



Special report

# Civil society increasingly shapes forest laws in the Mekong region



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# **Civil society increasingly shapes forest laws in the Mekong region**

August 2020

Five countries are opening up  
decision-making processes to civil society  
as they reform policies and laws  
governing forests

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## Chapter 1

# Participation is essential to good forest governance

Imagine waking up one day and being told you no longer have a right to live in the village where you, your parents and even your grandparents were born, because decision-makers in a distant city had allocated the land as a national park. Or imagine being told you can't use timber from trees you have planted in your own garden. Imagine feeling powerless when a logging company arrives in your area and says that it, not your community, has rights to the trees there.

Across the Mekong region of Southeast Asia, problems such as these have long affected communities that depend on forests for survival and are often already marginalized and living in poverty. But in recent years, the governments of the Mekong countries have increasingly listened to the concerns of communities and civil society organizations (CSOs) that represent their interests. These governments have started to let civil society groups provide input as they reshape policies and laws governing forests.

In Thailand, for example, lobbying by CSOs led to changes to the Forest Act, which now stipulates that people can at last use timber grown on land that they own. Thai CSOs also shaped Thailand's 2019 National Park Act, giving recognition to the rights of communities in conservation forest areas to obtain a licence to live there and use forest resources.

"The opportunity for local communities to claim land in national parks arose because civil society organizations raised their voices," says Robin aus der Beek, coordinator of the Voices for Mekong Forests (V4MF) project at RECOFTC. "In fact, there have been many revisions of policies and laws related to forestry and natural resource management in recent years in Mekong countries. Civil society organizations have had quite an influential role there."

Although there are many examples of progress, more is needed to build on these successes and overcome entrenched issues. This special report explores why participation matters, how it is happening, what challenges prevent more effective participation and how to overcome them.

## Why participation matters

One key argument for participation is that policies and laws are more likely to be effective if the people they affect have a say in their design. Indeed, the act of developing policies and laws in a participatory way can bridge gaps among groups with diverse and often conflicting interests, leading to sustainable results.

Traditionally, though, governments have set the agenda on their own. Where does that leave micro- and small-scale enterprises, Indigenous Peoples and civil society groups?

Too often, the answer has been “on the outside”. Now though, there is plenty of change underway in Mekong countries.

As well as influencing Thailand’s new Forests Act and National Parks Act, civil society groups there have had a say in processes related to national laws on community forestry, and international initiatives on illegal logging and on the role of forests in mitigating climate change. In Myanmar, civil society groups there have had a say in processes related to national laws on community forestry, and international initiatives on illegal logging and on the role of forests in mitigating climate change.

In Myanmar the government is increasingly coordinating and cooperating with civil society organizations on policy and legal reforms, says Aung Thant Zin, chief executive officer of the Myanmar Environment Rehabilitation-conservation Network. He lists recent participation by such organizations in the development of the National Land-use Policy and the National Climate Change Policy, the revision of Forest Rules and Community Forestry Instructions, and in the development of the Protection of Biodiversity and Protected Area Law.

Hoang Xuan Thuy, vice-director of the Vietnamese nongovernmental organization PanNature, says Vietnam has also become more open in recent years. Now, when government agencies develop a new policy or law, they seek the views of relevant stakeholders and the wider public, he says.

## Voices for Mekong Forests (V4MF) Project

Voices for Mekong Forests (V4MF) is an EU-funded project that aims to strengthen the participation of non-state actors in forest landscape governance. RECOFTC leads the project in partnership with WWF-Greater Mekong, the East West Management Institute-Open Development Initiative (EWMI-ODI), Nature Economy and People Connected (NEPCon), the NGO Forum on Cambodia, the Lao Biodiversity Association, the Myanmar Environment Rehabilitation-conservation Network (MERN), Raks Thai Foundation and People and Nature Reconciliation (PanNature).

The EU’s support for V4MF is part of its wider promotion of sustainable forest management and biodiversity conservation. Its commitment to strengthening the role of non-state actors in forest governance aligns well with best practices arising from the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan on illegal logging and associated trade, and from the UN-led REDD+ initiative, which aims to reduce greenhouse gas emissions from the forest sector in order to help address climate change.

In Myanmar, the government is increasingly coordinating and cooperating with civil society organizations on policy and legal reforms.

Aung Thant Zin



“When they have a draft, they put it online and anyone can download it, organize a consultation and provide comments to the government agency,” says Hoang. “When the government agency submits the draft law to the National Assembly for approval, they need to provide what feedback they have received and explain what they have taken into account and what they have not. They publish that on their website as well. These requirements provide room for engagement.”

To influence policy processes, PanNature will often organize consultation workshops to gather the views of forest stakeholders, or will join technical working groups set up by government agencies to help them develop policies.

“For revisions of the law, government agencies will invite different organizations to discuss what they should revise, what gaps to fill and what research they need to do to develop policy,” says Hoang. “When Vietnam developed its new Forest Law of 2017, we successfully advocated for the law to recognize sacred forests managed by communities.”

Robin aus der Beek says that by engaging with civil society groups and learning what they know, governments are starting to shift. Before, they focused on engaging communities in forest conservation and allowing them to use forest resources for subsistence. But now they are promoting livelihood development and income generation from the forest sector.

“This overall trend and the resulting increase in community rights is due to participation by civil society groups,” he says.

The next sections of this special report focus on how civil society organizations are participating in policy processes and the challenges they face.



### Forests and COVID-19

In recent years, several new human diseases have emerged after viruses that usually infect wildlife have begun to infect people. The list includes Ebola, SARS, HIV/AIDS and now COVID-19.

As the natural hosts of these viruses are forest animals, public health experts warn that deforestation and the trade in wildlife make the emergence of such diseases more likely.

During the COVID-19 pandemic, governments with strong forest governance and enforcement are claiming a decrease in forest crime—due to lockdown measures and check-points between provinces or states. On the other hand, in some countries where local communities have less secure tenure and control over resources, there are reports of increasing forest fires, illegal logging, illegal land grabbing and land use conflict.

A study published by the World Wide Fund for Nature (WWF) in May 2020 indicates that global deforestation rose by 150 percent



in March 2020 compared to the 2017-2019 average for the same calendar month. In Asia, compared to the average of March 2017–2019, the forest loss in March 2020 rose by almost 70 percent in Malaysia, by around 130 percent in Indonesia and Myanmar, and by around 190 percent in Cambodia. In Thailand, losses have more than quadrupled.

At the same time, some countries are trying to fast-track public consultations for legal reforms because they know there will be less resistance from communities and civil society, which are distracted by the pandemic.

Reducing the threat of future outbreaks and pandemics and related impacts as described above will entail greater protection for forests and wildlife. But to be sustainable and equitable, any solution will need to involve and meet the needs of people who live in and near forests. These people are often marginalized, with insecure rights, precarious livelihoods and low income. Lacking resources and access to healthcare, they are also highly vulnerable to COVID-19.

There is an urgent need to support such communities and ensure that they have both secure rights and a strong voice in decisions about policies and laws that affect them. In the post-COVID-19 world, RECOFTC recommends

seven building blocks for ‘building back better’ after the pandemic:

- Accelerate land tenure reforms by respecting the views, aspirations as well as clear and strong tenure rights of forest communities.
- Apply people-centered approaches that balance economic, social and environmental development.
- Build legitimate partnerships among forest communities, governments, civil society organizations and the private sector based on trust, accountability, transparency and mutual respect.
- Transform food systems to make them more climate and forest-friendly and ensure that they recognize the rights and aspirations of small holders, local communities and farming cooperatives.
- Improve forest governance by engaging forest communities and civil society organizations in honest and transparent forest processes.
- Help to eliminate forest crime by supporting citizen monitoring and remote sensing.
- Adopt fiscal mechanisms to incubate more innovations on the ground as foundations for secure land tenure and improved forest governance.



## Chapter 2

# Climbing the ladder of participation

In recent years, the forests of Cambodia have been the scenes of considerable conflict between local communities and powerful commercial interests, often linked to politicians and other elites. While many issues remain unresolved, the government has slowly but surely become more open to considering the needs of forest communities, as conveyed by civil society groups.

For example, Cambodia is developing a major new law, the Environment and Natural Resources Code. To develop each of 11 successive drafts of the code, the government consulted with civil society organizations, including RECOFTC's V4MF partner, the NGO Forum on Cambodia. Another example is the process through which Cambodia developed its national strategy for engaging with REDD+, the UN-led initiative that aims to reward countries for limiting carbon emissions from their forest sectors.

"Even from the first phase, the government developed a stakeholder engagement strategy and set up a REDD+ Consultative Group to provide comments on behalf of constituents, about the drivers of deforestation, et cetera," says Tol Sokchea, who coordinates work in Cambodia under RECOFTC's V4MF project. "There was an acknowledgement of the role of local people, and a recognition of the existence of community forests and community protected areas."

But while civil society organizations can often have a say in policy processes now, they don't always get to know whether or not the government has accepted their recommendations—and if not, why not. It is clear that participation can mean different things to different people. Indeed, academics who study forest governance often refer to a 'ladder of participation', on which each rung signifies more participation than the rung below.

### The ladder

Participation encompasses a broad range of activities. At its most basic, it involves people being told by governments about new laws but not being able to shape those laws. Climb up the ladder and you will find governments that are more open to consulting the public before they act. Higher still and you can find governments that work in active partnership with civil society groups to

develop, implement, monitor and improve policies and laws. And while no Mekong country is yet at the top of the ladder, it is possible to see that they are climbing.

Take Myanmar, for example.

“When the government revised its Forest Law in 2018, the Forest Department gave civil society organizations only a limited opportunity to provide input,” says Aung Thant Zin, chief executive officer of the Myanmar Environment Rehabilitation-conservation Network. “Action taken on the advice and recommendations was also limited.”

But the following year, there was considerably more participation by forest stakeholders in the development of Forest Rules for implementing the new Forest Law. The government held consultations in each of the 15 states and regions, and another two at the national level. Government officials, private businesses, academia, national and international nongovernmental organizations, United Nations agencies, local communities, ethnic groups and community forest user groups all took part in the process. According to the European nongovernmental organization Fern, they provided about 2,600 comments.

While the government is still consolidating these inputs, Aung Thant Zin is optimistic that it will take many of the recommendations on board. This is because of recent experience in another area of forest policy, the development of rules to regulate community forestry. Back in 1995, when Myanmar first developed its Community Forestry Instructions, the Forest Department did not seek input from civil society. The rules that emerged enabled communities to use forests only for subsistence needs.

But two decades later, when civil society groups called for the rules to change, the government listened.

“In 2016 and again in 2019, the Community Forestry Instructions were revised and updated with high involvement of civil society organizations, the private sector and government departments,” says Aung Thant Zin.



Phleuk Phirum represents her people, the Bunong minority ethnic group, at an event on REDD+ Safeguard Information System organised by the NGO Forum Cambodia, RECOFTC and National REDD+ Secretariat on 6-7 June 2019 in Siem Reap, Cambodia.

The revisions progressively increased the rights of community forest user groups to commercialize forest products and set up enterprises, thereby creating greater incentives for sustainable forest management. These and other aspects of the revised Community Forestry Instructions are the result of the inputs of civil society groups. For example, the revised rules emphasize gender equality in the formation of management committees of community forest user groups. They also give communities the right to claim compensation for loss of forest trees, crops and other damages due to implementation of other projects in community forests.

Another example of a recent movement up the ladder of participation is the way civil society groups in Viet Nam have taken part in the process through which the government has negotiated, and is now implementing, a timber trade deal with the European Union. The deal, called a Voluntary Partnership Agreement (VPA), is intended to stop the flow of illegal timber products while improving forest governance and promoting legal trade.

The EU requires participation by civil society in VPA processes, so Viet Nam allocated one seat to civil society during the negotiations and related meetings. However, when the negotiation began, in 2010, the government chose an association of timber processing industries to be the civil society representative. The body could hardly be expected to represent the views of Viet Nam's diverse civil society groups. Instead, nongovernmental organizations engaged in the process in different ways. In 2014, several of them came together to form a network, the VNGO FLEGT Network, which initially had no formal recognition.

"We followed the process and received documents such as draft technical annexes of the VPA," says Hoang Xuan Thuy, the vice-director of PanNature. "We then organized research and consultation workshops with different actors, for example, research on the VPA's potential impacts on livelihoods and research on smallholders living near forests and producing timber."

Through this work, PanNature and other organizations could influence the negotiations and improve the text of the VPA and its annexes.

"The government has taken up many of the points raised by nongovernmental organizations in the VPA's legality definition," says Hoang.

Having proven their value, the government has now formally recognized these contributions of civil society. The VPA, which took effect in June 2019, says that non-state actors including nongovernmental organizations, communities and forest-dependent people will continue to participate in the implementation and monitoring of the VPA. The government has also included civil society in the core group of stakeholders it set up to provide technical support for it and the EU when implementing the VPA.

"Now we are one of the quite strong actors in this process," says Hoang. "Much of our feedback and comments have been taken by the government to improve policy, such as stakeholder participation in monitoring of legal timber sourcing."

But while participation has improved markedly since the start of negotiations, Viet Nam is still far from the top of the ladder.

"The government needs to be more open to take into account our comments and feedback," says Hoang. "It seems to be open but there is still very limited opportunity for civil society organizations to influence it. Also, the time that a draft law is open for comment is very short. For some issues, we need more time to collect evidence or do research."

The government has taken up many of the points raised by nongovernmental organizations in the VPA's legality definition.

Hoang Xuan Thuy



Civil society groups also sometimes feel like they are left in the dark. They have given feedback on a draft decree to establish a system for verifying the legality of timber products, for example, but they don't know yet if the government has taken their ideas on board. Asked if NGOs are happy, Hoang replies with a chuckle: "Not yet."

The climb up the ladder continues.



### **Working together in Myanmar**

In Myanmar, government representatives have come together with civil society groups and the private sector in a body called the Community Forestry National Working Group. By bringing different interests together, the group aims to support the development and implementation of policies relating to community forestry, including through certification processes and legal support to strengthen the rights for members of forest user groups.

The area under community forestry more than doubled from 2016 to February 2019, reaching 249,000 hectares (among about 4,700 community forest user groups). Recent research supported by RECOFTC's V4MF project showed that the Community Forestry National Working Group has had positive impacts on participation, livelihoods and forest condition. For example, 89 percent of respondents reported improved participation of women and other marginalized groups in decision-making and resource sharing due to inclusive decision-making in community forestry user groups.



## Chapter 3

# Unlocking the potential of participation

In 2015, when it became clear that Lao PDR and the European Union would begin negotiating a FLEGT VPA, a group of 20 civil society organizations in Lao PDR came together to form a new network. They include RECOFTC's partner in the V4MF project, the Lao Biodiversity Association. The network members chose five of their number to represent civil society interests in the VPA negotiations through their participation in the VPA National Steering Committee, the National Support and Development Committee and the Technical Working Group.

Since then, this 'CSO FLEGT Network' has been able to influence the content of the VPA's draft technical annexes that will be used to define legality. The government also accepted the network's proposal about compensation for villagers when timber is harvested from production forests in areas where village forests are located.

### Building connections

In Lao PDR and across the Mekong region, civil society organizations are influencing legal and policy reforms despite considerable barriers. In Myanmar too, for example, while the government is opening up to outside input it is still in the stage of informing and consulting with civil society organizations, rather than sharing power with them.

"One reason is a lack of trust between government and civil society organizations," says Maung Maung Than of RECOFTC. "Most government officers think civil society organizations are activists that oppose the government's actions. Civil society organizations also assume that the majority of government staff just want to maintain the status quo. It will take time to share power with civil society organizations in decision-making within the forestry sector. We may need the

promulgation of legal instruments enshrining the rights and responsibilities of civil society organizations participating in the development of the forestry sector.”

“Another issue is the lack of appropriate platforms through which the government and civil society organizations can work together,” he says. “We also need a nationwide network of civil society organizations covering the whole of the forestry sector. There are many ad hoc networks in Myanmar, but their synergy is questionable. With a functioning network at the national level, the voices of civil society organizations would be more effective.”

## Communication challenges

In Thailand, despite some progress in the laws to reflect the acceptance of existing forest communities, there is still limited involvement of civil society organizations in improving and revising forest-related laws, says Direk Kruajinli, project coordinator at the Raks Thai Foundation.

“Feedback sessions during platforms meant for making amendments are usually very short, exclusive, and non-participatory,” says Kruajinli. “Even with the creation of online platforms to diversify feedback participants, most of the community members directly affected by the forest laws are indigenous communities with language barriers as well as limited access to internet services and phone signals.”

Even if it was easier to participate, local communities would struggle to do so in a meaningful way as they have limited knowledge of their rights, and of laws, policies and their potential impacts.

“Communities that are directly affected by these policies and laws lack, for the most part, the opportunities to access information and analyze the impacts on their communities and natural resources,” says Kruajinli.



Pikul Kittipon of the Krisana Wood Community Enterprise Network shares her opinions on the self-declaration process when verifying the origin of trees during a meeting of civil society representatives on 19-20 August 2020 in Bangkok, Thailand.

A recent RECOFTC survey to determine the impact of COVID-19 on forest communities found that most were struggling to access the internet in order to get vital news and information. Two-thirds of respondents said they had an unstable mobile internet connection, and more than 17 percent said they have no internet connection at all. Others were unable to fully use internet technology for work because they couldn't afford it or lacked knowledge about online conferencing and other web tools.

But there are wider communication challenges too. Kruajinli says legal reforms tend to succeed when they have a groundswell of support from middle class citizens. But, he says, these people tend to have weak connections with nature and little interest in the rights of forest communities.

“The common perception is that local communities cause forest degradation and loss.”

Kruajinli says that to generate greater social acceptance of the need for policies that support communities that depend on forests, it will be essential to generate and communicate robust research on the positive outcomes that arise when communities can manage local forests.

## Capacity gaps

One word that everyone mentions is ‘capacity’. Civil society groups across the Mekong region need more knowledge, skills and resources to organize themselves, share information, develop policy positions, present their concerns and solutions, and monitor implementation of laws and policies. Capacity gaps include the practical, such as skills for facilitation, communication, advocacy and conflict resolution. But they also include the technical, as civil society groups need to understand complex issues and their roles in specific processes.



Seven civil society representatives applied to be a part of the civil society FLEGT core committee in a meeting in Vientiane, Lao PDR on 22-23 October 2018. Five organizations were selected, including Lao Biodiversity Association.



“We sometimes lack capacity to take part effectively,” says Hoang Xuan Thuy of PanNature. “Sometimes we lack the human resources and financial support needed to conduct consultations so we can generate evidence and get comments from the ground. Sometimes we do not provide strong comments, so it is easy for government agencies to ignore us. Even working in a network, our organizations often speak individually not with a stronger collective voice.”

For David Ganz, executive director of RECOFTC, so much will depend on continuing participation by civil society organizations in a spirit of unity.

“Civil society’s voice has been critical in the last two to three years as almost every Mekong country has gone through legal reform processes,” he says. “They’ve been crucial in shaping reforms and they need to stay involved as reforms move to being enacted. It is even more crucial that civil society voices continue to participate and do so in united ways.”

It will take time to share power with civil society organizations in decision-making within the forestry sector.

Maung Maung Than





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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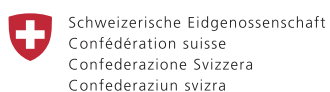
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