

THAILAND'S COMMUNITY FOREST ACT DRAFT (UNOFFICIAL TRANSLATION)

(As approved by Thai Cabinet on 30 April 1996)

The principles: There are 4 principles that all sides agree to:

1. This bill is one of the tools in environmental protection and development. It is not meant to be used to define and grant land rights.
2. It is a framework for utilizing natural resources sustainably in order to protect the forest's ecosystem.
3. To underlie and support the roles of communities that protect, use and develop forests their traditional ways.
4. To promote the process whereby the state and the community cooperate in supporting the state's development process.

The Fundamentals of the Bill

1 . Define what a community forest is

A community forest can be any area the community wants to be designated a community forest whether it is within the limits of a conservation zone such as a national park, wildlife sanctuary, watershed area; or non-conservation zone such as a national forest or public use area.

2. Who has the right to manage the community forest.

Those who could manage a community forest are groups or organizations that wish to undertake the role of managing the community forest. It could be the community representative, village committee, tambon council (administrative village), or tambon administration's assembly.

3. Monitoring

There will be a provincial community forestry committee which will consider applications requesting that an area be designated a community forest and also inspect the area. It will also oversee and evaluate the management of the community forest and also be able to revoke the status of a community forest. This committee will have the provincial governor or a deputy governor as its president. It will include the president of the tambon administrative organization's assembly or president of the tambon council as well as government representatives and experts.

4. The organization that manages the community forest.

The organization that manages the community forest is the community forestry committee which is appointed by the director general of the Royal Forestry Department. This committee will have to present a community forest management plan to the monitoring committee for their recommendation and also other plans it will undertake in support of sustainably using the natural resources.

5. The guidelines of utilizing the community forest

The community can use the woods for household or public use. They can collect wood products, rear animals, catch animals that are not reserved, protected, rare, or endangered

animals. They can grow controlled plants or make other uses of the community forest which the director general allows. They can not take control of the forest to live in, build anything on nor slash, burn or cut the trees or do anything that will degrade the forest.

6. Revoking the status of a community forest.

The Director General of the Royal Forestry Department has the power to revoke the status of a community forest if the monitoring committee finds that the community forest has been seriously damaged, or if the community forest committee does not recover the forest, or they do not comply with the bill, the director-general's regulations or the community forestry plans.

7. Penalty

There is penalty for those who obstruct the management of the community forestry committee or the provincial monitoring committee. The penalty for violations against the community forest is higher than those against areas that are not within a conservation zone.

Memorandum of principles and rationales for a Community Forest Act

Principle

There shall be a law on community forestry.

Rationale

The government created this policy to encourage citizens who live in communities, where their life styles are related to the forest, to participate in the conservation and development of the environment and to have the citizens in the communities manage and use forest resources sustainably. But this policy does not encourage individuals or groups of people to encroach on the forest in order to gain rights or benefits. By acknowledging the citizen's traditions and various ways in which they conserve, utilize and develop the forest, this policy has been created so that they will feel that they are owners of the forest resources which in turn will encourage cooperation in preserving the ecosystem and environment, reduce deforestation, oversee, utilize and recover the forest and also better the quality of life of the citizens in the community. Therefore, this is the reason why this policy needs to be enacted.

Section 1: This Act is called the "Community Forestry Act"

Section 2: This Act is effective after the day an announcement has been made in the Royal Gazette.

Section 3: Any laws, regulations, and rules which are in conflict with this Act must be exempted, and use this Act as the reference.

Section 4: In this Act :

"Community" means people who are settled together in a village or tambon (administrative village)

"Community Forestry" means the areas designated as communal forest to this Act.

"Wood" means all woody species, including trees, shrubs, lianas; whether it is standing or felled; and including the roots, knot or gall, stump, shoot, branch, bud, bulb, rhizome, piece, tip or any part of the woody species whether it is cut, slashed, sawed, chopped, broken up, dug or any other way.

"Forest products" means everything that grows or exists in the forest, which is:

1. wood, firewood or copse, charcoal, bark, leaves, flowers, seeds, fruits, shoots, resin and sap;
2. grasses, reeds or other members of Gramineae and Cyperaceae families, (undergrowth, kham, prue, kha, kok, krajood), orchids, ferns, mushrooms and other plants;
3. lac, beehive, honey, beeswax and guano;
4. soil, rocks, gravel and sand

"Biological diversity " means the diversity of all living things including the diversity of genetic resources and ecosystems of which those living things have originated.

"Genetic resources " means the fundamental composition of a living organism which dictates species speciation.

"Access to genetic resources " means any action taken to utilize the genetic resources pursuant to this Act.

"Community representatives " means a group of individuals who utilize and undertake activities which are in line with the objectives pursuant to section 7 under this Act who have been approved by the majority of members of the community of legal age to be community representatives and take action pursuant to this Act.

"Village committee" means the village committee pursuant to the law on local administration.

"Tambon council" means the tambon council pursuant to the law on tambon council and tambon administrative organization.

"Tambon administrative organization assembly" means the tambon administrative organization assembly pursuant to the law on tambon council and tambon administrative organization.

"Community forest committee " means the committee which is selected and appointed by the director general to manage the community forest.

"Competent official" means the person appointed by the Minister to take action under this Act.

"Community forest officials " means government officials from the Royal Forest Department (RFD) who are appointed by the director general or the persons from the community who are nominated by the Community Forestry Committee to take action under this Act.

"Director-General " means the director general of the Royal Forestry Department "Minister " means the Minister who has charge under this Act.

Clause 5: The Minister of Agriculture and Cooperatives shall have charge under this Act and have the power to appoint competent officials and issue ministerial regulations for the execution of this Act.

The Ministerial Regulations shall come into force upon their publication in the Royal Gazette.

Chapter 1 General Provisions

Clause 6.. Forest land which may be designated as a community forest area according to this Act is forest area, according to forestry laws, which is forest area or public land in which the public have a communal use or forest area in wild and uninhabited land according to the Civil and Commercial Code, mangrove forests under the Cabinet Resolution, forest areas in which the state has forbidden the use of, national forest reserves under the National Forest Reserve Act, forest areas in wildlife sanctuaries, or areas prohibited from hunting under the Wildlife Preservation and Protection Act, or areas under other laws in which the community representative, village committee, tambon council or tambon administrative organization assembly wish to be a community forest.

Forest areas which have been designated community forests shall remain under the laws of the Forestry Act, the National Forest Reserve Act, the National Park Act, the Wildlife Preservation and Protection Act as the case may be except where this Act has provided otherwise.

Clause 7: The designation of any forest area to be a community forest and be under community forest management must have the following objectives:

1. the conservation and the development of the state of environment and biological diversity;
2. sustainable use of forest resources to maintain the forest ecosystem;
3. to acknowledge and encourage the diverse community traditions in the preservation, utilization and development of forest resources
4. to create the process of cooperation between the state and the community

Chapter 2 The Provincial Community Forest Monitoring Committee

Clause 8: There shall be a provincial community forest monitoring committee, called shortly "the monitoring committee" consisting of the provincial governor or deputy governor which the governor appointed as the Chairman, the provincial forestry official and one qualified member from the province appointed by the chairman of the tambon administrative organization assembly, or chairman of the tampon council, two representatives from other provincial offices, and not less than four nor more than six other members.

There shall be one government official from the Forestry Department who is responsible for community forestry to be a committee member and secretary.

Other members pursuant to the first paragraph shall be drawn from persons who are knowledgeable and known for their expertise, contributions and experiences in the matters concerning activities that are in line with the objectives pursuant to section 7 who are nominated by registered non-governmental organizations engaged in environmental

protection and conservation of natural resources according to the Enhancement and Conservation of National Environmental quality Act.

Regulations and methods for the nomination and appointment of other members shall be prescribed by the ministerial regulation.

Clause 9: A qualified member appointed by the governor shall hold office for a term of four years.

Members who have vacated the office may be reappointed.

Clause 10: In addition to the expiration of the term of office, according to section 9, a qualified member shall vacate office upon:

1. death;
2. resignation;
3. be adjudged an incompetent or quasi- incompetent person;
4. be punished by a final judgment to a term of imprisonment except for an offense committed through negligence or a petty offense.

When a qualified member vacates office or when the governor appoints an additional qualified member before the expiration of the term of those already in office, such person who is appointed in his place or the additional qualified member shall hold office only for the remaining term of his predecessor

Clause 11: A meeting of the monitoring committee requires the presence of not less than one-half of the total members of the committee to constitute a quorum.

If the Chairman is absent or unable to perform the function, the members who attend the meeting shall elect one of the attending members to as the chairman of the meeting.

The decision of a meeting shall be made by a majority of votes.

In casting votes, each member shall have one vote. In case of an equality of votes, the Chairman of the meeting shall have an additional vote as a casting vote.

Clause 12: The Monitoring Committee shall have the power to appoint a subcommittee to consider or carry out any matter as may be entrusted by the Monitoring Committee, and Section 11 shall apply mutatis mutandis (make allowances) to the meeting of the subcommittee.

Clause 13: The Monitoring Committee shall have the power and duty as follows:

1. consider the application and inspect the forest area which has been proposed to be designated as a community forest;
2. announce the application for a forest area to be a community forest and examine any objections; (or "the objectives"?)
3. make recommendations to the secretary general to designate a forest area a community forest, add or reduce the boundaries of a community forest or revoke the status of a community forest;
4. propose the appointment of a Monitoring Committee member or revoke such appointment;

5. give approval to the community forest management plan including projects which will be undertaken in the community forest;
6. control, direct and oversee the actions of the Monitoring Committee so that it is in accordance with law, the community forest plan and the regulations issued by the Community Forest Committee under section 28 (5)
7. give advice and make recommendations to the Community Forest Committee in the management of the community forest to conserve, develop and utilize the community forest sustainably.
8. perform other functions designated by law to be the duty of the Monitoring Committee.

Chapter 3

The notification of the designation of a community forest

Clause 14.. Any community representative, village committee, tambon council or tambon administrative organization assembly who wants to manage a community forest may submit an application for the designation of a forest area to be a community forest.

The rules, methods and conditions for the submission of the application shall be prescribed in the ministerial regulations.

In issuing the ministerial regulation pursuant to the second paragraph, the application shall at least include the following details:

1. the objective;
2. the size of the forest which is being requested to be designated a community forest area;
3. the boundaries and bordering areas;
4. the committee or organization or group of individuals who were taking care of and preserving the forest area before it is designated a community forest area;
5. those who want to manage the community forest according to the application;
6. details of the community's customs and ways of life concerning usage, preservation and resource development in a forest area including the community's codes of conduct;
7. a map showing the forest area pursuant to (2);
8. the management plan pursuant to section 19(3).

Clause 15: upon receiving the application for a forest area to be designated a community forest the Monitoring Committee shall arrange for an inspection of the forest's condition and consider the application, then report on the findings of the inspection within 90 days from the date of receiving the application and also give recommendation whether the condition of the forest under the application should or should not to what extent be designated a community forest.

The inspection and report pursuant to paragraph one shall be in accordance with regulations prescribed by the director general

Clause 16: In receiving the inspection report pursuant to section 15 the Monitoring Committee shall post the application and a summary of the results of the inspection of the forest's condition in a public place at the office of the local district or sub-district, the local kamnan (head of the Sub-district) office or a public place easily seen in the local village for not less than number 30 days; it also must indicate the date that the announcement was posted on the announcement.

Clause 17: If within thirty days from the day such announcement pursuant to section 16 was posted any interested party send a writing to the Monitoring Committee to raise an objection or give an opinion on the designation of the community forest, the Monitoring Committee shall take them into consideration and make a report to the director general along with the report of the Monitoring Committee's findings of the inspection and its recommendations.

Clause 18: If no interested parties send an objection or give an opinion after thirty days since such announcement pursuant to section 16, the Monitoring Committee shall report the findings of the inspection and its recommendation to the director general to proceed with the consideration of designating the community forest.

Clause 19: The consideration of designating a community forest shall contain the following rules:

1. the objective of the request for the designation of the community forest is pursuant to section 7;
2. there is a community representative, village committee, tambon council or tambon administrative organization assembly which is ready to take care of and preserve the forest area which is requested to be designated a community forest area; and
3. there is a management plan and capability to manage the community forest in accordance with the rules prescribed in the ministerial regulation.

In the case that the community is within a national park pursuant to the law on national parks, wildlife sanctuaries or non-hunting zones pursuant to the laws on wildlife preservation and protection it must be there before the day the reconnaissance photo was taken in the year 2536 BE (1993) as attached at the end of this Act.

Clause 20: When the director general receives the report on the results of the inspection and the opinions pursuant to section 17, if the director general sees fit that the forest area be designated a community forest, the director general shall announce it by publishing in the Royal Gazette and shall accompany the notification with a map indicating the community forest boundary lines.

In the case that the director general sees fit that the whole forest area or parts of it as requested in the application be designated a community forest or that the application be revoked there shall be written notification sent to the applicant and the applicant has right to appeal to the Minister within 60 days from the date of receiving the written notification. The Minister shall deliberate the appeal within 60 days from the date of receiving the appeal.

The decision of the Minister shall be final.

The written notification, appeal and decision shall clearly state the reasons and particulars.

Clause 21: The competent official must arrange for boundary marks, signboards or other markings to show the boundaries of the community forest as deemed suitable in order for the public to see that it is a community forest area. Also, the community representative, village committee, tambon council, tambon administrative organization assembly or community forest community, as the case may be, shall cooperate in this case.

Clause 22: In cases deemed reasonable the community forest committee may request the area of the community forest be expanded or retracted or the management plan pursuant to section

19(3) be revised, or the management of the community forest in whole or in part be terminated but must clearly state the reasons and particulars. Section 14, section 16, section 17, section 18, section 19, section 20 and section 21 shall apply mutatis mutandis (to make allowances)..

Clause 23: The Royal Forestry Department shall have the duty to enhance and support the setting up of a community forest, including to arrange the training for the competent officials and in order to carry out the objectives of this Act.

Chapter 4 Community Forest Management

Clause 24.. In the case that the community representative is the persons who submitted the application when the designation of the community forest is proclaimed, there shall be a community forest committee for the community forest consisting of persons appointed by the director general who are selected by the community with the requested the designation of the community forest and nominated by the concerned provincial community forest monitoring committee.

In the case that the community forest lies in more than one community, the community forest committee pursuant to paragraph one must have representatives from all communities in that community forest.

The community forest committee shall select one committee member to be the Chairman.

The qualification, prohibition, selection and nomination rules of the community forest committee shall be as prescribed by the director general.

Clause 25: In the case of that the village committee, tambon council or tambon administrative organization assembly has been permitted by the director general to be the caretaker of the community forest pursuant to section 20 the village committee, tambon administrative organization assembly shall be the authority exercising the power and duties of the community forest committee pursuant to this Act.

Clause 26: The community forest committee shall hold office for a term four years. Member who have vacated the office may be reappointed.

Clause 27: Section 10, section 11, section 12 shall apply mutatis mutandis to the community forest committee.

Clause 28: The community forest committee shall have the power and duty as follow:

1. control, direct and oversee that all proceedings in the community forest are in accordance with the objectives of section 7;
2. submit a detailed community forest management plan which must separate the community forest area into the conservation area and the utilization area, as well as other plans and projects prescribed in the ministerial regulation;
3. control, oversee, protect and restore the community forest including taking care of and maintaining other natural resources to maintain a balanced ecosystem, be biologically diverse

as well as be sustainably utilized in accordance with the community forest management plan pursuant to (2);

4. nominate a member of the community to be a community forest official;
5. issue regulation on the management of community forest to be in accordance with the objectives pursuant to section 7 by gaining approval from the majority of the community members who have come of age;
6. proceed with the management of the community forest of the benefit of the community pursuant to this Act and regulations issued pursuant to (5) which includes of a construction of fire break around the community forest, cleaning of forest debris and fuel in the community forest to protect against fire, collecting and processing of wood for usage pursuant to section 3 1, pruning and coppicing and other necessities;
7. expel from the community forest or restrain from any actions in the community forest area those who violate a regulation issued pursuant to (5) or an offense against this Act;
8. reconcile and compromise when there is conflict among members of the community in the usage the community forest;
9. write a memorandum, report on the administration and management and take action in accordance with the power and duties of the community forest committee for the benefit in monitoring;
10. take actions as deemed proper to protect and lessen the deterioration to the community forest;
11. appoint a subcommittee to examine or carry out any matter as may be entrusted by the community forest committee;
12. assist the competent officials in the case of an arrest or the suppression of those who committed an offense pursuant to this Act.
13. perform other functions prescribed by this Act or other laws to be within the authority of community forest committee.

Clause 29.. To benefit from the education, research as well as monitor the results of the implementation of this Act, the competent official or person delegated duty by the competent official shall be able to go into the community forest to undertake this actions.

In taking action pursuant to paragraph one the competent official shall produce this identity and the person who is delegated duty by the competent official shall produce written delegation to the individual concerned and such individual shall facilitate as deems reasonable.

Clause 30: The community forest official shall have power and duty as follows:

1. advise, enhance and support the actions of the community forest committee so that it is in accordance with this Act as well as regulations prescribed by the director general pursuant to this Act;
2. inspect and oversee the actions and activities in community forest;
3. expel from the community forest or restrain any actions in the community forest or restrain any actions in the community forest area in the case where there is reasonable ground to suspect that someone has taken offense against this Act or any regulation prescribed by the director general pursuant to this Act in the case that a meeting of the community forest committee can not be call in time;
4. take any suitable steps to protect and minimize the damage to the community forest;
5. report to the Monitoring Committee when there appears to be the need to revoke the community forest in whole or in part;

Clause 31: Members of the community who have a community forest may collect forest products, raise cattle, catch animals that are not reserved wildlife, protected wildlife, or rare and endangered wildlife, and farm protected crops. They can also make use of the community forest in other ways, but must be in accordance with the regulations the director general prescribes.

Clause 32: In the community forest which has been designated for utilization under section 28(2) members of the community who have such a community forest may log for their household or public use. Logging in the community forest pursuant to paragraph one shall be as prescribed in the ministerial regulations.

Clause 33: In the community forest no one is allowed to occupy, possess, make use or dwell on the land, clear, slash, bum, log, collect wood products, access genetic resources or do anything which will deteriorate the community forest's condition except in the following cases:

1. actions of the Community Forest Committee pursuant to section 28;
2. steps taken by the competent officials or the person delegated by the competent official pursuant to section 29;
3. steps taken by community forest official pursuant to section 30;
4. wood product collection and actions of community members pursuant to section 31;
5. logging by community members for household or public use pursuant to section 32;
6. tree planting and forest conservation by community members.

The wood or wood products obtained from the community forest under this Act shall be exempted from proceedings pursuant to the Forest Law on wood processing, the possession of wood or wood products, the moving of wood and wood products through forest passes, the payment of duties, taxes or costs in forest maintenance of forest plantation in accordance to the Forest Law and the Law on National Forest Reserve.

Clause 35: In the case that the Community Forest Committee's regulations pursuant to section 28 (5) prescribe that those who violate or do not comply with the regulation shall pay for the cost, if the person who violates or does not comply with the regulation does not pay, the community forest official shall assist in reconciliation with the person who violated or did not comply with the regulation refuses to pay, and the community forest committee wants to proceed with the case, the community forest committee may let the Community Forest Official refer the matter to the public prosecutor the proceed with the charge at the expense of that Community Forest Committee.

When the public prosecutor receives the request from the community forestry official pursuant to paragraph one, the public prosecutor shall have the power to be the plaintiff and level compensation to the Community Forest Committee.

Chapter 5

Revoking the status of community forests

Clause 36: The director general shall have the power to revoke the status of the community forest in whole or in part after receiving a report from the Monitoring Committee on the following cases:

1. the community forest is very degraded or if the community forest committee has abandoned and no longer manages nor restores the community forest; or
2. the community forest committee does not comply with this Act, the regulations prescribed by the director general pursuant to this Act, or the community forest management plan to the extent of causing damage to the community forest.

(But all these,) section 22 shall apply mutatis mutandis (to make allowances). In the case that it is not the revocation of the whole area, there shall be a map showing the change in boundaries accompanying the notification.

Clause 37.. The status of community forest which has been revoked may be requested to be reinstated by taking the steps under Chapter 3.

Penal Provisions

Clause 38: In taking actions pursuant to this Act, the provincial monitoring committee, community forest committee, village committee, tambon council or tambon administrative organization assembly, competent official and community forest official shall be the competent official pursuant to the Criminal Code.

Clause 39: The competent official, apprehending and suppressing the offender of this Act, shall be the administrative or police officer in accordance with the Criminal Proceedings Code.

Clause 40: Any person who damages or destroys the boundary marks, signboards or other markings which were set up pursuant to section 21 shall be punished by imprisonment not exceeding three years or fine not exceeding sixty thousand baht, or both.

Clause 41: Any person who obstructs the monitoring committee's acts undertaken in pursuant to section 13, the community forest committee's community forest management undertaken pursuant to section 8, or the competent official or the person delegated by the competent official's acts undertaken in pursuant to section 29 shall be punished by imprisonment not exceeding one month or fine not exceeding two thousand baht, or both.

Clause 42: Any person who refuses to observe the community forest official's orders issued by virtue of section 30(3) shall be punished by imprisonment not exceeding six month or fine not exceeding ten thousand baht, or both.

Clause 43: Any person who occupies, possesses, makes use of or dwells on the land, clears, slashes, burns, logs, collects wood products, accesses genetics resources or does anything which will damage the condition of the community forest without legal cause pursuant to section 3 1, section 32 or section 33, if that community forest area is in the area for utilization, that person shall be punished by imprisonment from six months to five years or fine from ten thousand baht to one hundred thousand baht, or both.

If such action in paragraph one is done in a community forest area for conservation that person shall be punished by imprisonment from one to fifteen years or fine from twenty thousand baht to three hundred thousand baht, or both.

Interim Provisions

Clause 44: The ministerial regulation shall be issued within two years from the day this Act comes into effect.

The director general shall take steps to issue regulations pursuant to this Act within two years from the day this Act comes into effect.

Countersigned by:

Prime Minister