



Assessment

Thailand's Community Forest Act



RECOFTC



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Voices for
Mekong Forests



เครือข่ายป่าชุมชนเมือง
CITIZENS FOREST NETWORK



Thailand’s Community Forest Act: Analysis of the legal framework and recommendations

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Thailand's Community Forest Act

Analysis of the legal framework and recommendations

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Abbreviations

CF	Community Forest
CF Management Committee	Community Forest Management Committee
CF Policy Committee	Community Forest Policy Committee
CSO	Civil society organization
FPIC	Free, prior and informed consent
FRMO	Forest Resource Management Office
Government Gazette	Royal Thai Government Gazette
NGO	Non-governmental organization
PCF Committee	Provincial Community Forest Committee
RFD	Royal Forest Department
V4MF	Voices for Mekong Forests

Foreword

Thailand is undergoing an important development in its forestry laws. When the Community Forest Act B.E. 2562 was passed in 2019, Thailand had for the first time an official umbrella law to recognize community forestry. Subordinate laws still need to be developed to further clarify the Act for its implementation.

Community forestry is the management, protection and use of forest resources by local communities. This model of forest management prevents the marginalization of communities associated with top-down, state-led forms of forest governance.

This analysis is the first of its kind. It fills in a legal analysis gap in Thailand's forestry sector for policymakers, civil society organizations and local communities living in and near forests. It uses a method of analysis created by lawyers at the environmental law charity ClientEarth to help readers understand how the Act recognizes and secures the rights of forest communities. It can be an important tool to enhance the implementation of the Community Forest Act and the subordinate laws.

At RECOFTC, we hope that this analysis will broaden the discussion on community forestry and help ensure that a people-first legal approach is developed in the country's forestry sector.

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Introduction

The Community Forest Act B.E. 2562 (2019) took Thailand nearly three decades to develop. The long-debated subject was one of the most important issues for local communities in the 1990s.

There are many different opinions among stakeholders about the Act, especially on the definition of community forestry and where it can be established. The Act states community forests can only be found in forest areas outside of protected forests, which causes some limitations. However, the Act gives formal rights to communities to use community forests. Its passage in February 2019 was an important milestone in the recognition of communities' rights.

Before 2019, people could submit a request to the Royal Forest Department (RFD) to register a community forest under the Reserved Forest Act. If the request was approved by the RFD's Director General, the registration would be valid for a maximum of 10 years. However, the rights of local people were not clearly defined or fully granted.

The Community Forest Act provides a legal foundation to recognize local communities' rights to manage their forests, including the creation of mechanisms for decision-making.

The RFD wants to classify 1.6 million hectares of reserved forest as community forests by 2025. This will include 15,000 registered community forests. Up until 2019, there were about 11,327 registered community forests covering about one million hectares.

About this assessment

This assessment summarizes the legal analysis conducted by ClientEarth and RECOFTC on Thailand's Community Forest Act. The analysis uses a methodology developed by ClientEarth¹ to assess community forestry laws and regulations. ClientEarth's methodology asks a series of questions about 10 thematic areas to identify the strengths and weaknesses of a community forestry legal framework.

This assessment will help Thai civil society organizations (CSOs) understand the Community Forest Act and engage in the legal reform process, especially the ongoing development of forestry regulations. The assessment will also be a valuable tool for donors, international non-governmental organizations (NGOs), policymakers and academics interested in Thailand's community forestry or its legal reform process.

Objective and rights under the Community Forest Act

The Act outlines the overall objective of community forestry in Thailand: ensuring people and communities benefit from forests while managing them sustainably. Community forestry is heavily oriented towards environmental conservation under the Act. It allows communities to engage in the conservation, rehabilitation, management, maintenance or use of natural resources, the environment and biodiversity. These activities must be carried out in cooperation with the government.²

The Act describes the basic conditions under which community forests can be established. The Community Forest Policy Committee (CF Policy Committee) was created under the Act to provide further guidance.

Community forests can only be established outside the country's protected forest areas³ to conserve, manage and sustainably use forest resources.⁴ Community forests represents about 7 percent of the total reserved forest area.

The Provincial Community Forest Committee (PCF Committee) considers requests to establish community forests, modify the boundaries of an existing one or cancel one. It oversees approving or rejecting the community forest management plan and monitoring and evaluating forest management. When evaluating community forest requests, the PCF Committee considers the geographical conditions, the community size and the community's potential to manage the forest. It also considers the forest size and the usable area based on criteria set out in the management plan.⁵ These elements will be further clarified in the regulations to be developed.

Legally, community forests can only exist outside protected areas, which limits communities' rights. For generations communities have been practicing community forestry beyond the defined forestlands and for reasons other than conservation, which are not recognized in the Act.

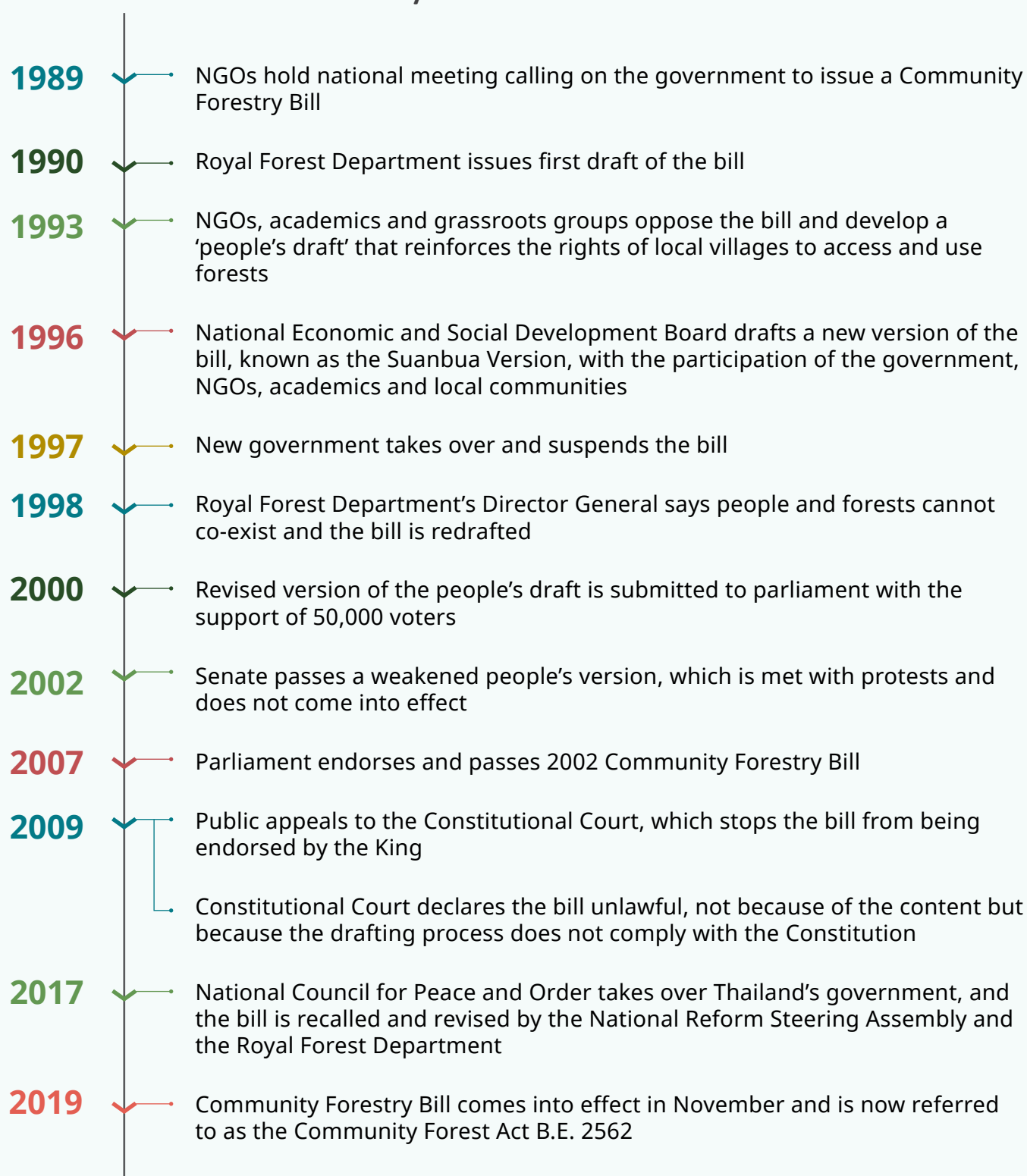
The Act does not require a minimum or maximum period for the allocation of a community forest. It does not limit the size of a community forest. It specifies that the authorities will approve a community forest management plan for five years with a possibility of renewal.⁶



History of Thailand's Community Forest Act

It took three decades and many revisions by civil society and consecutive governments before the Act was finally adopted. The main delays were the result of changes in government and disagreements over the content.

Timeline for Thailand's Community Forest Act



The main differences between the people's version and the RFD version of the text were:

- What 'community' means
- Whether a community can live in protected areas
- Which forest practices are legitimate in a community forest

The people's version defined a community as a social group living in the same area and having the same cultural heritage, in accordance with Thailand's 1997 Constitution. This version required the community to apply for a community forest after a minimum of five years' experience in managing the forestland.

The RFD version defined a community as at least 50 individuals living close to a forest, regardless of how long they have been in the area or how the forest is managed. CSOs raised concerns that this definition would produce a legal loophole enabling any 50 people to establish a community forest. They could then use the forest to establish commercial plantations, for example, rather than managing the forest sustainably.

A turning point in the process came in 2009 when the public made an appeal to the Constitutional Court on the government's proposed 2007 bill. The public raised the appeal on two grounds.

First, the 2007 bill limited the establishment of community forests to groups that could prove they lived in and managed a protected area for at least 10 years. This would have denied community forest rights to 20,000 communities living around the peripheries of protected areas.

Second, the 2007 bill prohibited logging within protected community forests, jeopardizing Indigenous Peoples' rights to access forestland and hindering the use of forest resources where local communities do have access.

In 2009, the Constitutional Court declared the 2007 bill unlawful on the basis that the process of drafting it did not comply with the Constitution.

The National Council for Peace and Order took over Thailand's government in 2017, changing the conversation. The bill was recalled and revised by the National Reform Steering Assembly and the RFD.

After much controversy and 30 years after its first draft, the Act was made legally binding on 29 May 2019. Most of the Act's provisions came into effect on 24 November 2020, which is 180 days after the law's entry into force.⁷ The preamble states its purpose was to create a legal basis to register and hand over community forests to people to allow them to participate in forest management. The Act also clarified the decision-making powers for authorities, including the RFD.

Certain elements of the Act, such as details of the management plan, need new regulations to clarify the access and management of community forests, criteria and rights and obligations of the community. The Act requires that these regulations be developed by the Community Forestry Policy Committee (CF Policy Committee) by 24 November 2021, one year since its publication in the Royal Thai Government Gazette (Government Gazette).⁸

The CF Policy Committee is an administrative body with a strong government representation. It was established to develop regulations that will specify the conditions in which community forests can be granted and used. It is composed of the deputy prime minister, the minister of Natural Resources and Environment, representatives of nine other ministries and experts.⁹ These experts include two civil society members and representatives from the provincial community forest network.

After the full enforcement of the Act, 33 regulations will be enacted. As of November 2020, six of the total regulations have entered into force.



Methodology of analysis

Toolkit for analyzing community forestry legal frameworks

Non-profit environmental lawyers from ClientEarth created a first-of-its-kind legal toolkit to support development of laws on the management rights of indigenous and local communities on forests worldwide, entitled *Toolkit for Enabling Laws on Community Forestry* (ClientEarth, 2020).

The toolkit draws on lessons from the community forestry models of Nepal, Philippines and Tanzania, summarized in *Communities at the heart of forest management* (ClientEarth, 2019). This report provides governments and communities with legal guidance to reform and implement community forestry laws.

To ensure a strong legal framework, ClientEarth's toolkit lays out a comprehensive set of questions that decision-makers can use to develop and review legislation. This includes:

- 10 key components that make up an empowering community forestry framework
- Guidance to conduct a robust and inclusive reform of community forestry laws

Because national laws are tailored to each country, the toolkit is designed to be adaptable while considering national and local contexts. It can be used by a variety of groups, including civil society organizations advocating for improved community rights.

The guidance ensures that forestry laws reflect the customs of communities and use of land, while encouraging participation from all community members, including women, Indigenous Peoples and other marginalized groups.

While national laws are the cornerstone of improved forest management, the success of community forestry also requires effective law implementation to achieve healthier forests, while providing economic and social benefits to the people who inhabit them.

Ten building blocks for community forestry

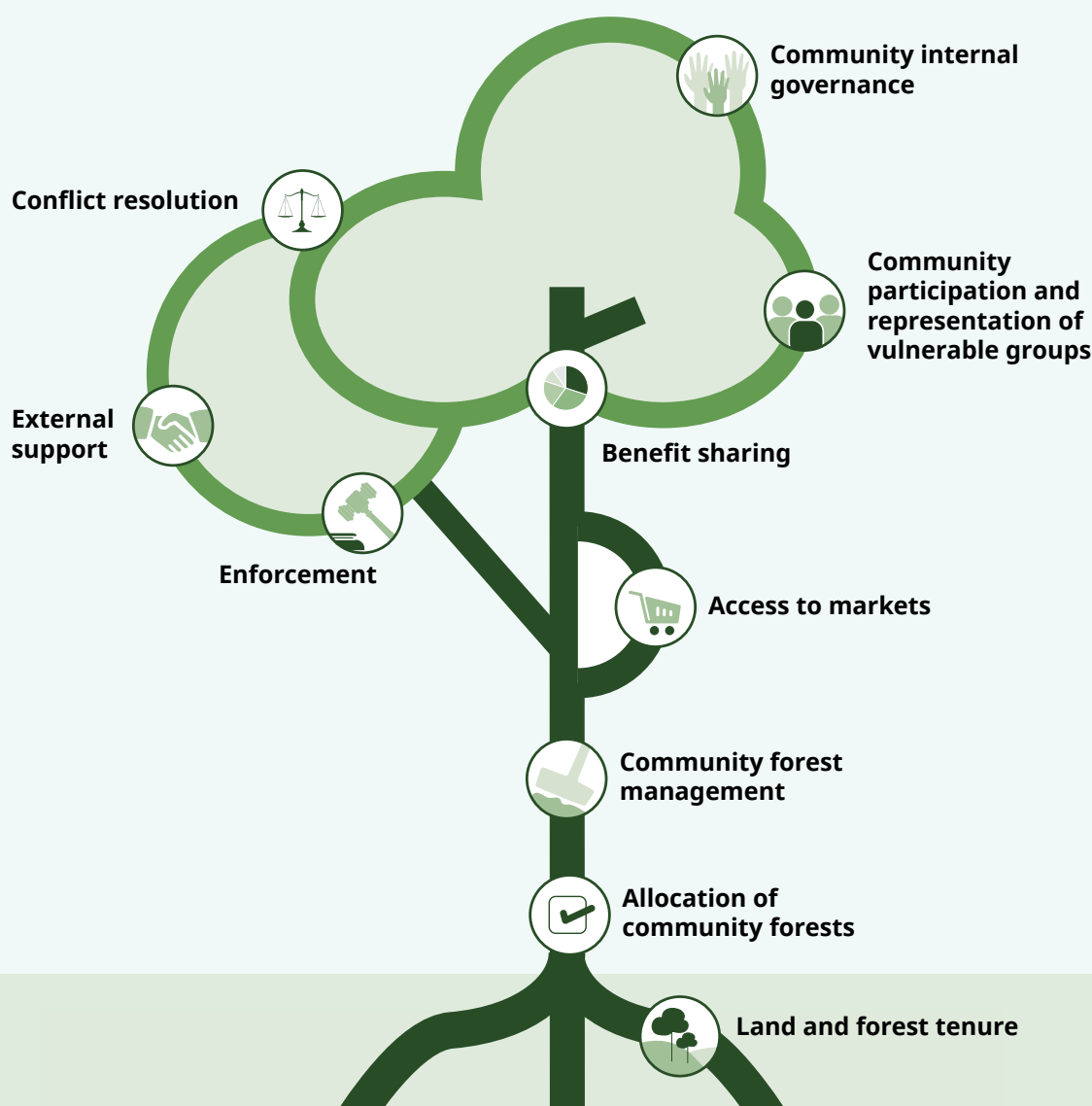
The toolkit identifies important questions that decision-makers can use to develop or review laws on community forestry to ensure an inclusive, consistent approach. It consists of a series of questions on 10 thematic areas, called legal building blocks, that provide a strong foundation for community forestry-related laws.

These are the 10 important components that policymakers should consider when designing community forestry laws:

- **Land and forest tenure:** It is important that community forestry laws reflect traditions and the use of land and forests by Indigenous Peoples and local communities. This will help these communities have clear, strong land tenure rights and are able to benefit from community forestry.
- **Allocation of community forests:** Designing a simple process to allocate community forests is crucial to ensure good access to community forestry for Indigenous Peoples and local communities. The process should allow a group, identifying itself as a community, to undertake the procedure by itself or to seek external support.
- **Community internal governance:** The law should include general accountability and transparency principles for the implementation of community forestry. It should allow communities to establish specific mechanisms themselves to implement these principles in practice.
- **Community participation and representation of vulnerable groups:** The legislation should include provisions to ensure the participation of all community members, particularly vulnerable groups such as women, Indigenous Peoples and the poorest or most marginalized members of the community. The law should allow the community to determine the most suitable mechanisms for participation.
- **Community forest management:** The law should enable community members to develop a community forest management plan and provide them with easy-to-understand templates and guiding documents. Management plans should adapt to different situations depending on the type of activities proposed, the size of the community and the size of the forest.

- **Access to markets:** To support the development of community forestry, the law should facilitate the sale of products and services derived from the use of community forests. The law does so when it contains provisions that are clear and beneficial for communities, including provisions on taxes, transport and processing of products, as well as by providing economic incentives.
- **Benefit sharing:** The law should provide general guidelines for a mechanism allowing communities to decide how to equitably share the benefits from community forest activities. The law should provide safeguards that ensure information transparency and a monitoring system to protect community members against elite capture.
- **Conflict resolution:** If there is a conflict in community forest activities, the law should guarantee community members the right to a fair dispute resolution mechanism, which can rely on traditional dispute resolution methods. Community members should also have access to a judicial dispute resolution mechanism, such as tribunals and courts to file a formal complaint or as a means for recourse.
- **Enforcement:** The law should identify what is an infraction and set out clearly which sanctions can be applied. The law should identify the officials or authorities that can enforce the law and impose sanctions and describe the role and duties of these officials or enforcement bodies.
- **Support of external actors:** It is essential to allow external actors, such as the government, NGOs or the private sector, to support community members implementing community forestry. Legislation can facilitate and encourage this support.

Ten building blocks for community forestry





Legal analysis of the Community Forest Act

Using ClientEarth's toolkit, the authors analyzed Thailand's 2019 Community Forest Act to assess how the Act recognizes and secures the rights of forest communities.

This section is composed of three parts:

- An overview of the guidance on each legal building block for community forestry
- An overview of the corresponding provisions of the Community Forest Act
- An analysis of the strengths and weaknesses of the Community Forest Act

Land and forest tenure

Guidance on effective community forestry laws

It is important that community forestry laws reflect the traditions of Indigenous Peoples and local communities and the way they use land and forests.

The law should offer these communities clear and strong land tenure rights by ensuring:

- **Clarity on the rights, based on which community forests are allocated**
The law should give clarity on whether community forests are allocated to forestland title owners, customary owners or other forestland users.
- **Recognition of statutory tenure rights**
Legal recognition of customary land ownership rights can encourage local communities to become involved in forest management. When these rights are secure, they may be more invested in forest stewardship over the long-term. Statutory community forestry laws should incorporate the formal recognition of customary land tenure rights.
- **Customary tenure rights**
In the absence of statutory recognition of customary rights, community forestry laws should account for the community's customary tenure rights in some form. In particular, the law should clarify the size of the area that can be covered by community forestry, the scope of allocated rights and the duration of the allocation of a community forest.

Community Forest Act

Community land ownership and management

Legal texts on community land ownership in Thailand are limited. The 2017 Constitution of Thailand established the right of communities to "manage, maintain and utilize natural resources [...] in a balanced and sustainable manner, in accordance with the procedures as provided by law" but without ownership (Article 43). The Constitution allows local communities to participate in state management of natural resources and "obtain the benefit from such undertakings" (Article 57).

Communities only have the right to collectively manage and use state-owned lands for their livelihoods under the Regulation of the Prime Minister's Office on the Issuance of Community Title Deeds, 2010. Very few communities have been able to obtain community title deeds to date.

Customary land tenure

Thailand's legal framework does not recognize customary tenure or free, prior and informed consent rights of Indigenous Peoples and local communities. However, indigenous people, living mainly in the north of the country, follow customary laws and practices governing access and use of land. Much of this land is classified as state forestland and national laws do not recognize customary land rights. Local communities, particularly indigenous ones, have very limited tenure security.

Community forest management rights

Although the Community Forest Act provides legal recognition of the right of local communities to manage their forests, it is limited in scope because it only allows community forests to be established outside protected forest areas. Because more than 4,000 villagers live in protected forests in Thailand, the Act does not benefit these communities.¹⁰ The Act also stays silent on the rights of neighbouring communities living around the allocated community forest area.

Analysis

Some community tenure rights are not explicitly recognized in the Community Forest Act. For example, the Act does not give clarity on customary rights to forestland and management rights, such as decision-making power in relation to the use of the forest. The government's implementation of the law may contradict the community's traditional ownership and use of resources because there is a lack of clear recognition of their customary rights. This may lead to conflicts between local communities and the state, and among communities.

Traditional forest knowledge is important in effective forest management. The lack of recognition of customary knowledge and rights in the Act or other legislation may lead to degradation of forests and hinder successful development of community forestry.

The Act does not clearly account for the rights of neighbouring communities. Successful community forest management requires collaboration among stakeholders, including members of the community forest and the neighbouring communities. The community that lives adjacent to the community forest may help support forest management by patrolling or helping to establish networks with other communities.

Allocation of community forests

Guidance on effective community forestry laws

Designing a simple process to allocate community forests is crucial to ensure good access to community forestry. The community forestry law should:

- **Provide a clear and simple process**
The process should allow a group identifying itself as a community to undertake the procedure by themselves or to seek external support.
- **Identify who can request a community forest**
The legal framework should clearly identify who can be allocated a community forest by defining 'community' and considering the different groups, such as marginalized ethnic groups, that exist within the community.
- **Provide easy process for setting up a legal entity**
If setting up a legal entity is required to access community forestry, the law should ensure the process is not too complicated or costly.
- **Regulate forest size and type**
The law should regulate the size, whether it provides limits or not, and the type of forests or areas of the forest where community forestry can take place. The area should be the appropriate size to support community development and forest sustainability and should consider current uses of the forest by the community.
- **Provide rules for renewal**
To ensure legal security and certainty, the law should explicitly provide rules on the renewal of community forests based on clear criteria and an accessible procedure.
- **Outline clear allocation procedure**
To ensure accessibility of community forestry, the steps of the allocation procedure should be outlined and be simple and affordable for communities.
- **Offer detailed criteria for applications**
Detailed criteria for applications should be in the law to avoid discretionary decisions. For example, the law should indicate the time period the administration has to handle the application at each stage of the process, as well as the consequence in the case of no response from the administration.
- **Provide an appeal mechanism**
Legislation should provide an appeal mechanism or the possibility to resubmit an amended application if it is rejected.

Community Forest Act

Who can establish a community forest

The Act defines a community as a group of people with a mutual interest in engaging in lawful activities and supporting its members. The group meets regularly and has a committee in place to express its members' opinions.

Community forests can be established by a group of at least 50 people who must be over 18 years old and living in the same district. Community members must live in the region where the forest is situated for at least the last five years.¹¹

The community is not required to set up a legal entity to apply for or manage a community forest. However, the Act does require communities to set up a Community Forest Management Committee (CF Management Committee) once the community forest is allocated. The CF Management Committee manages the forest according to the community forest management plan approved by the PCF Committee. It also has other roles, such as acting as a mediator between community members.

Allocation process

The allocation of a community forest is complex. There are at least three levels of decision-making involving the local Forest Resource Management Office (FRMO), the PCF Committee and the RFD's Director General. The procedure can take a minimum of about 130 days, more than 220 days if overlapping requests are submitted and up to 355 days if objections are raised and there are appeals. These timeframes are estimations, as the number of days will depend on whether the request must be amended, if objections are raised and other hindrances. The law is also not clear on the steps that must be followed in each situation.

There are many steps to establishing a community forest. The main ones are:

1. Request
The community makes a written request to the local provincial governor or the PCF Committee where it exists. The request must include their objectives, the names of the CF Management Committee members, a short history of the community, including how long it existed, a rough map of the forest's boundaries and the forest management plan.
2. Review and public announcement
The local FRMO reviews the request and carries out a survey of the area. The FRMO posts a public announcement of the request in a public area, such as the Provincial Hall, the District Office or the Local Administrative Organization Office of the region, for 45 days. This allows any interested person, company or group to raise objections. The FRMO produces a report and sends it to the PCF Committee along with the request and any land rights or use claims submitted.
3. Approval
The PCF Committee approves the request if all documents are in order and there are no objections.
4. Publication
If the RFD's Director General agrees with the resolution of the PCF Committee, the approval is published in the Government Gazette and the community forest becomes official.

Demonstrating capability

The community that wants to apply for a community forest must demonstrate its capability to care for the forest. The law does not specify what this means, but it may be clarified in regulations prescribed by the CF Policy Committee.

Objections

Objections can be formulated by a government entity, a state enterprise, a government agency or a person already using or filing a request to use the same area. The PCF Committee considers all documents submitted and informs the community and the person who objected about its decision. Both parties have a right to appeal the decision to the CF Policy Committee.

Overlapping requests

When there are overlapping requests for the same area, the parties will be encouraged to reach an agreement to either cancel one of the requests or to merge them. If no agreement is reached, all requests are cancelled and removed from the system. This leaves communities to mediate among themselves, which can create conflicts. It would be useful for supporting regulations to provide a legal mechanism that could be used as a safeguard for those objecting to the request and to prevent conflicts.

How to establish a community forest in Thailand

Abbreviations legend

CF Management Committee	Community Forest Management Committee
CF Policy Committee	Community Forest Policy Committee
FRMO	Forest Resource Management Office
PCF Committee	Provincial Community Forest Committee

1 Request

A community is defined as at least 50 people aged 18 years or over located in the same district

Community submits request to provincial governor or PCF Committee. Request must contain:

- Names and profiles of applicants
- Names of elected community forest committee members
- Short history of community; description of land topography; map of proposed boundaries
- Community forest management plan with community forest objectives, including conservation areas
- Mangrove forests or a national reserved forest require prior consent from Department of Marine and Coastal Resources

CF Policy Committee will develop further rules, procedures and conditions to establish a community forest

2 Review and public announcement

FRMO, assigned by Director General, reviews request within 10 days

If incomplete or incorrect, community amends request within 30 days

If not amended on time, FRMO notifies applicant in writing that request is cancelled

If complete, FRMO surveys area and prepares map of boundaries within 45 days. FRMO issues a public announcement and has 30 days to collect comments and objections from the public

If there are overlapping requests, FRMO suspends consideration of requests and notifies applicants to reach an agreement

FRMO produces a report, including its opinion on any objections, within 45 days for PCF Committee review

If they agree to revoke all but one request within 90 days, FRMO considers request

If no agreement is reached, FRMO removes all requests from the system

If not amended, PCF Committee may reject request

If PCF Committee decides community forest management plan is not accurate or adequate, applicants have 45 days to amend

If request approved, PCF Committee notifies applicant, person who objected and Director General within 15 days right to appeal to the Policy Committee during 45 days

Applicant and person who objected can appeal to CF Policy Committee within 45 days

If disagrees, Director General has 45 days to give opinion to PCF Committee

3 Approval

CF Policy Committee considers appeal and makes final decision within 45 days

PCF Committee approves

4 Publication and amendments

Director General publishes the approval in the Government Gazette. The community forest becomes effective

When community forest management plan is effective, CF Management Committee can:

- Propose an improved management plan through a request to PCF Committee
- Request an extension of community forest boundaries or its cancellation

Further rules

The CF Policy Committee should develop further rules and regulations for establishing community forests. Several important elements, such as the content of the management plan, are missing. This makes the current framework incomplete.

Renewal periods

There is no provision in the Act that clearly recognizes a right to the renewal of community forests. It mentions the possibility to renew the community forest management plan after five years. However, it is unclear how many times it can be renewed, what process should be followed and what happens if the management plan is not renewed.

Designated timeframes

Providing a designated timeframe to approve or dismiss the application would help ensure the effectiveness of the decision-making process for allocating community forests. The Act does set some periods, such as 30 to 45 days, that the administration must handle the community's application at each stage of the process. However, it does not specify whether the lack of response from the administration within this timeframe results in the approval or dismissal of the request.

Administration support

There is no specific provision clearly allowing or requiring the administration to support the community in the community forest allocation procedure. There is a general provision for support to the community to perform their duties, not specific to any activity.¹²

Previously established community forests

If a community forest was already established under the forest law or national reserved forest law or with the support of the RFD, it is automatically approved as a community forest under the Act. The community must submit a community forest management plan within two years from the date of entry into force of the community forestry regulations.¹³ There is also priority given to recognize a community forest that has been established in a forest or government area before it is registered as a protected forest under the national park law or wildlife preservation and protection law.¹⁴ In other words, the community forest located in an area that would qualify as protected under the new laws would remain a community forest under the Community Forest Act.

Analysis

Overall, the law details the process for the first-time allocation of a community forest. There are an overwhelming number of steps for communities to follow, a timeline for the different stages of the process and of the role of certain institutions, such as the FRMO or PCF Committee. However, the process is long and complex. Therefore, communities may not be able to follow the process without support from third parties who can help them understand the application process for preparing management plans.

Some steps of the process are also unclear. For example, what does the FRMO do with the file deposited by the community when there is no objection from third parties?

The process of renewal of a community forest is not clearly laid out in the Act. It is possible to renew the management plan and automatically renew the duration of the community forest for its period of validity, which is for five years.

Community internal governance

Guidance on effective community forestry laws

Factors to address on community internal governance are:

- **Accountability, representation and transparency**
Act should explicitly include accountability, representation and transparency as principles for implementing community forestry.
- **Adaptation to the community's own internal governance**
Legislation should allow communities to use their own mechanisms to implement these principles in practice. For example, a community should be able to decide the composition, role and operational procedures of community forestry decision-making bodies. The community should be able to create a

mechanism, such as public notice boards, to share information with its members. It should also be allowed to use its own internal accountability mechanisms to monitor the activities of its governing bodies to safeguard against corruption, local elite capture and arbitrary decisions.

Community Forest Act

Community decision-making power

The Act guarantees that the community has decision-making power over community forest management. However, the final approval of the forest management plan rests with the CF Policy Committee, which is largely composed of government representatives.¹⁵

The community can develop its own rules on community forest management, the membership to the CF Management Committee and the management of common property. However, the community must abide by the CF Policy Committee's regulations and receive prior approval from the PCF Committee.¹⁶ There are no criteria provided for the PCF Committee to reject these rules or what the process is in this case.

Decisions of the Community Forest Management Committee

Decisions on the membership and functioning of the CF Management Committee must follow regulations developed by the CF Policy Committee.¹⁷ For example, rules can refer to the election of members, the term of office and a change in community forest members. This shows there could be a prescriptive framework for the community to follow, but it is not clear to what extent and which conditions will limit decision-making by the community.

Information sharing

The Act does not require the community to set up a specific mechanism to share information on the forest and its management to community members and beyond. The Act does require the CF Management Committee to raise awareness externally about activities related to natural resources, the environment, rehabilitation and others carried out in the community forest.¹⁸

Accountability

The community is not required to set up an accountability mechanism to ensure good governance or to create a complaint mechanism to ensure effective internal accountability. In terms of external accountability, the community reports to the PCF Committee every year on its common property. If the CF Management Committee or one of its members does not fulfill its duties, the PCF Committee can remove the whole committee or some of its members with 75 percent of all votes.¹⁹ While this allows for the monitoring of the CF Management Committee and its activities, it does not provide community forest members with the power to exercise their own accountability mechanism.

Analysis

There are few provisions on community internal governance mechanisms in the Act. While this allows some flexibility to adapt to the local circumstances, there are elements that are missing in the current framework:

- A mechanism to share information amongst community members
- Representation of marginalized groups within the CF Management Committee and as part of the community
- A conflict resolution mechanism at the community level, either an existing, traditional one or one set up for the community forest

Community participation and representation of marginalized groups

Guidance on effective community forestry laws

To ensure community forestry is truly community-driven, the legislation should include provisions on the participation of all community members, particularly vulnerable groups such as women, Indigenous Peoples and the poorest or most marginalized members. These provisions could, for example, require regular community meetings with the participation of all community members or quotas to ensure the representation of certain groups in community forest decision-making bodies including in executive roles.

Community Forest Act

Participation

The Constitution and forest laws in Thailand allow the participation of all to preserve the environment. However, the Community Forest Act does not mention the right for all to participate. In particular, it does not offer additional safeguards to ensure vulnerable groups can participate in community forest management and decision-making.

Representation

Overall, there is no mention of vulnerable groups, such as ethnic and other minority groups, Indigenous Peoples, women or youth and their involvement in community forestry.

Analysis

The Act does not explicitly mention the diverse groups that can form a 'community', such as Indigenous Peoples, women, youth, poor and marginalized people, and those carrying out certain activities.²⁰

It does not stipulate that these groups should be identified by community members to ensure they are represented and can participate in decision-making around the use of the forest.

There is no reference about quotas from vulnerable groups or other mechanisms to ensure they benefit from the use of the community forest.

There is no requirement for CF Management Committee members to include one or more representative from minority groups in the community. The CF Policy Committee requires that the members of the CF Management Committee have "qualifications" and refrain from having "any prohibited characteristic of a Community Forestry Committee member."²¹ It is unclear, without further regulations, what this means. The words "qualifications" and "prohibited characteristic" need to be defined in new regulations so that the terms are not left to interpretation.

Community forest management

Guidance on effective community forestry laws

To support effective community forest management, the law must provide:

- **Guidance**
The law should enable community members to develop a community forest management plan and provide them with easy-to-understand templates and guiding documents.
- **Adaptation**
The law should be adaptable to different situations depending on the type of activities proposed, the size of the community and the size of the forest.
- **Management plans**
Management plans that are easy to understand and fill out can ensure that members have a sense of ownership over their content and stronger compliance. Their level of complexity should be set according to the capacity and needs of the community and the types of activities it plans to conduct, so they remain a useful planning tool. For example, detailed tree and timber inventories could be required only if the community plans to sell forest products or receive payments for environmental services.
- **Types of activities**
The legal framework should clarify what types of activities are allowed or prohibited in the community forest. If there are restrictions, it should provide safeguards for groups whose livelihoods depend on the restricted activities, such as cattle grazing or hunting in the community forest.
- **Termination of community forestry**
The legislation should specify under which conditions the community forest may be terminated and detail the procedure leading to its termination, including the possibility to appeal a decision to terminate.
- **Involvement of third parties**
The law should provide clarity on the involvement of third parties. For example, it can create rules for third-party interventions in community forestry operations and for marketing community forestry products. The legislation should provide safeguards to prevent any contractual imbalance between a third party and the community.

Community Forest Act

Management structure

Community forests are managed by the CF Management Committee together with the community forest members, following a forest management plan approved by the PCF Committee.

Community forest management plan

The management plan is the main document that allows the community forest to be established and plans how the forest will be used. The Act does not detail what the management plan must contain, which will be detailed in the regulations. It does require that the plan determines the areas for conservation, if the community forest is for conservation only, or if the use of the forest is aligned with the geographical and living conditions of the community. The plan must show how the community will conserve, rehabilitate or monitor the environment, biodiversity and natural resources in the conservation and use areas.²²

The Act does not offer guidance to the community as it develops the management plan through the use of templates and guiding documents, which may be covered in the upcoming subsidiary legislation.

The CF Policy Committee is the body responsible for regulating how the community forest management plan can be developed.²³ It is composed of 23 members: 15 representing different ministries and the state; at most two representing civil society; and the remainder CF Management Committee members and experts in environmental or social sciences.²⁴ Non-government representatives are chosen by a Nomination Committee made up of representatives of different ministries and according to conditions laid out in the Community Forest Act. For example, nominees must be experts in their field and have no criminal record.

Further regulations must be developed to reduce ambiguity in implementation of the law and creation of the community forest management plans.

Rights of community members

The Community Forest Act identifies the main activities that can be carried out by community forest members.

They can:

- Enter the community forest for recreation
- Earn benefits from products and services, such as collecting forest products and using timber and other resources for normal household use or for public activities
- Use the forest for educational and awareness-raising purposes

Future regulations should specify the types of products and services that are prohibited or require the approval of the PCF Committee.

The law specifies that only non-naturally occurring valuable timber can be used by the community for subsistence. Commercial logging is therefore not allowed. It also foresees that in special circumstances, such as to alleviate damage from a natural disaster or to bring assistance to people, the community can use the timber to build houses, bridges and other infrastructure needs. In such cases, the written approval of the PCF Committee must be obtained first.

The Act also identifies activities that are prohibited in the community forest:

- Residing in it or making a living from it
- Clearing, burning, mining, hunting protected animals or degrading the forest
- Using timber beyond subsistence household or community use
- Constructing buildings, unless it is necessary for community forestry activities, such as a fire lookout tower²⁵

Third-party involvement

There is little in the legislation about the involvement of third parties in the community forest, such as if and how the community may receive external support or enter into a contract with third parties. The law provides that people who are not members of the community forest can use it in certain circumstances. They have the right to enter the forest to learn about natural resources and environmental conservation, according to the rules set up by the CF Management Committee. It is also possible to carry out studies and research activities or explore the biodiversity of the forest with the written permission of the PCF Committee.²⁶

Analysis

The Community Forest Act does not describe in detail what should be included in the content of a community forest management plan. The CF Policy Committee should provide more clarity.

Access to markets

Guidance on effective community forestry laws

The legal framework can facilitate communities' access to markets by:

- **Enabling communities to generate revenue**
Communities can earn income if the law allows them to harvest, process and sell timber or non-timber forest products. It could also allow them to carry out other types of income-generating activities, such as ecotourism or those that generate payments for environmental services.
- **Creating beneficial conditions for the sale of products**
The legal framework should contain clear provisions that benefit communities, including on taxes, transport and product processing. For example, economic incentives could include tax exemptions or low taxes for the sale of forest products, making it affordable for communities to engage in commercial activities.
- **Providing a simple process**
The law can provide an easy procedure to encourage economic activities, for example, by not requiring the establishment of a new legal entity to allow market access.
- **Providing access to capital and support**
Regulations can provide better access to capital and technical support. For example, the government and civil society can offer training on financial management for community-owned enterprises.

Community Forest Act

Commercialization and earned benefits

There is no provision in the Act that clearly provides communities with the right to commercialize community forest products. However, the community can earn benefits from products and services derived from the community forest. This seems to refer mainly to conservation and other forest protection and rehabilitation activities that can be carried out in the community forest.

Regulations and processes

The CF Policy Committee must develop clear regulations and processes on the types of products and services the community can use to make access to market more secure.

Natural resource use

The Act specifies that only non-valuable timber can be used and only for subsistence purposes. The same rule applies to natural resources, which the community can access only for 'normal usage' by households or for public activities.

The Act defines 'timber' as all plants, 'valuable timber' as restricted timber under the forest law, and what constitutes as 'utilizing timbers.' To utilize timber means to cut, stab, lop, fell, crop, saw, spit, trim, chop, dig or drag timber in a community forest or to conduct any action to remove timber from a community forest. Forest products are defined as things that happen or exist in a community forest, such as firewood, bamboo, leaves, flowers, grass, mushrooms and other plants, honey and bee-derived products, animals, insects and soil products.²⁷

Analysis

The Act allows communities to generate benefits from the use of community forests. It makes clear that timber cannot be sold and can be used only for household purposes. However, the Act does not specify which community forest products and services may be sold and under which conditions.

The Act allows communities to benefit from community forests and provides for the setting up of a fund to collect fees from the use of the community forest. It also prevents communities from using timber and other natural resources except for domestic use or 'normal usage.'²⁸ This seems to suggest such products cannot be sold to third parties, but it is unclear on this point, leaving a major gap.

Benefit sharing

Guidance on effective community forestry laws

Benefit sharing is a key element of successful community forestry. The law should include:

- **A community benefit-sharing mechanism**
The legal framework should allow the community to develop their own equitable benefit-sharing mechanism, which should explicitly include references to marginalized groups of people.
- **Safeguards**
The law should provide for accountability safeguards to protect community members against elite capture. This could be done through a community system to ensure transparency and monitor benefit sharing or requiring a minimum percentage of the benefits to be reinvested or shared among all community members.
- **Links with other communities**
It would be useful to include a benefit-sharing mechanism with neighbouring communities that exercised customary rights in the forest before it was allocated.

Community Forest Act

Monetary and non-monetary benefits

The Act recognizes certain monetary and non-monetary benefits that community forest members can obtain from the community forest.

Non-monetary benefits include using the forest for recreation or collecting forest products such as bamboo, flowers, seeds, honey, pebbles and other non-timber products within the limit of what will be detailed by the CF Policy Committee in further regulations.

Monetary benefits may be derived from the products and services proposed by the community, as well as from the collection of fines, entry fees or benefits from research.²⁹ In this last case, the PCF Committee can give permission to a person to carry out a study or other research on biodiversity in a community forest. It may then prescribe that the benefits made from the research are shared with community members.³⁰ This is not an obligation under the Act.

Benefit sharing

The Act is so far not prescriptive on how these benefits should be shared among community members. However, it provides for the possibility for communities to create a fund for community forest management.

The fund will receive 50 percent of the fines collected under the Act for offenses committed in the community forest, with the rest reserved for the state. The fund will also collect any fees accrued from the use of the community forest by non-members. Money collected from donations, government funding or other income may also go to the community fund.³¹

The fund is the common property of the community forest and must be used for community forest management or any purpose specified by those who donate to the community. The fund must follow the rules and regulations of the CF Policy Committee.³² Beyond these general provisions, the Act does not specify if and how money collected will be spent by community members. The Act seems to suggest that money cannot be directly used for the members' benefits but needs to be reinvested in the community forest management. It does not impose the creation of a benefit-sharing mechanism.

Finally, there is no requirement to set up a mechanism to manage this fund in a transparent and in an effective way. This also reiterates the lack of accountability discussed under the community internal governance section.

Analysis

There is no requirement for benefit sharing among community members or for establishing a mechanism to do so. There is also no obligation to establish a fund management system or another mechanism that would ensure transparency and accountability for using benefits. Marginalized people are not mentioned in relation to benefiting from the fund.

Rights and obligations of community forest users

Abbreviations legend

CF Management Committee
CF Policy Committee
FRMO
PCF Committee

Community Forest Management Committee
Community Forest Policy Committee
Forest Resource Management Office
Provincial Community Forest Committee

Rights of community forest members



- Enter community forest for recreation
- Earn benefits from products and services as described in management plan:
 - Collect forest products
 - Use timber (excluding natural valuable timber) for household needs or for public activities in the community
 - Use natural timbers as defined by Community Forest Act to alleviate damage after public disaster or to help people if PCF Committee gives written approval
 - Members do not pay fees, royalties or charges for timber and forest products obtained from community forest
 - Use other natural resources for household needs
- Use community forest for educational purposes and for raising awareness on conservation and environmental issues as described in the management plan, as long as actions do not deteriorate natural resources, the environment and biodiversity
- CF Policy Committee prescribes products or services prohibited for use, and the types of uses that will require written permission from the PCF Committee



Prohibited activities in the community forest

- Residing in or making a living from community forest
- Clearing, burning, mining, hunting protected animals, degrading community forest
- Using timbers beyond what is prescribed in Community Forest Act
- Constructing a building, unless necessary for CF Management Committee duties, such as a fire lookout tower

Rights of non-members



- Entering community forest to learn about natural resources and environmental conservation as per CF Management Committee rules
- Studying, researching and exploring biodiversity with written permission of PCF Committee

Community forest common property



- 50 percent of fines collected from offenses committed in the community forest goes to fund for community forest management; remainder goes to the state
- CF Policy Committee sets the rate and process for CF Management Committee to collect fees from a non-member for using community forest
- Money can also be collected from donations, government funding or other sources of income and will become the community forest's common property
- Community forest common property is used for management or other purpose specified by donors, as per CF Policy Committee rules and procedures
- CF Management Committee has legal authority to represent the community before court



Conflict resolution

Guidance on effective community forestry laws

Conflicts may arise between members of the community, or between community members and third parties such as government representatives, companies or NGOs. The law should guarantee that each community member has the right to a fair dispute resolution mechanism, which can rely on traditional dispute resolution methods. Judicial dispute resolution mechanisms, such as a court or tribunal, must be accessible to allow community members to file a complaint or for recourse.

Community Forest Act

Mediation

The Act allows the CF Management Committee to mediate or reach a compromise on any dispute that may arise because of community forest management.³³ However, the Act does not mention the possible use of traditional dispute resolution mechanisms or how the CF Management Committee may revert to those or other existing mechanisms.

The Act does not provide for a specific mechanism if the conflict around the allocation or the use of the forest concerns two or more neighbouring communities.

Litigation

If a community proceeding is unsatisfactory, community members may take the matter to a judicial body.³⁴ When there is a dispute over common property of the community, such as the money collected from the use of the forest, the CF Management Committee has the right to conduct litigation on behalf of the community if it obtains more than half of the CF Management Committee members' votes. All court fees will be waived when the CF Management Committee engages a public prosecutor to conduct litigation.

If anyone violates the Act or subsequent rules and damages animals, plants or the environment in the community forest, the RFD can sue that person. The CF Management Committee can join the RFD as another plaintiff to claim expenses to avoid or repair damages, as well as for the value of the damaged natural resources.

If a conflict arises between the community and the administration or between the community and a third party, the recourse for the community is similar to a redress mechanism, which is both administrative and civil based.³⁵ This includes cases where third parties may cause damage by using the community forest's products and services. The CF Management Committee can then either be a joint plaintiff with the RFD and sue for damages³⁶ or ask a public prosecutor to conduct the litigation and all court fees will be waived.³⁷

Analysis

The Act does not clearly state that the community can use its own dispute resolution methods, whether those are existing or not. However, community members can use judicial courts in case of a dispute, and the CF Management Committee can represent the community for matters linked to its common property.

Enforcement

Guidance on effective community forestry laws

Elements to incorporate in legislation include:

- **Clear infractions and sanctions**
Legislation should identify what constitutes an infraction of community forestry laws and clearly state possible sanctions that can be applied.
- **Competent authorities**
The law should identify the relevant person or authority that can enforce the law and impose sanctions.
- **Roles and responsibilities**
The law should clearly define the role and duties of the enforcement bodies or individuals.

- **Clear rights of communities to enforce community forest rules**

The law should be clear about the extent to which the community can perform checks in the community forest and impose sanctions when one of its members or an external person breaches the rules.

- **Administrative duties and mandate**

The law should clearly identify which administrative body oversees conducting checks in the community forest and define its mandate.

- **Right to appeal**

The legislation should provide an appeal mechanism for the community, especially for the most serious sanctions, such as when the government withdraws a community forest certificate.

Community Forest Act

Enforcement

The Act allows legislation to be enforced by the state and by community members at the community level. It identifies applicable sanctions and the institutions in charge of monitoring compliance with community forest rules.

Role of the CF Management Committee

The CF Management Committee ensures community members carry out their duties. The CF Management Committee can order members to comply with the rules and if they do not comply, they can be ordered to exit the community forest with a vote of 75 percent of the members.

Performing checks in the community forest is not explicitly mentioned in the Act but the committee is responsible for 'taking care of the community forest' and for ensuring community members do their duties. The CF Management Committee is also allowed to 'take any appropriate action to prevent or alleviate any damage to the community forest.'³⁸

Monitoring and enforcement

The Minister of Natural Resources and Environment is responsible for the execution of the Act and can appoint government officials and issue ministerial regulations and notifications for the execution of the Act.

The main body in charge of monitoring community forestry is the PCF Committee. The PCF Committee monitors the performance of the CF Management Committee and evaluates its forest management in an annual report presented to the CF Policy Committee.³⁹ If there is a violation of the Act, the CF Policy Committee can order the CF Management Committee and its members or officials to take any appropriate action. If a new building or structure is created in the community forest in violation of the rules, the PCF Committee can order that it be dismantled or destroyed.⁴⁰

The PCF Committee can appoint a community forest official to help them monitor and enforce community forest rules. Community forest officials must be members who are at least 20 years old.

They are tasked with:

- Investigating the area and monitoring forest members, non-members and forest activities
- Preventing or alleviating damage to the community forest
- Reporting to the PCF Committee if a community forest must be cancelled

The PCF Committee can order someone to take any action or exit the forest if they violate the rules.⁴¹ The fact the official is a community forest member and can act against other community members raises a significant risk of conflict of interest. It may foster conflicts or corrupt practices.

Officials have the power to enter a community forest to inspect and monitor the forest operations and compliance with the Act, to order someone to exit the forest, to search a person or vehicle and to seize property. They must report violations made by CF Management Committee members to the Director General of the RFD.⁴²

Sanctions

The Community Forest Act describes administrative and criminal sanctions that may be applied if there is a violation of the law. Penalties range from fines for failure to comply with the laws and regulations or the CF Management Committee rules, to imprisonment for those who conduct prohibited activities in the community forest.⁴³

Cancellation of a community forest

The Act outlines the conditions for cancelling or revoking a community forest. The Director General of the RFD has the authority to do so if the CF Management Committee neglects or no longer manages or rehabilitates that community forest; if it does not comply with the Act or with the rules or regulations resulting in damage to the forest; or if there is a reason to believe it should not be trusted to continue managing the forest.⁴⁴

A community forest can also be cancelled if the CF Management Committee itself asks that it be cancelled and provides justification, or for a reason of national security, with the approval of the Cabinet. The community can appeal this decision to the CF Policy Committee.⁴⁵ The community forest cancellation is effective from the date it is published in the Government Gazette.

Analysis

The Community Forest Act provides information on how it will be monitored and enforced, including the penalties to be imposed if the Act is breached. The PCF Committee can appoint someone in the community to monitor and enforce the community forest rules. This may or may not improve monitoring of the rules and may create conflicts within the community because the official can take enforcement actions against peers. As the official is a member of the community forest, it could be a conflict of interest for him or her to be monitoring its use.

Support from external actors

Guidance on effective community forestry laws

It is essential that the law explicitly allows and helps external actors to support community members who implement community forestry, including:

- **Support from NGOs and the administration**

The law should expressly allow NGOs to support communities before the community forest is allocated and when implementing community forestry activities. It is helpful if it allows the administration to cooperate with NGOs in matters relating to community forestry.

- **Support from the private sector**

The legal framework should contain materials to help safeguard communities, such as contract templates they can use when working with private operators. Properly written contracts can help ensure there is a balanced relationship between the two entities and minimize potential power imbalances or capture of community forest by private companies. The contract templates can include important details, including how the benefits will be shared between the private operator and the community.

Community Forest Act

The Act clearly identifies the relevant administrations that will offer support for community forestry.

Provincial Community Forest Committee support

The PCF Committee provides suggestions and assistance to the CF Management Committee in managing community forests.⁴⁶ Community forestry officials can be appointed by the PCF Committee to support the community as community members themselves. They are responsible for giving advice and raising awareness about natural resources conservation and the importance of maintaining and nurturing local wisdom, traditions and culture. They also support the work of the CF Management Committee overall.⁴⁷

Prosecutor

Any public prosecutor has the power to help the community access courts in case of any harm occurring to the community forest's common property or the forest.⁴⁸

All involved parties

There is also a general principle, although not specifically stated in the Act, that all involved parties in the community forest must facilitate the work of the CF Management Committee. This includes community forestry officials and other relevant officials as they carry out their duties.⁴⁹

Third parties

The Act does not define how third parties, including companies, NGOs or other actors, can work with communities to manage the forest area. However, the 1992 Enhancement and Conservation of the National Environmental Quality Act allows NGOs to support communities with environmental management, either directly or in collaboration with the administration.⁵⁰ This provision can be applied to community forestry.

Composition and roles of community-based bodies and stakeholders in community forestry

Abbreviations legend

- CF Management Committee Community Forest Management Committee
- CF Policy Committee Community Forest Policy Committee
- FRMO Forest Resource Management Office
- PCF Committee Provincial Community Forest Committee



Stakeholder

Selection and composition

Role and responsibilities

CF Management Committee elects its members based on criteria set by CF Policy Committee, which outlines:

- Election process
- Qualifications and characteristics of committee members
- Structure and number of committee members
- Length of term and replacement process
- PCF Committee will adopt regulations to determine specific conditions of CF Management Committee membership

Accountability

- PCF Committee members, with 75 percent of votes, can permanently remove CF Management Committee members



- Care for and promote the community forest
- Work with officials to set up boundary posts and signs
- Issue rules on community forest management; enforce compliance; set criteria to accept members
- Manage common property; submit annual report to PCF Committee
- Mediate community forest disputes
- Aid officials when an offender is arrested
- Any other actions prescribed by CF Policy Committee or PCF Committee

At least 50 members are needed to apply for a community forest. Members must:

- Be at least 18 years old
- Have lived in a home located in the forest for at least five years before filing the request
- Meet guidelines set by CF Policy Committee

Accountability

- CF Management Committee members, with 75 percent of votes, can remove a community forest member



- Manage the community forest, together with the CF Management Committee, according to the community forestry management plan
- Comply with rules of CF Policy Committee, CF Management Committee
- Work with government to care for the community forest, wild animals and natural resources
- Cooperate with CF Management Committee to conserve and rehabilitate natural resources

- Officials selected from community forest members must be at least 20 years old; meet other criteria to be specified in a royal decree



- Investigate community forest area; monitor members and non-members using community forest
- Offer advice; educate and raise awareness about conserving natural resources, biodiversity and local traditions and culture
- Prevent or alleviate damage to community forest
- Supports work of CF Management Committee
- Report to PCF Committee when a whole or part of community forest needs to be cancelled

Composition and roles of administrative institutions that are part of the community forest allocation process

Abbreviations legend

CF Management Committee	Community Forest Management Committee
CF Policy Committee	Community Forest Policy Committee
FRMO	Forest Resource Management Office
PCF Committee	Provincial Community Forest Committee



Stakeholder

Selection and composition

- Deputy prime minister
- Minister of Natural Resources and the Environment
- Representatives of the ministries and offices related to defence, agriculture, water, marine and coastal resources, treasury, land development, social development and welfare, local administration and cooperative promotion
- Expert committee members, including a maximum of two civil society representatives

Role and responsibilities

- Gives opinions to the prime minister's Cabinet on policies to promote and support community forests
- Suggests to the Cabinet financial or other regulations for CF Management Committee
- Suggests enactment of royal decrees and ministerial regulations
- Prescribes regulations to Community Forest Act
- Reports on performance of community forests
- Approves list of experts proposed by RFD to be appointed to PCF Committee
- Considers appeals on the establishment or cancellation of community forests and against an order of PCF Committee

Community Forest Policy Committee

Established at national level

- Provincial governor or vice-governor
- Representatives of ministries and provincial administration
- Local administrator where the community forest is located
- Two officials related to the community forest
- Provincial community forest network chairman
- Seven expert committee members, including two members of civil society; expert members are selected by a Nomination Committee, composed of ministries and governmental offices
- RFD's Director General

Provincial Community Forest Committee

Established in each province where community forests are requested or allocated

- Considers matters to establish or cancel a community forest or extend its boundaries
- Extends the time to consider community forest request
- Passes resolutions on removing CF Management Committee members
- Appoints and revokes community forest officials
- Approves the community forest management plan and rules of CF Management Committee
- Provides suggestions and assistance to CF Management Committee in managing community forest
- Monitors and evaluates performance of CF Management Committee and community management in the province

- FRMO is assigned by the RFD's Director General; Thailand's Community Forest Act does not clarify FRMO's composition

Forest Resource Management Office

Established at the local level

- Reviews community forest requests and documents
- Investigates area to establish community forest and prepares a map of its boundaries
- Publishes announcement of community forest request and considers objections
- Formulates opinions on community forest and submits report to PCF Committee

Private operators

There is no provision in the Act explicitly authorizing the involvement of private operators in community forestry activities.

Analysis

The Ministry of Natural Resources and Environment and appointed officials will provide some support to the community for community forestry activities. However, there is no legal provision explicitly authorizing private operators, local NGOs or others to help establish or maintain community forestry projects.



Recommendations

Overall, the Community Forest Act secures the rights of communities to use and manage forest resources, but only outside protected areas. It clarifies the rights and obligations of residents living in the forests to manage and use natural resources sustainably, and in collaboration with the government.

Based on the analysis of existing legal provisions on community forestry, RECOFTC and ClientEarth have developed recommendations to strengthen the Act.

Completing the legal framework

The government needs to develop specific regulations to implement the Community Forest Act and complete the legal framework. Several regulations should be enacted by the CF Policy Committee on different aspects of community forestry, such as:

- How to determine the size and purpose of the community forest
- Rules and conditions needed to establish a community forest, such as the requirements to be a community forest member or the map showing the boundaries of the community forest
- Governance rules of the CF Management Committee
- Types of products and services a community can use or provide

These current major gaps prevent forest users from understanding how to establish and use a community forest.

Ensuring coherence with other legislation

The Act should be read in conjunction with other legislation that gives rights to communities to carry out other natural resource management activities. It only focuses on the rights of communities in forests outside of protected areas. However, other acts, such as the National Park Act, provide different mechanisms for communities to use natural resources for their benefits. The Community Forest Act states that when the CF Policy Committee proposes new regulations, it must consider the forest law and national reserved forest law.

Understanding the role of administrative institutions

The important administrative institutions within the community forestry framework, in particular the CF Policy Committee and the PCF Committee, have extensive powers to set the conditions for establishing and managing community forests, approving the forest management plan, monitoring and enforcing rules. For example, the main internal governance rules of the CF Management Committee will be prescribed by the regulation imposed by the Community Forest Policy Committee, which is a group largely composed of officials from the national government.

It remains unclear how prescriptive these regulations will be. However, it will be important that community members understand the mandate and role of all administrative institutions involved in the community forest allocation process. This should be clearly defined within future regulations.

Strengthening the 10 building blocks in the regulations

There are several areas we recommend the regulations should focus on in relation to the 10 building blocks of community forestry legal analysis:

1. **Land and forest tenure:** The subsidiary regulations should consider the existing use of the forest and land, those of Indigenous Peoples and local communities, before allocating community forests.
2. **Process for allocating community forests:** While developing a more detailed procedure for the allocation process, the CF Policy Committee should keep the process of community forest allocation simple. Communities should be able to apply with a minimum number of steps and a reasonable amount of documentation. The procedure should also clarify other aspects of the process, such as where the request

goes once deposited at the FRMO when there are no objections from third parties. It should also provide a designated timeframe to approve or dismiss the community forest application and clarify the process and conditions for renewing a community forest after the 25-year period. Conditions around the requirements to become a community forest member or be part of the CF Management Committee should be minimal and allow for inclusive participation of all community members.

- 3. Community internal governance:** Further regulations should detail principles and safeguards to ensure fair representation, accountability and transparency. This can be done by explicitly stating these principles and asking the community to develop their own mechanisms or systems. The rules framing the membership and functioning of CF Management Committee and the relationship between CF Management Committee and community forest members should be formulated as guidance and be flexible to adapt to the context.
- 4. Community participation and representation:** To ensure good participation of all community members, subsidiary regulations should include provisions for the participation of women, Indigenous Peoples and poor and marginalized people who are historically underrepresented in developing and managing community forests. This can be done by identifying these groups and requiring a certain percentage of them be included in decision-making or by providing another mechanism that explicitly makes space for them.
- 5. Community forest management:** The community forest management plan should be simple and clear. It should be adapted to the size of the forest and the type of activities proposed. For example, it should not require a thorough timber inventory if timber is only used for subsistence purpose. Guidance documents, such as templates, should be provided, as well as the option for communities to call upon forest technicians, NGOs, researchers and others for support.
- 6. Access to markets:** The subsidiary regulations should clarify the types of products and services that the community can use and under which conditions. This will allow them to truly benefit from the community forest and take an interest in the sustainable management of the forest while increasing their livelihoods.
- 7. Benefit sharing:** It should be clear how revenue can be generated from the community forest and which mechanism will be established so benefits can be shared equitably among all community members, including the poorest and most marginalized groups.
- 8. Conflict resolution:** There should be clarity on the use of traditional and existing mechanisms to resolve conflicts.
- 9. Enforcement:** The legal framework would be more clear and easier to enforce if the subsidiary regulations detailed the types and numbers of controls and checks that the government will perform. There should also be safeguards provided for the role of community forest officials to avoid community-level conflicts.
- 10. Support:** The subsidiary regulations should detail how external stakeholders, such as NGOs, experts, the private sector and others can support communities in the application and forest management processes, if and when the community wishes to involve them.

Endnotes

1. Between 2016 and 2019, ClientEarth explored what an enabling legal framework on community forestry could look like. As part of that work, it analyzed community forestry laws in Nepal, Tanzania and the Philippines and identified ten key areas — or legal building blocks — essential to the design of enabling community forestry laws. See ClientEarth (2019) *Communities at the heart of forest management: how can the law make a difference? Sharing Lessons from Nepal, the Philippines and Tanzania*. <http://bit.ly/2Xuv54I>, and ClientEarth (2020), *Toolkit for Enabling Laws on Community Forestry*. <https://www.clientearth.org/new-toolkit-helps-build-community-forestry-laws/>.
2. Community Forest Act, B.E. 2562, Section 6 (2019).
3. As of 30 January 2020, there were 1,221,481 hectares of existing CF.
4. Community Forest Act, B.E. 2562, Section 4 (2019).
5. Community Forest Act, B.E. 2562, Sections 26 and 31 (2019).
6. Community Forest Act, B.E. 2562, Section 46 (2019).
7. Community Forest Act, B.E. 2562, Section 2 (2019).
8. Community Forest Act, B.E. 2562, Section 104 (2019).
9. Ministries of defence, agriculture, water, marine and coastal resources, treasury, land development, social development and welfare, local administration and cooperative promotion. Community Forest Act, B.E. 2562, Section 9 (2019).
10. While there is no official number available, it is estimated that the communities of about 4,192 villages, covering 786,280 hectares, live in protected areas. Information and guidelines for the inspection of the government, Inspector General, Office of the Permanent Secretary of the Prime Minister's Office Office of the Inspector General. See (link in Thai) <https://www.opsmoac.go.th/chachoengsao-dwl-files-421091791258> .(2013)
11. Community Forest Act, B.E. 2562, Section 4 and 32 (2019).
12. Community Forest Act, B.E. 2562, Section 68 (2019).
13. Community Forest Act, B.E. 2562, Sections 99, 100, 102 (2019).
14. Community Forest Act, B.E. 2562, Section 103 (2019).
15. Community Forest Act, B.E. 2562, Sections 43, 44 and 46 (2019).
16. Community Forest Act, B.E. 2562, Section 44 (2019).
17. Community Forest Act, B.E. 2562, Section 42 (2019).
18. Community Forest Act, B.E. 2562, Section 44(3) (2019).
19. Community Forest Act, B.E. 2562, Sections 44 and 74 (2019).
20. Community Forest Act, B.E. 2562, Section 4 (2019).
21. Community Forest Act, B.E. 2562, Section 42 (2019).
22. Community Forest Act, B.E. 2562, Section 33 (2019).
23. Community Forest Act, B.E. 2562, Section 17 (2019).
24. Community Forest Act, B.E. 2562, Section 9 (2019).
25. Community Forest Act, B.E. 2562, Section 63 (2019).
26. Community Forest Act, B.E. 2562, Sections 53 and 66 (2019).
27. Community Forest Act, B.E. 2562, Section 4 (2019).
28. The English translation of the CF Act mentions 'normal use' while the Thai original version mentions 'for necessary reason only'.
29. Community Forest Act, B.E. 2562, Section 50 (2019).
30. Community Forest Act, B.E. 2562, Section 66 (2019).
31. Community Forest Act, B.E. 2562, Sections 55, 56 (2019).
32. Community Forest Act, B.E. 2562, Section 56 (2019).
33. Community Forest Act, B.E. 2562, Section 44 (2019).
34. Community Forest Act, B.E. 2562, Section 62 (2019).
35. Community Forest Act, B.E. 2562, Section 58 (2019), *Act on Liability for Wrongful Acts of Officials*, B.E. 2539 (1996), Civil and Commercial Code, B.E. 2468, Section 420 (1925).
36. Community Forest Act, B.E. 2562, Section 58 (2019).
37. Community Forest Act, B.E. 2562, Sections 60 and 61 (2019).

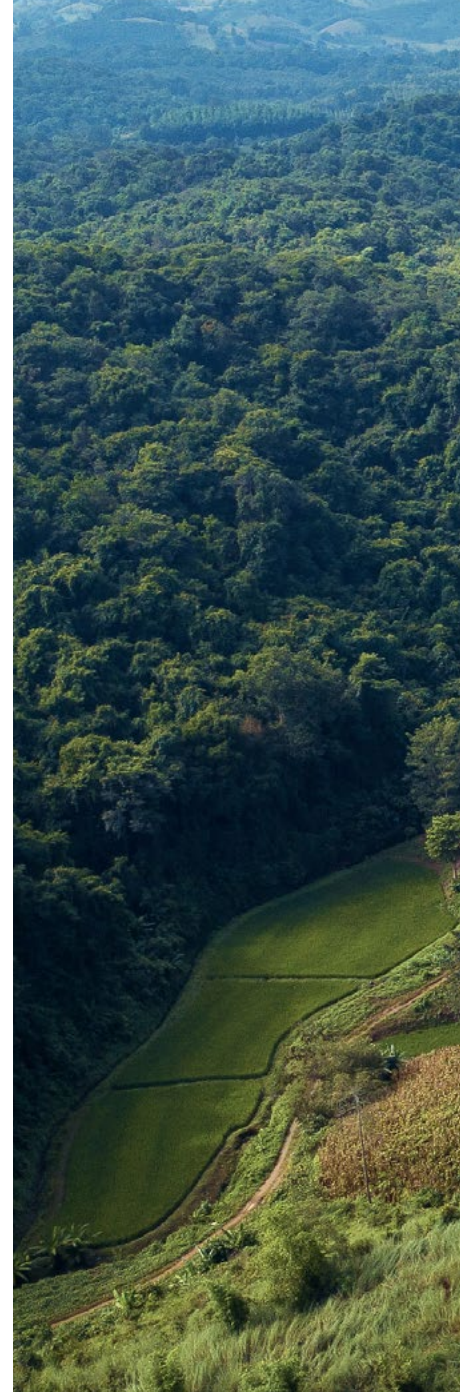
38. Community Forest Act, B.E. 2562, Section 44(3), 44(5) and 44(10) (2019).
39. Community Forest Act, B.E. 2562, Section 27 (2019).
40. Community Forest Act, B.E. 2562, Sections 74, 77 (2019).
41. Community Forest Act, B.E. 2562, Sections 64, 65 (2019).
42. Community Forest Act, B.E. 2562, Section 67 (2019).
43. Community Forest Act, B.E. 2562, Sections 82 to 95 62 (2019).
44. Community Forest Act, B.E. 2562, Sections 78 to 81 (2019).
45. Community Forest Act, B.E. 2562, Section 78 (2019).
46. Community Forest Act, B.E. 2562, Section 26(6) (2019).
47. Community Forest Act, B.E. 2562, Section 64 (2019)
48. Community Forest Act, B.E. 2562, Sections 60, 61 (2019).
49. Community Forest Act, B.E. 2562, Section 68 (2019).
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At RECOFTC, we believe in a future where people live equitably and sustainably in and beside healthy, resilient forests. We take a long-term, landscape-based and inclusive approach to supporting local communities to secure their land and resource rights, stop deforestation, find alternative livelihoods and foster gender equity. We are the only non-profit organization of our kind in Asia and the Pacific. We have more than 30 years of experience working with people and forests, and have built trusting relationships with partners at all levels. Our influence and partnerships extend from multilateral institutions to governments, private sector and local communities. Our innovations, knowledge and initiatives enable countries to foster good forest governance, mitigate and adapt to climate change, and achieve the Sustainable Development Goals of the United Nations 2030 Agenda.



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