Benefits: Strategic Options for Forest Assistance in Indonesia* (2006) Report No. 39245, 86.

information regarding forest practices to stakeholders may be the development of extension services.³⁰

Conclusion

This report has discussed the recent amendments to Thailand's *Forest Plantation Act* (1992). The amendments address a number of failings of the *1992 Act*, but fail to address others. Significantly, the amendments do not adequately provide for increased participation of the community in the forestry industry, and amendments introduce measures that may cause: increases in complexity and corruption in the system; and decreases in environmental sustainability. Timely research and proposals into methods to overcome failings of the Act would provide useful input to Thailand's efforts to truly meet the Act's environmental, social and economic objectives, and to meet the country's international obligations.

³⁰ K. Singh, B. Sinha and S. Mukherji, *Exploring Option for Joint Forest Management in India* (2005) Forestry Policy and Institutions Working Paper: A World Bank/WWF Alliance Project, Food and Agriculture Organization, 4.

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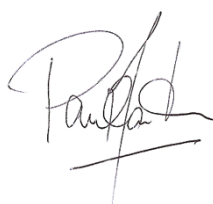


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3.4. Conclusion

The purpose of this chapter has been to explain the forest governance system in Thailand. The chapter began by explaining how forests play a key role in Thailand's social, economic and environmental wellbeing, and noting that Thailand has institutions and laws, and has ratified several international obligations that should ensure that it is in position to achieve effective forest governance.

Under executive power, three levels of government: the Central, Regional and Local governments regulate forest management. In the Central Government, the institutions influencing forest management can be classified into three groups: authorities that have direct responsibility for forest governance; the authorities with responsibilities indirectly affecting forest governance; and the authorities with general responsibilities which influence forest governance.

Regional governments take a coordinating role between the central government and local government. They are a territorial extension of the Central Government and have neither autonomy nor authority over administration. Local Government Organisations are empowered by the Thai *Constitution* to govern forest practices but remain under the strict control of the central government. Provincial Governors and District Officers are officials of the Central Government and have the power to direct the staff of the Local Government.

Local government operates through five forms of administration:

- The BMA manages natural resources including forests within the Bangkok area;
- The City of Pattaya local government manages natural resources including forests within Pattaya City;
- The PAO is empowered to manage forests within its province;
- The Municipality governs natural resource management including forest within urban areas;
- The TAO is responsible to manage forest within individual Tambon areas. Its operations are monitored by the District Chief and the Provincial Governor to ensure compliance with forest laws.

Forest management in Thailand has been developed based on the concept of state-owned forests. All forest areas in Thailand are owned by the state; legislation to use, access and manage forest is determined by the State. Only trees on private land are counted as privately owned forests. These are mostly plantation forests.

The implementations of forest laws under the concept of 'state-owned forest' has contributed to the decline of Thailand's forestlands and been the cause of chronic conflict between the Government and the forest communities. Then there have been efforts to involve traditional forest dependants in forest governance, with significant efforts to pass the *Community Forest Bill*. However, this law have not

been put into effect on constitutional grounds and it was failed by the Constitution Court reasoning that the process of drafting the law is violating the provision of the *Constitution*. The *Constitution* recognises the rights of native communities to preserve their customs and to participate in the management, maintenance and exploitation of natural resources, but legislation has largely failed to resolve Constitutional ambiguity or give effect to Constitutional ideals.

Forest management in Thailand is currently regulated by six keys forest-related Acts: the Forest Act (1941); the National Reserved Forest Act (1964); the Wildlife Conservation and Protection Act, (1992) the National Park Act (1961); the Forest Plantation Act (1992); and the Chainsaw Act (2002).

Although the *Constitution*, several international agreements to which Thailand is a party, and government efforts encourage decentralisation in forest management, power of forest management continues to be vested in the State. The next Chapter discusses how, internationally, there is an increased understanding of what constitutes good forest governance. This research uses these international lessons to develop criteria to diagnose Thailand's current forest governance system and propose reform directions.