

What people are saying about the Community Forestry Bill – 19th December 2007

From the limited media reports in English it seems that most people are of the opinion that the bill, although not perfect, is a very important accomplishment after 15 years of debate, protests, demonstrations, petitions, lobbying, and four attempted bills put before the Parliament.

Activists feel that the bill does not do enough to protect forest communities, stating that some elements of the bill violate the Thai constitution, and that some 20,000 communities will be denied the rights set forth in the bill because of strict stipulations.¹ The debate is concentrated around the two contentious articles, 25 and 34. Article 25 is on the *qualifications* of a community necessary to obtain rights. To qualify for rights a community has to be older than ten years. 20,000 communities on the edge of the forest are excluded. Article 34 *defines the rights* communities get if they qualify. There are strict guidelines on the use of protected forest.

In an interview with Prof Anand Kanchanaphan from the Faculty of Social Science, Chiang Mai University, one of the academics who has been pushing for the passing of the Community Forestry bill, he states that *"The contents of Sections 25 and 34 are no different from conventional forest laws which aim to curb people's rights to use forests and in fact led to conflicts of interests and the demand for a Community Forest law in the first place"*.²

Former permanent secretary for natural resources and environment Petipong Pungbunna Ayudhaya said that while local communities should have the right to manage natural resources, we have to prepare for negative impacts. *"We are going to transfer natural resources management from the state to the people. Isn't it too fast?"* he said during the debate. *"In fact, those living on the rim of protected forests can use the forests. There is no need to grant them legal rights."*

Tuenjai Deetes told the assembly that the bill should recognize the rights of people who have "a good record in keeping the forest".

"Please understand that over 20,000 villages will help protect over 30 million rai of forest," she said. *"We should not ignore them. If we do, it means the community forest law means nothing to them."*

Pirote Polpetch, a community rights activist, expressed his disappointment with the approved bill which, he said, breaches Article 66 of the constitution that recognizes community rights in natural resources management. He said activists were considering filing a complaint with the Constitution Court, or collecting over 10,000 signatures to push for the amendment of the law.³

Andrew Walker an expert at the Australian National University is concerned that the bill doesn't protect farmers and agricultural lands in the forest. Andrew Walker wrote a paper on the proposed law back in 2004. Walker's concern is that the community forest bill does nothing about the uncertain status of agricultural land in forest reserve areas. He says that giving local communities a role in forest protection is all very well, but the much more pressing livelihood and human rights issue is to give them secure tenure over their agricultural land. Walker also mentions Article 64 saying "this prohibition is backed by a sanction of five years' imprisonment, or 15 years if the offence takes place in a conservation area of the community forest. The legislation does make provision for 'zones for use' but the Thai term used here (kaan chay sooy) usually

¹ <http://rightsandresources.org/blog/labels/community%20forestry.html>

² <http://www.prachatai.com/english/news.php?id=398> - See full interview below

³ Bangkok Post

implies, in discussions of forest management, collection of forest products rather than agricultural activity".⁴

For further reading, read this [World Bank Case Study](#) from Columbia University on Community Forests in Thailand. The [Asia Forest Network](#) also has a lot of information including a working paper that describes some of the basic issues.

For basic background information on Thailand's forestry sector read the 2005 report by [Keith Barney](#): *At the Supply Edge: Thailand's Forest Policies, Plantation Sector, and Commodity Export Links with China*. To understand what's going on with forestry laws like Thailand's new [Community Forest Act](#) this report seems to be essential reading. At 90 pages it takes a while to read though.

References

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Will the Community Forest Act be good for farmers?
November 23rd, 2007 by Andrew Walker

<http://rspas.anu.edu.au/rmap/newmandala/2007/11/19/thailands-rural-development-policy-choices/>

Thailand's rural development policy choices
November 19th, 2007 by Andrew Walker

[Interview with Prof Anand Kanchanaphan from the Faculty of Social Science, Chiang Mai University](#)

What are your general impressions about the Community Forest Bill endorsed by the NLA?

The version of the Community Forest Bill endorsed by the NLA will definitely make it impossible for communities to fully participate in community forest management. Instead of writing the law to provide for community participation, they have blocked these rights. Traditionally, people have had rights and have benefited from the forests, and these rights are upheld by the Constitution. The law now puts constraints on these rights and reduces the communities' potential role in forest management. It simply infringes on their constitutional rights.

⁴ ANU New Mandala Blog

- The minority voices in the Drafting Committee held that if we paid too much attention to the people's draft version, it would lead to more encroachment.

This is an unfounded claim. Communities have long established themselves as protectors of the forests. It is not that they just started to do it recently. They have invented tools and mechanisms for this purpose. So we can develop our mechanisms to monitor the community at different levels including the setup of a Community Forest Committee, rules and regulations. It's not the case that they can just start managing forests; they have to have experience. In the draft version proposed by people's sector, we already required that to be entitled to forest management, a community must have at least five years experience. We have established many mechanisms to ensure that they really help to preserve the forests.

In the draft version by the people's sector, various mechanisms and conditions were set out to provide for very detailed monitoring. But in the final version, none of the mechanisms are there, so how can you say that this law will work? Those who support this final version have no understanding of the reality.

- Maybe they do not trust the mechanisms (proposed by the people's sector)?

Well, the monitoring is supposed to be carried out at different levels and by various sectors. Before, it was exclusively the government that took the role, but the new mechanisms we proposed included monitoring by the state, civil society, and the community with very good checks and balances. Before, it was the government that had the biggest voice and that led to discrimination or inaction, particularly, when money gets involved. But the new system that we proposed set out many conditions that involve cooperation from academics, the state, and civil society. To cheat in this system, you would have to bribe all the three parties, which is not very easy.

- Could the fact that this version of the Community Forest law has been endorsed be attributed to a lack of trust or acknowledgement of the rights and authority of communities in natural resource management in society in general?

They must be worried too much. They must be concerned that people from outside will take advantage of the law to serve their vested interests. But their concerns are based on emotion, rather than facts.

Until now, forest and resource management has been guided by a single and exclusive point of view. The idea hinges on the exclusive leadership of one sector such as having the state to take the lead in management, or letting the market to drive management -- either the state or market forces. They stick to the idea of having a single authority, i.e., social organization, or state agency, market or private organization, to manage. They tend to forego the interdependence of all these agencies. We never explore how to mobilize the different functions of these organizations. We tend to look at the ownership aspect - who owns and controls the resources, and who should be the host organization in management.

But natural resource management is highly extensive. It involves the forest, the sea, and the environment. To stick to a solution based on identifying a single authority that owns and manages the entire web of resources is very costly. The environment in its entirety is so large. Problems in the past stem from the fact that the environment is big, and man did not understand its potential, and thus failed to protect it by leaving many loopholes. We have to shift from thinking that natural resource management should belong to one single authority. The rights to manage resources should be treated as collective rights and involve multiple rights including the right to use, the right to check and balance, etc.

Once it is held that the rights are multidimensional and collective, then we can assign different rights to different actors, i.e., the ownership rights belong to the state, the rights to preservation and management to the community, and the rights to monitoring to some other agency. All the rights must be spread out among different parties and are subject to checks to prevent monopolization. And the gaps must be bridged. Different actors are assigned the roles they are capable of, i.e., the rural folk live close to nature, so they should be encouraged to look after it. It does not mean that the state will just leave it entirely in the hands of the community. They can still help to provide information to serve the purpose, and then we have the monitoring and checks performed by independent organizations such as academics, or NGOs. They are supposed to monitor the management.

All these different sectors should be involved and work with good checks on each other. Previously, there were no such checks, and that resulted in mistakes, unintentional negative impacts, leaks of natural resources and many other crises. Management must be carried out at multiple levels. Before, it was monopolized by just one single authority. Now, all the rights to management must be devolved to various actors including various social mechanisms to keep good checks.

- What are the problems with Section 25 in the final draft?

An amendment was made to change the requirement of experience in forest management from five to ten years. This may lead to problems in verification. How can we know if a community has been involved with community forest management for that long? There was no registration system.

The crux of the matter is they do not grasp that there are different layers of rights and how they lay on top of each other. They tend to focus on physical topography and then divide the area for management. But if we rely on the notion of relationships, the physical topography will no longer matter. Given that the management relationships are subject to checks and balances, a community anywhere can help to manage a forest. Of course, if you have never had experience in managing the forest for at least five years, you would not be entitled to the rights. But they tend to focus on the physical topography. They look at the world through a looking glass with one single colour.

- What about Section 34?

This section is OK. Traditionally, people have been using the forests, but their rights have not been recognized, which has led to discrimination against them. If a community's right to manage the forest is recognized, it will have more bargaining power and it will not be easy for government officers to interfere.

- Will this kind of law lead to more tense confrontation between the state and community?

I have no idea. But the bottom line is the government officers will never easily let go of their powers.

- How extensive are the impacts from the law?

All people managing community forests in the lowlands will be affected, but maybe not that much for the highlanders. The law has been tailored for those living on the mountains in the conservation forests. But there are people who live outside the conservation forests like those living in the lowlands. Since they have to rely on water from the mountains, they have been part of the efforts to help preserve the forests up there. Now, with this law, they will no longer be allowed to take part in that since they do not live in the conservation forests. Yet, we have many

such communities. Peasants in the North traditionally rely on small scale irrigation systems which benefit from the watershed on the mountains. But now, the law makes it impossible for people living in the lowlands to apply for the rights to manage community forests.

- After 18 years of struggle, how do those in the community forest network eventually benefit from the law?

Many think having laws is an answer, a solution and an ultimate goal. They think that with the law passed, the problems will end. But in fact, it is just the beginning. Mobilization for the community forest law has led to an increased awareness. The term "community forest" has now been included in the dictionary and the general public has been made aware. Despite some confusion and misunderstanding, it is now impossible to deny the existence of community forests since it has become part of the discourse in Thai society. Community forests are classified as part of the forest management system. Of course, there are different opinions about it.

I have no worry about this. As I said earlier, the process of pushing through the law aims just to raise people's awareness of the term "community forest". The notion behind the term is justification for this kind of forest management. But how it will evolve depends on how we bargain. And there will be endless bargaining. It is not that the issuing of the law will spell an end to the bargaining. Whether or not the law is passed, the bargaining will still go on. The law is just the first step, and definitely not the ultimate solution to forest management, which is very reliant on the strength of the people's sector.

- What are your proposals now?

Efforts to push for genuine community forests must continue. Even with the law, there may be no serious efforts and it might still lead to inaction. We need to push for the enforcement of the law. And if conflicts arise in future, we have to fight in the judicial system to prove that the law has been written with no regard to reality. It is not only impractical, but also leads to conflicts and therefore needs to be amended. Most importantly, the law was passed during an interim government. We may wait until an elected government is in place to push for amendments.

Translated by Pipob Udomittipong