

ASEAN Guiding Principles for Effective Social Forestry Legal Frameworks





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1. Background of the Principles

Forests in the Association of Southeast Asian Nations (ASEAN) region cover more than 193 million hectares, or 44 percent of the land area.¹ They have a vital role in the lives of many people and contribute to the achievement of all the Sustainable Development Goals. Across the region, governments, civil society and the private sector are increasingly recognising that local communities, Indigenous Peoples and ethnic minorities must participate in the management of the region's forests. This recognition is based on the understanding that local people are among the best stewards of the forests, especially if they have clear and strong tenure rights.

There are now almost 14 million hectares of forests managed under various forms of social forestry practised in ASEAN countries, where local people have rights to manage and benefit from their forests. This area has doubled since 2010.

Cambodia, Indonesia, Myanmar, the Philippines, Thailand and Viet Nam have set national targets for transferring forest areas to local communities in the coming decade.² Collectively, these targets amount to just over 30 million hectares, or 15 percent of the region's forest land. As of mid-2019, 46 percent of this area had been transferred to community management.³

Efforts to scale up and accelerate progress on social forestry – which should be considered in terms of both social forestry area expansion and meeting qualitative goals of social forestry (such as improved livelihood development) – are being made but success in reaching these targets is still lagging. While gaps remain, there are some opportunities to strengthen existing legal and policy frameworks to facilitate the progress of social forestry in the region. Some recent endeavours have started making use of these opportunities, revising or adopting new policies and laws enabling social forestry at the national level.

To support ongoing efforts, the ASEAN Working Group on Social Forestry (AWG-SF), with the support of RECOFTC and ClientEarth, has developed regional-level guiding principles for effective social forestry legal frameworks to help strengthen national social forestry laws, policies/rules and regulations and their implementation in ASEAN Member States (AMSS).

1 RECOFTC. 2020. Social forestry and climate change in the ASEAN region: Situational analysis 2020. Bangkok, RECOFTC, <https://www.recoftc.org/publications/0000379?t%5B0%5D=88&p=browse>.

2 Each country has a different target date, ranging from 2019 to 2030.

3 RECOFTC. 2020. Social forestry and climate change in the ASEAN region: Situational analysis 2020. Bangkok, RECOFTC, <https://www.recoftc.org/publications/0000379?t%5B0%5D=88&p=browse>.



2. Social Forestry in ASEAN

Definition of Social Forestry

The term 'social forestry' is used as an overarching term referring to the management of forests by and for local communities, Indigenous Peoples and ethnic minorities. This includes various forms of community forest management, such as community forestry, community-based forest management, community protected area management and village forestry.

The term 'local communities' refers to people living in or around forests who have economic, social or cultural relationships with the forest. They can include individuals, households and communities.

Social forestry therefore refers to a broad range of community-based forest management models that place local communities, Indigenous Peoples and ethnic minorities at the centre of forest governance. The objectives of social forestry range from forest conservation to local development and providing livelihoods to communities.

Scope and Scale of Social Forestry in the ASEAN Region

Millions of people in ASEAN countries rely on forests for their livelihoods, well-being and customary practices. However, historically, local communities, Indigenous Peoples and ethnic minorities were largely excluded from decision-making processes pertaining to forests. As a result, forest management suffered as local people were not permitted to play a role in the conservation and management of forest ecosystems. Now, governments, civil society and the private sector increasingly recognise that genuine and active participation of local communities, Indigenous Peoples and ethnic minorities is an essential component of sustainable forest management. Such inclusive forest management also helps to maintain important environmental services provided by healthy forests, such as carbon storage and biodiversity conservation.

Formal social forestry systems started to develop during the 1970s and 1980s. These early models did not sufficiently include local participation and the benefits of the forests were not distributed equitably. Social forestry has since developed significantly in terms of objectives, legal foundations, land area and impacts.

Social forestry's early objectives focused narrowly on forest conservation and subsistence. Now social forestry has broader goals that support human well-being, including income generation, enterprise development and climate change mitigation and adaptation. In fact, through empowering communities to manage and protect forests, social forestry can contribute to drawing carbon out of the atmosphere, supporting sustainable livelihoods, improving food and tenure security and reducing climate-driven disasters.

Enabling conditions necessary to ensure the success of social forestry include secure tenure, strong governance, viable technology, adequate market knowledge and supportive bureaucracy.⁴ An additional and important factor to enable the long-term success of these models is carrying out ongoing and participatory monitoring and evaluation of social forestry implementation. Inclusivity should be prioritised in designing and conducting monitoring and evaluation. For instance, the process of defining baseline data and indicators for monitoring and evaluation should be participatory. Also, regular monitoring and evaluation should include all relevant stakeholders, and community-based approaches should be considered as part of the overall process. Monitoring and evaluation should be conducted transparently, with results openly shared and made publicly available.

4 Gilmour, D. 2016. Forty years of community-based forestry. FAO forestry paper 176, FAO, <http://www.fao.org/3/a-i5415e.pdf>.

Achievements and Challenges of Social Forestry in ASEAN

Significant progress has been achieved over the last few years, with new waves of legal reforms since 2016. In practice, a number of initiatives were set up to implement these new laws and regulations, which resulted in an unprecedented increase of forest areas under community management between 2016 and 2019. It also led to increased livelihoods and more opportunities for communities to generate income, as well as a reduction of forest degradation.⁵

Social forestry in AMSs cannot be fully considered without taking into account the larger ASEAN context. AMSs are more vulnerable to climate change than countries in many other parts of the world, because of their large rural populations that depend on climate-sensitive agriculture. As temperatures rise, droughts, floods, heatwaves, and other extreme weather events are becoming more frequent and intense. These issues will be exacerbated in light of regional trends. The economies of AMSs are growing rapidly, but at an uneven pace. This development has put more pressure on natural resources and further marginalised local communities, Indigenous Peoples and ethnic minorities. Deforestation and conflict over forested areas are increasing.⁶

The coronavirus pandemic has further led to environmental challenges, including, but not limited to:

- a risk of increased tenure conflicts and land-grabbing due to reductions in independent monitoring of forest resources;
- more widespread forest fires due to limited fire prevention efforts or higher forest use; and
- more rapid land encroachment by agribusinesses that are taking advantage of preoccupied governments and decreased public scrutiny.⁷

Specific to social forestry, AMSs face challenges that include:

- insecure tenure rights;
- inadequate legislative frameworks;
- poor governance;
- limited institutional and technical capacity;
- insufficient financial resources; and
- weak incentives for communities to manage forests.⁸

5 RECOFTC. 2020. Social forestry and climate change in the ASEAN region: Situational analysis 2020. Bangkok, RECOFTC, <https://www.recoftc.org/publications/0000379?t%5B0%5D=88&p=browse>.

6 *Id.*

7 RECOFTC. 2021. Contributions of community forestry to COVID-19 response and recovery in seven Asian countries. Bangkok, RECOFTC, <https://www.recoftc.org/sites/default/files/publications/resources/recoftc-0000391-0002-en.pdf>.

8 RECOFTC. 2020. Social forestry and climate change in the ASEAN region: Situational analysis 2020. Bangkok, RECOFTC, <https://www.recoftc.org/publications/0000379?t%5B0%5D=88&p=browse>.



3. Legal Frameworks for Social Forestry

Scope of Legal Frameworks on Social Forestry

National legal frameworks on social forestry refer to laws (acts), implementing or subsidiary regulations (such as sub-decrees and orders), and other regulatory texts outlining social forestry rules. Furthermore, non-binding documents, such as technical guidelines on the process of allocation of social forestry areas or the development of forest management plans, can also form an integral part of legal frameworks.

Enabling Legal Frameworks for Social Forestry

An enabling legal framework for social forestry is one that supports and facilitates the use of forests by local communities, Indigenous Peoples and ethnic minorities to improve their livelihoods and the conditions of forests.⁹ Legal frameworks matter because they ensure that community rights to forests are formally recognised, offering legal certainty and security, as well as enhancing accountability of social forestry actors. They provide clarity on the rights and responsibilities of stakeholders and put in place mechanisms to raise complaints when the rules are not respected. It is important to ensure that legal frameworks are accessible, clear and comprehensive. They should be tailored to a specific local context in order to achieve long-term economic, social and environmental benefits, while maintaining some flexibility to avoid a rigid framework that cannot encompass diverse situations.¹⁰

Legal reform is an important part of the process in developing enabling legal frameworks for social forestry, as reform processes can address new national challenges pertaining to the protection and management of forests. They can also ensure that the legal framework considers international commitments made by governments, such as those enshrined in the European Union's Forest Law Enforcement, Governance and Trade (EU-FLEGT) Action Plan, REDD+ processes (reducing emissions from deforestation and forest degradation, and fostering conservation, sustainable forest management, and enhancing forest carbon stocks), those found in the Nationally Determined Contributions (NDCs) within the Paris Agreement framework, or the post-2020 global biodiversity framework under the Convention on Biological Diversity.

Furthermore, stakeholder participation in legal reform processes is essential to ensure that the law reform outcomes are equitable, coherent and empowering and that the new laws are implemented effectively. Participation by all affected stakeholders, including local communities, Indigenous Peoples and ethnic minorities, is crucial for developing a clear and comprehensive legal framework that takes into account institutional and local needs and contexts as well as the rights of the communities affected.¹¹

9 Gilmore, D. 2007. Regulatory frameworks for community forestry with particular reference to Asia. Proceedings: International Conference on Poverty Reduction and Forests, <https://bit.ly/2EeleGi>.

10 ClientEarth. 2019. Communities at the heart of forest management: How can the law make a difference? London, ClientEarth, <https://www.clientearth.org/media/mr2f3x3k/communities-at-the-heart-of-forest-management-ce-en.pdf>.

11 ClientEarth. 2020. Practical guide on law reforms in the forest sector. London, ClientEarth, <https://www.clientearth.org/media/dluf4w3j/practical-guide-on-law-reforms-in-the-forest-sector-ce-en.pdf>.

Key Features of Legal Frameworks for Social Forestry in ASEAN Member States

Given the variety of social forestry models and associated legal frameworks in AMSs, the information provided here is not meant to be exhaustive or to provide in-depth analysis of these legal regimes. Its purpose is to provide a brief overview of some of the fundamental aspects of diverse social forestry models in AMSs.

In **Brunei Darussalam**, social forestry forms mainly through forestry extension activities such as forest rehabilitation and conservation programmes and also through the development of nature-tourism activities which is mainly for the communities economic benefits. Forests in Brunei Darussalam are government-owned and all forest-related activities falls under the jurisdiction of Forestry Department. Any activities that falls within the forested area, the communities are allowed to apply for permission for access and use the forest for activities such as recreation and research, subject to certain conditions.

In **Cambodia**, community-based natural resource management mechanisms currently exist in three forms:

- Community Forests (CFs)
- Community Protected Areas (CPAs)
- Community Fisheries (CFis)

CFs and CPAs are regulated by different laws, such as the Forestry Law (2002) and Protected Area Law (2008), and by a number of secondary regulations, such as sub-decrees and guidelines. Rights accorded to local communities under the CF model extend to access, use, withdrawal, management and exclusion rights. CFs can be established for a period of 15 years with a possibility to extend for another 15 years. Similarly, under the CPA model,¹² communities are given 15-year agreements (extendable) granting them the rights to manage the land. Their rights do not extend beyond CPA boundaries. The CPA mechanism aims to significantly improve conservation efforts while increasing community livelihood opportunities.

In **Indonesia**, there is official recognition of adat¹³ communities and several models of social forestry exist: village forest, community forest, customary forest, and, to a limited extent, the community forest plantation and forestry partnerships.

- Village forests (*Hutan Desa*) can be established in protected forests or production forests for 35 years and are managed by villages.
- Community forests (*Hutan Kamasyarakatan*) can be established in protected forests or production forests for 35 years and are managed by communities.
- Customary forests (*Hutan Adat*) are located in customary community land and have no defined tenure duration period.
- Community forest plantations (*Hutan Tanaman Rakyat*) can be established in production forests for 35 years by communities.
- Forestry partnerships are partnerships between a company (state-owned or private) and a local community in the management and utilisation of forest resources for a length of time agreed on by the parties involved.

12 In terms of jurisdiction, CPAs fall within the mandate of the Ministry of Environment, whereas the Ministry of Agriculture, Forestry and Fisheries is responsible for CFs.

13 The term 'adat communities' is often used to describe Indigenous and other groups practising communal or customary tenure.

In the **Lao People's Democratic Republic** (Lao PDR), communities can manage forests through village forestry, which is defined as a partnership between the state and villagers. It covers a range of approaches and various levels of community participation in forest management. Village forestry can apply to any category of forest (in fact, a village decides whether to classify the village forest as a protection forest, conservation forest or production forest), and it can be implemented for any forest management objective. The Forestry Law 2019 and the Forestry Strategy 2035 form the main legal framework on village forestry-related rules.

In **Malaysia**, social forestry takes three distinct approaches, based on the region.

- In Sabah, social forestry programmes are focused on community development and participation in sustainable forest management.
- In Sarawak, social forestry largely pertains to rural development and agroforestry.
- In Peninsular Malaysia, social forestry focuses on recreation, education and greening of urban spaces.

Malaysia's social forestry model involves local communities in forestry operations undertaken by the state or private forest managers on state land, and, unlike in other AMSs, forests are not allocated to local communities or households to manage. The National Forestry Act (1984) and the Malaysia Policy on Forestry (2021), plus all subsequent amendments, are the two primary laws related to forestry activities. In Sabah, the State Forest Policy (1954, 2018) and the Forest Enactment (1968) are the main legal instruments. In Sarawak, the main legal instruments are the Forest Policy (2019) and the Forests Ordinance (2015). Recognising the absence of a national social forestry strategic plan, the three regions have outlined their respective strategic plans at the regional level.

In **Myanmar**, community forestry is the model used to pursue sustainable forest conservation and use. To establish a community forest (CF), a community forest user group (CFUG) must be formed. CFs have 30-year tenure periods, which can be extended by 30-year increments. Community forestry in Myanmar includes managing existing forests as well as establishing new plantations, and providing communities with subsistence needs as well as livelihood improvement opportunities. Community forestry is governed by, amongst others, the Myanmar Forest Policy (1995), Community Forestry Instructions (1995, 2016, 2019), and the National Forest Master Plan (2001–2031). The National Forest Master Plan established community forestry as an integral part of Myanmar's strategy to achieve sustainable forest management.

In the **Philippines**, Community-Based Forest Management (CBFM) as the national strategy for sustainable development of the country's resources was adopted through Executive Order 263 (1995). Under the CBFM Program, the Community-Based Forest Management Agreement (CBFMA) is the primary "tenurial instrument" entered into by and between the government and the local community, represented by People's Organization, as forest managers POs are given the rights to occupy, develop, protect, manage and utilize the forest lands and its resources within a designated CBFM area. Likewise, Protected Area Community-Based Resource Management Agreement (PACBRMA) is awarded to

communities within forest lands recognized as protected areas and its buffer zones. Under the then Integrated Social Forestry Program (ISFP), Certificate of Stewardship Contract (CSC) was previously being awarded by the government to individuals or families actually occupying or tilling portions of forest lands, The adoption of CBFM in 1995 discontinued the issuance of CSC, but CSCs areas are still existing at present. CBFMA, PACBRMA and CSC have a term of 25 years and renewable for another 25 years, subject to performance evaluation of their holders. The 1975 Forestry Code is the legislative basis for general forest management and utilisation, and is supported by a number of administrative orders, memorandum circulars, technical bulletins/guidelines and other issuances.

Social forestry is currently not practised in **Singapore**. There are no local communities, Indigenous Peoples or ethnic minorities that are dependent on the forests in Singapore. Forested areas are almost exclusively owned by the state, and the National Parks Board is the leading agency that manages and administers most of these forested areas.

Thailand adopted its new Community Forest Act in 2019, which formally recognises local communities' rights to manage their forests, including the creation of mechanisms for decision-making. Under the Act, community forestry is mainly oriented towards conservation. It allows communities to engage in the conservation, rehabilitation, management, maintenance or use of natural resources, the environment and biodiversity. Community forests can be established only outside the country's protected forest areas. The Act does not require a minimum or maximum period for the allocation of a community forest, nor does it 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. Thailand is currently in the process of adoption of subsidiary regulations that will further clarify the provisions of the Act.

Viet Nam has three social forestry models: community forestry, traditional community forest management and community-based forestry.

- Community forestry refers to forests that are allocated to communities for 50 years and governed by the local government.
- Traditional community forest management allows local communities to follow customary laws passed across generations to manage forests. However, it is not supported by the current legal framework and remains informal.
- Community-based forestry refers to forests, owned by state owners or forest enterprises, that are protected by communities or individuals who are contractually engaged and paid by the forest owners. Such communities/individuals can also use non-timber forest products in the forest. Community-based forestry, which is the most prominent model, is governed by the Law on Forestry 2017 and the Land Law 2013.



4. Nature and Terminology of the Guiding Principles

These guiding principles are legally non-binding and voluntary and shall not conflict with existing national laws and regulations or binding international treaties.

The guiding principles can provide a basis for the development of further laws and regulations. They can be used as a guide to ensure legal frameworks on social forestry integrate the most important aspects of enabling social forestry on the ground. They may also be used to reflect on an existing legal framework and to carry out an assessment of whether essential aspects are already integrated or may require further legal/law reforms.

The terms used in these guiding principles – for example, ‘social forestry’, ‘local communities’, ‘Indigenous Peoples’ and ‘ethnic minorities’ – may be defined and understood differently based on the unique national context of each AMS. However, the principles remain broadly applicable despite any national distinctions.

We use the term ‘communities’ to refer to the local communities, Indigenous Peoples and ethnic minorities that are engaged in social forestry and are allocated, or are in the process of applying for, a social forestry area.

We use the term ‘local communities, Indigenous Peoples and ethnic minorities’ when referring to the local people who should have access to, benefit from, and participate in social forestry.



5. Objectives of the Guiding Principles

- To outline key priorities and establish a comprehensive regional approach for the development of effective and enabling laws and policies on social forestry in the region.
- To serve as a baseline against which AMSs, as well as civil society organisations and other national stakeholders, can assess their social forestry models and guide the development of national level strategies and action plans.
- To enable AMSs to strengthen existing legal frameworks on social forestry on national and sub-national levels in order to promote sustainable forest governance and sustainable and equitable community livelihoods.
- To enhance access of local communities, Indigenous Peoples and ethnic minorities to social forestry at the national level.



6. Intended Users of the Guiding Principles

The intended primary users of the guiding principles are AMSs' policy-makers and government authorities involved in the development of social forestry legal frameworks and engaging with local communities, Indigenous Peoples and ethnic minorities in establishing social forestry areas and supporting them to implement and monitor social forestry activities.

Secondary users are local, national and international non-governmental organisations (NGOs) that support the development and implementation of social forestry legal frameworks, as well as donors, academic institutions and others that support those processes.

The principles may also be used by civil society and community-based organisations for advocacy purposes.

7. Guiding Principles

PRINCIPLE 1

Recognising communities' land and forest tenure rights:¹⁴ *The legal framework should ensure that communities involved in social forestry have strong and clear tenure rights and responsibilities in order to benefit from and contribute to social forestry and sustainable forest management, reflecting communities' customs and uses of forests and land, including those of Indigenous Peoples and ethnic minorities.*

In Southeast Asia, around 140 million people depend on forests for their livelihoods.¹⁵ Growing evidence shows that forests are best protected by the local communities, Indigenous Peoples and ethnic minorities who depend on them for their livelihoods and have been granted or enjoy strong land and forest tenure rights.¹⁶ Formal recognition of community rights over land and forests, including customary rights, can increase the effectiveness of social forestry legal frameworks as it enhances community engagement and interest in forest management and reduces the vulnerability of forestlands and associated resources. Securing tenure rights held by local communities, Indigenous Peoples and ethnic minorities has demonstrably contributed to lower rates of deforestation, reduced greenhouse gas emissions, better biodiversity protection, and improved livelihoods.¹⁷

- 1.1.** The legal framework should formally recognise local communities', Indigenous Peoples' and ethnic minorities' forest and land tenure rights, including customary tenure. Where land and/or forest laws formalise customary tenure rights, these should also be reflected and recognised in social forestry laws. However, formal recognition of tenure rights may not be required in order for communities to access social forestry. Furthermore, formal recognition of local communities', Indigenous Peoples' and ethnic minorities' tenure rights should be a relatively simple process.
- 1.2.** In the absence of legal recognition of customary rights, social forestry legal frameworks should take into account de facto customary forest and land tenure rights in order to reflect communities' customs and traditional uses of forests and land.
- 1.3.** The legal framework should respect and acknowledge the traditional knowledge of local communities, Indigenous Peoples and ethnic minorities, as well as their knowledge management/knowledge systems as an asset of the community.

14 ClientEarth. 2019. Communities at the heart of forest management: How can the law make a difference?

London, ClientEarth, <https://www.clientearth.org/media/mr2f3x3k/communities-at-the-heart-of-forest-management-ce-en.pdf>.

15 RECOFTC. 2021. Tenure and social forestry in ASEAN Member States.

Bangkok, RECOFTC, <https://www.recoftc.org/sites/default/files/publications/resources/recoftc-0000387-0003-en.pdf>.

16 Gilmour, D. 2016. Forty years of community-based forestry. FAO forestry paper 176, FAO, <http://www.fao.org/3/a-i5415e.pdf>;

Beukeboom, H.J.J. et al. 2010. Can community forestry contribute to livelihood improvement and biodiversity? Steps on how to improve community forestry programmes, lessons from work in 11 countries and communities. WWF, <https://bit.ly/2GdjpvO>.

17 World Bank. 2021. Opportunity Assessment to Strengthen Collective Land Tenure Rights in FCPF Countries. Washington, D.C., World Bank, https://www.forestcarbonpartnership.org/sites/fcp/files/2021/Oct/collectivelandtenurereport_synthesisreport.pdf; Veit, P. 2021. 9 Facts About Community Land and Climate Mitigation. World Resources Institute, <https://files.wri.org/d8/s3fs-public/2021-10/9-facts-about-community-land-and-climate-mitigation.pdf>.



- 1.4. The legal and institutional framework should facilitate and support the participatory mapping of customary rights to lands and resources.
- 1.5. The legal framework should provide a gender-conscious approach to social forestry in order to safeguard against inequitable customary land tenure systems and to safeguard the rights of access and decision-making of women, especially those from low-income groups and local and Indigenous communities.
- 1.6. The legal framework should clearly outline the tenure rights upon which access to social forestry is based in order to avoid tenure conflicts.¹⁸
- 1.7. Legal recognition of customary forest and land tenure rights should be consistent and harmonised throughout the legal framework, particularly in land and forest laws, to ensure legal certainty and same degrees of tenure security. Where inconsistency or incoherence is found, a participatory legal reform process may be engaged to address such issues.
- 1.8. The ministries and administrations responsible for the recognition and implementation of communities' land and forest tenure should coordinate with sectoral governmental bodies in order to ensure that sectoral laws are consistent with social forestry frameworks and vice-versa. Such coordination should encompass both national and sub-national authorities.

18 Almeida, F. 2012. What rights? A comparative analysis of developing countries' national legislation on community and indigenous peoples' forest tenure rights. RRI, <https://rightsandresources.org/wp-content/exported-pdf/whatriightsnovember13final.pdf>.

- 1.9. Governments should ensure that land and forest tenure rights, especially of local communities, Indigenous Peoples and ethnic minorities, recognised in laws are respected and enforced. Implementation of such rights should occur within an appropriate timeframe, such as by ensuring that necessary institutional structures are set up in a timely manner.
- 1.10. Registration of social forestry areas in existing land registration systems should be required to enhance tenure security and ensure greater transparency and rights protection.

PRINCIPLE 2

Simplifying the process of allocation of social forestry areas:¹⁹ *The legal framework should provide for a simple and inexpensive process to allocate social forestry areas in order to ensure good access to social forestry for local communities, Indigenous Peoples and ethnic minorities. The legal framework should allow a community to undertake the procedure by itself or to seek external support if it chooses to do so.*

Clear and simple rules for social forestry establishment are key for ensuring wide accessibility of social forestry, in terms of both the surface area and who may apply to establish a social forest. Rules that are too stringent and complex risk posing a barrier to community access to social forestry. Communities should also be allocated quality forest land to manage, rather than degraded forest areas.

- 2.1. The legal framework should clearly state who can be allocated a social forestry area, under which conditions and what form, if any, a community needs to take to be allocated a social forestry area. The legal framework should also make clear what, if any, geographic limitations exist for allocated social forestry areas (such as specific forest domains where social forestry areas can be created and size limits), as well as any duration limits.
- 2.2. The legal framework should clearly outline the steps of the allocation process, including the technical documents that are required to be submitted by the community. It should also outline the deadlines/timelines of each procedural step to be observed during the decision-making process.

19 By allocation, we mean the granting of forest areas to communities for their management, according to the process laid out in legislation.

- 2.3. The legal framework should clearly identify the institutions in charge of processing social forestry applications and where institutional coordination is required. The responsible institutions should be supported with appropriate capacity-building programmes, to ensure they have the training and skills needed to effectively engage with communities and carry out their duties.
- 2.4. In cases where proposed social forestry establishment is rejected, the legal framework should require that a justification be provided by the relevant administration. Communities should also be provided an opportunity to amend their submission.
- 2.5. To simplify and clarify the allocation process, governments should also adopt binding or non-binding operational guidelines or visuals to help explain the process and guide applicants through it. These guidelines should be culturally and gender sensitive, and translated into local languages where possible.
- 2.6. Decentralisation of the allocation process, where local administration and government representatives have a central role in the decision-making process, should be considered as one mechanism to ensure simpler, more accessible and more efficient procedures.
- 2.7. The legal framework should clearly outline the reasons and conditions under which an established social forestry area could be terminated, and also require a clear rationale be provided. The legal framework should include the recourse available to communities to challenge such a decision, such as a grievance mechanism. Communities should be compensated if the termination is not based on the fault of a community.
- 2.8. The legal framework should ensure transparency during the allocation process, such as by requiring the sharing of information on the process and by providing a mechanism for any interested persons to provide comments or raise objections.

PRINCIPLE 3

Developing rules on social forest management: *The legal framework should provide for the elaboration of simple but comprehensive forest management plans to be designed by community members, with the help of easy-to-understand templates and guidelines. Rules should be designed so that such management plans can be tailored to local circumstances, such as the type of activities foreseen in a forest, the size of the forest and the size of a community.*

Forest management plans lie at the heart of community-based forest management as they identify and guide the activities to be carried out in the forest. It is important for the legal framework to consider this issue and set the conditions for the implementation of social forestry activities by leaving room for them to be adaptable to different situations, based on the type of activities proposed, the size of the community and the size of the forest.

Management plans that are simple and practical for communities to develop and follow can help ensure more ownership and better compliance. By contrast, management plans that are too complicated can hamper the implementation of social forestry.

- 3.1. The legal framework should envisage the creation of a longer-term management plan reflecting a broader community vision, as well as shorter-term periodic work plans (in accordance with the longer-term management plan) to allow flexibility in planning and implementing specific activities. Requirements for both types of management plans should be reasonably simple enough that communities are able to develop them on their own.
- 3.2. The legal framework should clearly state what activities are permitted or prohibited to take place in a social forestry area in order to guide the design and implementation of the management plan.
- 3.3. The type of community body responsible for the development, adoption and implementation of the management plan should be clearly identified in the legal framework, and fairly represent all segments of the community. In addition, the process of developing the management plan should be participatory.
- 3.4. Legal provisions²⁰ around management plans should be supplemented by accessible guidelines and templates, explaining the process and content of management plans in simple terms and supporting the communities to develop their own plans.
- 3.5. The legal framework should allow external support to be provided to communities to develop management plans, and for capacity building activities for communities as well as local authorities.
- 3.6. The legal framework should identify the authorities responsible for monitoring implementation of the management plan, as well as the reporting requirements of communities.

PRINCIPLE 4

Supporting internal community governance: *The legal framework should support internal community governance by providing for general principles of accountability and transparency for the implementation of social forestry, while allowing communities to establish specific mechanisms for implementation of these principles and according to their own institutional structure.*

The legal framework can support effective social forestry implementation by guiding communities to develop internal rules or by-laws that are tailored to their practices and objectives for how they aim to manage their social forest. To encourage good governance practices, principles on accountability – which safeguards against corruption and arbitrary

²⁰ The provision may include the identification of responsible institutions, body and/or authority (whatever is applicable) in charge of reviewing and/or approving management plans of communities, especially to comply with existing local legislations.

decision-making – and transparency – which ensures access to information – should be included in the legal framework. Communities should be accorded flexibility to implement such principles in ways adapted to their circumstances, so as to allow diverse practices.

- 4.1. The legal framework should ensure that communities have decision-making authority over how they manage social forestry areas, according to their own community internal governance.
- 4.2. The legal framework should allow communities to create new decision-making bodies or rely on existing bodies to manage social forestry areas. Such bodies should have clearly defined objectives, roles and responsibilities.
- 4.3. Although the legal framework may provide suggestions, examples or guidance, communities should be allowed to structure and develop their own internal rules/policies, such as by-laws. In doing so, the legal framework should recognise local customs and traditions.
- 4.4. The legal framework should establish the principle that an information sharing mechanism should be used by communities, especially by those in leadership roles, where information pertaining to social forestry decision-making, activities, etc., is broadly shared with community members.
- 4.5. The legal framework should require that communities develop and use accountability mechanisms in order to ensure good governance. The legal framework should also provide for complaint mechanisms as a recourse.

PRINCIPLE 5

Enabling community participation and representation of marginalised groups:

The legal framework should enable social forestry by including specific provisions to ensure participation in social forestry decision-making, activities and management by all community members, especially from marginalised groups, such as women, Indigenous Peoples, ethnic minorities, and the poorest or most disempowered members of the community, based on the local context. Participation by youth should also be encouraged. The legal framework should allow community members to determine the most suitable mechanisms for participation.

It is important for the legal framework to include safeguards that encourage participation by and representation of all segments of a community – particularly women, Indigenous Peoples, ethnic minorities, and poor and socially marginalised groups – as local customs may not always provide for full inclusion of all groups in social forestry. While the legal framework can provide guidance, communities themselves should be able to decide on the most suitable mechanisms for participation.

- 5.1. The legal framework should include provisions on the inclusion of marginalised groups in social forestry, which may differ according to each country's local context. Such groups may include, but are not limited to, women, Indigenous Peoples, ethnic minorities, and poor and socially marginalised groups.



- 5.2. The legal framework should specifically define the marginalised groups that are being targeted to enhance their participation.
- 5.3. The legal framework should require participatory decision-making, where marginalised groups are able to fully and effectively participate and/or are properly represented. To ensure substantive participation, the legal framework should require representation of marginalised groups in all levels of decision-making, including in leadership roles.
- 5.4. The legal framework should encourage youth participation in social forestry.
- 5.5. The legal framework should allow, and encourage as needed, external support to be granted to communities in order to help foster greater participation by marginalised groups and youth, such as by appointing a community facilitator.

PRINCIPLE 6

Enabling community access to markets: *The legal framework should provide support and facilitate opportunities for market access and the sale of social forestry products and services, with clear and enabling provisions on tax, transport and processing, as well as economic incentives.*

To ensure improved community livelihoods, social forestry legal frameworks should consider the aspects of commercialisation of products and services deriving from the management of social forestry areas.

- 6.1. The legal framework should put in place simple rules to develop economic activities and establish a community business, as well as facilitate access to different steps or nodes of the supply chain for sustainable provision of forest-related products and services.
- 6.2. Different economic incentives should be considered in order to stimulate communities' access to markets, such as tax exemptions, subsidies, simplified rules for obtaining transporting or manufacturing permits, different permit requirements depending on the scale of the commercial enterprise (for example, small-scale harvest for local market versus products entering larger supply chains) or the type of product (such as timber versus non-timber forest products), easier access to capital and technical support for community enterprises.
- 6.3. The legal framework should allow communities to enter into agreements with third parties in forest management, including companies, while providing safeguards against abuse of power imbalances between communities and third parties as well as grievance mechanisms.

PRINCIPLE 7

Equitable benefit sharing: *The legal framework should enable benefit sharing by providing a general framework, while allowing communities to use their own mechanisms to equitably share the benefits from social forestry activities between community members. The legal framework should provide safeguards that ensure information transparency and a monitoring system to protect community members against risks such as elite capture.²¹*

One objective of social forestry is to improve community members' livelihoods, and, in line with that goal, it is important that benefits gained from the management of forest resources through social forestry are shared in a fair and equitable manner. Benefits should be shared amongst all community members with particular attention to marginalised members (horizontal benefit sharing), and with the state/third parties as appropriate (vertical benefit sharing). The legal framework can generally outline such a requirement or provide options, and ultimately allow communities to choose and use an already existing mechanism or develop one according to their local needs and customs. The legal framework should also include safeguards to ensure monitoring and transparency of such benefit sharing arrangements.

- 7.1. The legal framework should provide that monetary, material and non-monetary/non-material benefits derived from the use and management of a social forestry area belong to the community.
- 7.2. The legal framework should include the principle of equitable benefit sharing, while recognising that communities can use their own specific benefit sharing mechanisms.

²¹ In this context, 'elite capture' refers to situations where more privileged members of communities dominate, to the detriment of those less privileged.



- 7.3.** The legal framework can provide guidance on developing and implementing benefit sharing mechanisms by, for example, defining benefit sharing (types of benefits, horizontal versus vertical benefit sharing) or providing examples or models of benefit sharing arrangements.
- 7.4.** The legal framework should envisage mechanisms that reduce the risks of benefit or elite capture, such as setting up a system to ensure transparency, accountability and monitoring of benefit sharing. There should also be mechanisms to ensure equal access to benefits by marginalised groups, such as women, Indigenous Peoples, ethnic minorities and others.

PRINCIPLE 8

Including mechanisms for conflict resolution: *In case of conflict, the legal framework should guarantee that communities and all community members have access to a process of fair dispute resolution, which can rely on customary or alternative dispute resolution mechanisms, while ensuring that judicial means, such as tribunals and courts to file formal complaints, are also available. The legal framework should also ensure that access to legal assistance is available.*

Conflicts may arise between members of a community, between communities, or between a community (or one of its members) and third parties (including government representatives, companies or NGOs). Legal frameworks can assist in anticipating and specifying tools for use in case of conflicts.

- 8.1.** The legal framework should allow communities to use their own chosen dispute resolution mechanism, and, in doing so, recognise customary or alternative dispute resolution mechanisms.

- 8.2. In cases of conflict between communities and third parties, the legal framework should guarantee that there is a means to recourse for communities, such as an administrative or contract-based redress mechanism.
- 8.3. The legal framework should also provide access to a judicial or other independent and enforceable dispute resolution mechanism, so that parties may formally file complaints or seek recourse.
- 8.4. The legal framework should ensure that access to legal assistance is readily available, in order to make sure all parties, especially communities and marginalised groups, can sufficiently and effectively obtain remedy.

PRINCIPLE 9

Enforcing social forestry frameworks: *The legal framework should identify what constitutes an offence and clearly state the associated sanctions and who can issue them. The legal framework should specifically identify the roles and responsibilities of communities and governmental authorities in enforcing social forestry rules.*

Enforcement of forest rules is an important element of social forestry to consider, and a clear legal framework can help facilitate effective enforcement. Often, communities and governmental authorities are the primary parties engaged in enforcement. Communities may be involved in enforcement of their own internal social forestry rules, as well as participating in broader enforcement of forestry laws. The government, often local authorities, is typically responsible for overseeing the implementation of social forestry by communities.

- 9.1. The legal framework should clearly establish what constitutes an offence and what the associated sanctions are or may be. Sanctions should be fair, proportionate and dissuasive.
- 9.2. The legal framework should provide some authority, as well as the necessary means and tools, to communities to enforce rules relevant to their management of a social forestry area. Such authority may include taking action against community members or third parties for wrongdoing. If direct action is not permitted to be taken against third parties, the legal framework should make clear what actions are available to communities.
- 9.3. The legal framework should lay out the types of sanctions or other measures a community may impose, such as reprimands or warnings. Such sanctions should be included in a community's internal rules/policies (for example, by-laws).
- 9.4. The legal framework should identify which governmental bodies are responsible for monitoring social forestry implementation and enforcement. This should include specifying how such monitoring and enforcement will be conducted. Sufficient financial and human resources should be provided to ensure monitoring and enforcement activities can be fully achieved.

- 9.5.** As part of the monitoring process, the legal framework should require *an evaluation of the communities' fulfilment of forestry obligations and a formal notification mechanism to allow them to undertake remedial actions before sanctions may be imposed*. The legal framework should also provide for an appeal mechanism if sanctions are imposed, especially for severe sanctions such as withdrawal/revocation of an allocated social forestry area.

PRINCIPLE 10

Enabling external support to communities: *The legal framework should allow external actors, such as NGOs, the government, the private sector or international institutions, to provide a broad range of support to community members in accessing and implementing social forestry. The legal framework should also clearly establish the necessary means and institutions for such external support to materialise.*

Support from external actors can be integral to ensuring full and successful development of social forestry. The legal framework can facilitate and encourage this support. However, it is important that, while access to external support should be available when and if needed, communities engaged in social forestry should not have to seek external support in order to access and implement social forestry. External support should also be respectful of and guided by communities' own plans related to social forestry.

- 10.1.** The legal framework should specifically identify the relevant governmental bodies that will be involved in supporting social forestry, including their mission and functions. The legal framework should also make clear how sectoral government entities will coordinate on social forestry matters. A clear programmatic approach should be put in place and pursued by relevant authorities, and sufficient financial means made available to fulfil their missions.
- 10.2.** The legal framework should expressly allow NGOs to provide support to communities. The legal framework should also make clear if there are any requirements that NGOs must meet in order to provide such support, and what such requirements entail. Any such requirements should not be burdensome, including rules on registration of association and operating as an NGO.
- 10.3.** The legal framework should authorise the involvement of private sector actors in social forestry, while also containing safeguards to ensure a balanced relationship between communities and private sector actors and minimise risks of capture of social forestry by private sector actors.
- 10.4.** The legal framework should allow international institutions to provide support for social forestry. The legal framework should enable such support to be directly granted to communities. Where direct support may not be allowed, the legal framework should clearly establish how support can be provided.



8. Implementation and Next Steps

Effective Dissemination and Implementation of the Principles

In order to disseminate these guiding principles effectively, it is recommended that they are presented at the national level to policy-makers and other key stakeholders who work on the design and implementation of social forestry legal frameworks.

Collaborative engagements between governments, civil society and other actors supporting social forestry – to unpack these principles and understand how they can be applied in a specific country – will be key to ensuring the effective implementation of these guiding principles as well.

It is also important that the regional principles are reflected in and adopted to national frameworks themselves. This may involve conducting assessments of current national legal frameworks on social forestry based on these guiding principles. Any gaps or inadequacies may be addressed through existing or new legal reforms, or the development of a national legal framework may be initiated if one does not yet exist.

In order to ensure appropriate and timely implementation of these guiding principles, it is recommended that the AMSs develop a monitoring and evaluation process. This will provide a good overview on how these principles are applied in practice at a certain time within ASEAN and will enable any remaining gaps to be identified and addressed.

Principles as a Living Document that can be Further Elaborated into More Detailed Technical Guidelines for Effective Social Forestry

The guiding principles contained herein are intended to be treated as a living document and may be further refined on the basis of feedback from users. The principles are also meant to serve as broad regional guidance, and thus users of the ASEAN Guiding Principles for Effective Social Forestry Legal Frameworks may consider further developing the guiding principles into more detailed technical guidelines, appropriate for specific AMS legal systems and context.

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10. Annexe

Methodology

The ASEAN Working Group on Social Forestry (AWG-SF), RECOFTC 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.²² Each of these countries had recently developed new laws or revised existing ones to support social forestry. The participants therefore reviewed progress and challenges relating to reforming and implementing these new frameworks, as well as priorities to overcome challenges.

Building on this positive experience, RECOFTC and ClientEarth proposed further collaboration with AWG-SF members to help strengthen national social forestry laws, policies/rules and regulations and their implementation, as well as to develop regional level principles for effective social forestry policy. This collaboration was formally agreed at the 15th AWG-SF annual meeting on 10 June 2021.

In order to develop Guiding Principles for Effective Social Forestry Legal Frameworks, RECOFTC and ClientEarth, together with AWG-SF and the ASEAN Secretariat, organised a series of technical sessions and collected information on national legal frameworks on social forestry based on a questionnaire completed by the AWG-SF delegates. The technical sessions aimed at discussing the ten key building blocks of social forestry that were proposed as a starting point to develop the ASEAN guiding principles on social forestry legal frameworks.²³ AWG-SF delegates also shared their countries' experiences with their current social forestry frameworks to inform discussions.

²² The event was organised by RECOFTC under the projects ASEAN-Swiss Partnership on Social Forestry and Climate Change (ASFCC) and the Voices for Mekong Forests (V4MF) and with the continued support of the Swiss Agency for Development and Cooperation (SDC).

²³ ClientEarth. 2019. Toolkit for enabling laws on community forestry. London, ClientEarth, <https://www.clientearth.org/media/2vpbjm5v/toolkit-for-enabling-legal-frameworks-on-community-forestry-ce-en1-1.pdf>.