



Policy brief

Ensuring the effectiveness of laws on social forestry

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Ensuring the effectiveness of laws on social forestry

Highlights

- As well as strong laws, countries need clear regulations and guidelines, clear and strong tenure and rights for local people, appropriate institutions, adequate resources and capacity, effective enforcement, and ongoing review and adjustment of legal frameworks.
- Effective implementation of laws supporting social forestry will depend on the quality of the legal reform process, participation and inputs from stakeholders, the content of the reformed law, and the wider enabling environment.

Community forestry legal reforms and implementation gaps

Across Southeast Asia, governments are reforming legal frameworks to allow communities greater control over local forests. Internal drivers for these reforms include national efforts to address forest loss, reduce poverty and support sustainable rural livelihoods. External factors include international commitments on forestry, trade, climate change and sustainable development.

Reforms are opportunities for governments to address inconsistencies in legal frameworks, clarify rights and responsibilities, recognize customary rights, resolve conflicts resulting from competing tenure claims, and remove unjust laws. As such, reforms can have profound effects, particularly around sustainability, equity, opportunity and accountability. For these effects to materialise however, it is key that the whole cycle of the law reform process, from the planning stage to the adoption of the new legislation, takes into account key principles such as transparency and participation by a wide variety of stakeholders.

Moreover, during the implementation of the new legal framework, countries often encounter challenges that prevent social forestry from achieving its true potential. It is therefore important to understand the barriers to effective implementation of laws and policies, and how to overcome them.

With this in mind, RECOFTC, the ASEAN Working Group on Social Forestry (AWG-SF) and ClientEarth held a two-day workshop in November 2019. The event gathered officials and other experts from Cambodia, Indonesia, Lao PDR, Myanmar, Thailand and Viet Nam. Each of the countries have recently developed new laws or revised existing ones to support social forestry. The participants reviewed progress and challenges relating to reforming and implementing new legal frameworks, and identified ways to overcome challenges. This policy brief summarizes the discussions.

Challenges to implementation

Some challenges that countries have faced relate to the readiness of local people to take part in social forestry. For example, a community may lack clear tenure and rights, capacity to manage forest resources sustainably, or the knowledge and skills needed to implement forest management plans (as in Lao PDR and Myanmar).

Communities may also be unsure about what they can or cannot do under the new law. This may be because the law itself is not clear about rights, roles, responsibilities and sanctions, because implementing regulations or guidelines are absent, or because the new legislation is not accessible or well disseminated.

Often, communities can struggle to access markets with forest products. And in some countries, such as Myanmar and Thailand, communities cannot get loans to invest in their forests. This is because banks deem them to be too risky as the authorities can take away their access to forest land if they fail to manage it well.

Other issues are institutional. For example, in some countries, such as Cambodia and Thailand, multiple government ministries or departments have authority over forests, which complicates the implementation of reforms. Further issues arise when reforms supporting social forestry contradict existing laws such as land laws or agri-business investment policies, as has happened in Indonesia and Lao PDR.

Other challenges include inclusion of vulnerable groups; emerging conflicts of interests among stakeholders; encroachment onto community forest land (as in Cambodia); and a risk that commercialisation could lead to over-extraction of forest resources. Challenges have also arisen in places where governments have allocated communities low-quality forest land, as has been the case in Myanmar and Viet Nam.

Lastly, countries may struggle to measure the success of community forests because of a lack of clarity about what success looks like, and about which indicators and evidence to use.

Laying the foundations for effective implementation

Participants spoke about how the quality of the reform process will influence the effectiveness of subsequent implementation. In Indonesia, for example, a wide variety of stakeholders supported implementation of new regulations because they had taken part in the reform process. This and other aspects of Indonesia's experience of developing and implementing reforms were reflected in the five-step outline of a strong legal reform process that ClientEarth presented:

- Plan ahead
 - Situate social forestry within the vision for the forest sector
 - Have clear objectives for the legal reform, and an iterative plan and clear agenda for the reform

- Start with legal work
 - Analyze the existing legal framework, including sectoral laws, and identify gaps
 - Analyze the national and local contexts
 - Start drafting legal texts that address these gaps
- Be participatory
 - Have an open process for wide participation and consultation of stakeholders, including local communities
 - Ensure stakeholders have the required capacity and access to the information they need to take part effectively
- Implementation
 - Disseminate the new law
 - Train and raise awareness
 - Have a strong institutional framework
 - Enforce the new law
- Action learning
 - Evaluate the current legal framework and identify the need for further reforms
 - Return to the first step of this cycle

It is important that aside from the reform process itself, the content of laws and regulations must enable social forestry. To unpack this aspect, ClientEarth presented their research on social forestry and legal frameworks. The research identifies ten elements for governments to consider when developing laws on social forestry. According to this framework, laws are more likely to provide a strong basis for social forestry if they include provisions that:

1. Ensure that communities have strong and clear tenure rights and reflect customary uses of forests and land
2. Simplify the process of allocating community forests
3. Support internal community governance
4. Encourage inclusive participation of all community members
5. Allow communities to develop forest management rules and plans
6. Enable community access to markets
7. Enable equitable benefit-sharing among community members
8. Include mechanisms for resolving disputes
9. Support enforcement of community forest rules, with clarity about offences, sanctions, roles and responsibilities
10. Enable communities to receive support from external actors

From these ten elements, the workshop participants identified the key priorities to focus on in their respective countries. For Myanmar,

reinforcing land and forest tenure, as well as access to markets for communities, came out as areas to focus on. Thailand and Viet Nam prioritized the process of allocating community forests and rules around the management of social forestry. For Cambodia, land and forest tenure, governance and enforcement were the main priorities. And for Lao PDR, it was the need to focus on conflict resolution and village internal governance.

Participants also suggested other elements that laws could also specify, such as monitoring and evaluation frameworks, compensation for land reallocation, and financial support from the private sector.

Creating the enabling environment

Participants from Indonesia explained their recent successes in legal reform in the social forestry sector, identifying the following best practices and suggesting interventions that can contribute to an environment that enables effective implementation of legal frameworks:

Implementing rules and guidance

Develop, with input from all stakeholder groups, subsidiary regulations, sub-decrees and guidelines to enable the implementation of the new law, and mechanisms for resolving grievances and sharing benefits

Awareness

Raise awareness and understanding of the new law among officials, communities and businesses

Capacity

Build the capacity of communities for forest management, business development, conflict resolution and mediation. Also build capacity of, and strengthen coordination among, relevant government agencies.

Structures

Ensure that the required institutional structures exist, including a dedicated unit or agency for social forestry, and establish multi-stakeholder structures focused on implementation. For example, Indonesia established working groups for social forestry in each province.

Resources

Ensure there are adequate budgets, facilities, equipment and human resources for implementing and enforcing new laws

Finance

Ensure communities can access finance, either by encouraging the development agencies and the private sector to provide grants and loans, or by making it easy for them to access state funds. Thailand's 'Tree Bank' scheme, for example, allows community members to use trees as collateral when applying for loans. In Indonesia, farmers with social forestry certificates can access loans from a bank connected to the Ministry of Finance.

Private sector engagement

Help communities connect with the private sector so they can develop viable businesses, attract finance and sell products.

Maintaining progress

Continuously improve through research, monitoring and further changes to the legal and policy framework. Continue to involve stakeholders and to learn from experiences in other countries.

Making it happen

Participants presented plans for addressing some of the challenges their countries face.

Cambodia aims to strengthen the skills of community members who manage forests, and improve coordination between government departments with mandates for social forestry. Cambodia also plans to draft a social forestry sub-decree for its new forest law. It will develop procedures for product commercialization in its social forestry guidelines, and will consult stakeholders on how to develop agroforestry.

Indonesia plans to activate a database that will enable officials to see the map of community forest allocation, aiding policy-related decision-making. It will build the capacity of social forestry groups for business planning with help from civil society organizations. Indonesia will also work to improve social forestry products to attract investors and consumers, and will use an online platform to improve marketing.

Lao PDR's priorities include building the capacity of villages to develop forest management plans, strengthening village governance and resolving conflict.

Myanmar is developing guidelines for social forestry and will assess its Community Forestry Instruction against the ten elements presented by ClientEarth to identify any gaps to address. The Community Forestry National Working Group will also consider different models of agroforestry for each area.

Thailand is developing orders to accompany the Community Forestry Act passed in May 2019, including guidelines on registering as a community and developing a management plan. Thailand is also taking steps to inform communities about the new law.

Viet Nam's priorities include land allocation, community forest management and generating support such as financial resources and market links from national actors.

Tapping the potential of social forestry

Southeast Asian countries have set ambitious targets for increasing the amount of forest that local communities manage, protect and use as a basis for sustainable livelihoods. While good laws are essential, so too are good implementation, enforcement, regulation and adjustment of those laws. By following best practices and continuing to learn from each other, ASEAN member states can help social forestry meet its true potential for reducing poverty, supporting sustainable livelihoods, conserving biodiversity and combating climate change.

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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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