

Thailand

General Comments

Articles 66 and 67 of the Constitution of the Kingdom of Thailand of 2007 recognize the right of communities to “participate in the management, maintenance, preservation and exploitation of natural resources, environment, and biological diversity in a balanced fashion and persistently” [sic]. In practice, however, many communities have not been able to take advantage of this constitutional protection (Written comments by Rattanakrajangsri). There are five main forest related acts in Thailand. The Forest Act of 1941, the National Park Act of 1961, the National Reserved Forest Act of 1964, the Wildlife Preservation and Protection Act of 1992 and the Forest Plantation Act of 1992. None of these legal instruments directly regulate the use, benefit, management, etc. of forest resources by communities. On the contrary, some of the provisions in these laws have criminalized the status of traditional communities living on their traditional lands. Additionally, the Cabinet Resolution of January 17th, 1989 imposed a nationwide ban on logging. This resolution revoked all logging licenses in natural forests and banned all forms of logging.

The Forest Act of 1941 focuses mainly on trees exploited for timber and forest products. It regulates activities within the forest and prohibits such activities as: the logging of protected species of timber, extracting forest products, and land occupation. Section 54 of the Forest Act prohibits the clearing, burning, occupying or possession of any forest land. Contravention of these regulations may result in fines and possible imprisonment.

The National Reserved Forest Act of 1964 and the National Park Act of 1961 form the basis for the determination, control and maintenance of National Reserved Forests and other protected areas in Thailand. The National Park Department oversees the management, control and use of National Reserved Forests. According to this Act, no person may occupy, possess, exploit or inhabit the land; or develop, clear, or burn the forest; collect forest products or cause by any other means whatsoever any damage to the nature of the National Reserved Forest (Section. 14, National Reserved Forest Act, 1964). However, logging or collection of forest products and logging of reserved timber species may be done after obtaining permission from the Director General (Sections 15 and 16, National Reserved Forest Act, 1964). Furthermore, the law states that any claim to user rights or ownership rights of land (which once recognized may give rise to compensation rights) declared as National Forest Reserve must be made within 90 days of the demarcation and declaration of the new status (Section 12, National Reserved Forest Act, 1964). This short window of opportunity to make claims has negatively impacted traditional communities, as many of them “simply are not informed of these legal changes to their lands and territories, due either to the remote sites of their communities or language barriers (with) many indigenous and traditional communities becoming illegal encroachers on their own lands” (Kurashima et al. 2005, 264).

The National Park Act 1961 makes unlawful any act that a person depending on forest resources would commit such as: collecting, removing endangered or deteriorated timber, gums, resins, wood-oil, turpentine, minerals or other natural resources; or creating a disturbance or causing trouble or nuisance to any person or wildlife. As such it affects directly the use rights of indigenous peoples and traditional communities regarding forest resources (Section 16, National Park Act, 1961). The penalty for violation of Section 16 ranges from paying a fine of 500 Baht to imprisonment not exceeding five years (Sections 24-27, National Park Act, 1961). (Note: The descriptions of legislation have been adapted from Kurashima et al. 2005)

Since the enactment of this legislation there have been some initiatives aimed at recognizing use rights of traditional communities, but with the exception of the Community Land Use Permit established by the Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds none of them are in practice as of today. These include:

Sor Por Kor (SPK) – “In the years 1981 to 1994, the Royal Forest Department issued SPK (Sor Por Kor) certificates for areas of up to 15 Rai (2.4 ha) per family in the lowland parts of the national forest reserve. SPK certificates provided usufruct rights for farming purposes only and did not entail full ownership. There are 2-3 different types of SPK, but none of them can be used as collateral or transferred except to descendants. In the past SPK certificates were often purchased by outsiders opening the doors for misuse and land speculation. This was one of the reasons why the Royal Forest Department was ordered by the Government to stop the SPK program and to hand over the right to allocate degraded forest areas to the Agricultural Land Reform Office” [sic] (Rock 2004, 25).

Wang Nam Khiaw resolutions of 1997 – “These resolutions were influenced by the Assembly of the Poor campaign. While one of them (22 April 1997) was a general policy statement, the other two issued on 19 and 29 April 1997 allowed villagers who had been living in reserve forests prior to 1993 to remain there on the condition that they take part in forest conservation. Proof of settlement for the first time took into account the village’s history as well as the age of fruit trees and buildings. A series of Forest Fires in early 1998 led to the approval of another cabinet resolution on 30 June 1998, which cancelled the three April 1997 resolutions regarding human settlement in forests and recommended (...) classification and zoning, with the eviction of villagers living in 'sensitive areas'" (Kurashima et al. 2005, 275). This resolution has created many difficulties for forest dwellers, particularly regarding land claims (Written comments by Rattanakrjangsri).

Community Forest Bill – “In 1991, supported by nongovernment organizations (NGOs) and communities, the government began drafting a Community Forest Bill to guide the formalization of community engagement in forest management. Unfortunately, for two decades the bill has been a constant source of national debate and considerable frustration (...). The original draft has undergone a number of rewrites, and has been rejected, passed, and then rescinded. The major point of contention has been over local people's forest use rights within protected areas. (...)The end result is that today there is no Community Forestry Bill in place" [sic] (RECOFTC 2011).

Community Land Use Permit - On May 2011, the Government passed the Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds allowing communities to apply for a Community Land Use Permit, which has been included in our study as the only community forest tenure regime for Thailand. “The essence of this regulation is to legally allow communities (both highland and lowland people) to collectively manage and use state-owned land for their living. This implies that the state still retains its claim to ownership of these lands. The present law requires that a community has to periodically renew their land title deeds with the respective government agencies that formally own the land, which means that to the communities it is like renting their own land” (Ernie 2010). As of 2010, the Royal Forest Department had formally recognized and registered around 7,000 community forests, all outside of protected areas, and it is actively seeking to register more (RECOFTC 2011). According to Rattanakrjangsri this resolution cannot be applied in protect areas as it contradicts existing forestry law (Written comments by Rattanakrjangsri).

1. Community Land Use Permit

	Rating	Rationale
General Description	The purpose of this law is to legally allow communities (both highland and lowland people) to collectively manage and use state-owned land for their livelihood. The present law requires that a community has to periodically renew their land title deeds with the respective government agencies that formally own the land (Ernie 2010).	
Legal documents consulted:	Regulation of the Prime Minister's Office on the Issuance of Community Land Title Deeds, 2010. This regulation is legally binding but has a lower legal status than other laws (Written comments by Rattanakrajangsri and Sinthipong).	
Legislation confers rights to:	Communities	Regulation on the Issuance of Community Land Title Deeds, 2010
Access	1	
Withdraw (NTFP)	2	This resolution does not explicitly give the right to use and benefit. It does, however, determine a community's duty in the co-managing of natural resources and states that decisions about the use of resources should be the responsibility of the Community Committee (Art. 9(1), The Regulation Community Land Title Deeds, 2010; Written comments by Rattanakrajangsri and Sinthipong).
Withdraw (Timber)	2	
Management	0	Written comments by Rattanakrajangsri and Sinthipong
Exclusion	1	Communities can exclude others under community regulations (Art. 9 (1), Regulation of Community Land Title Deeds, 2010; Written comments by Rattanakrajangsri and Sinthipong).
Alienation (Lease)	0	Individuals are not allowed to sell the land under this regime (Prasertpholkrang 2011).
Alienation (Collateral)	0	
Alienation (Sale)	0	
Revocability	0	Written comments by Rattanakrajangsri and Sinthipong
Duration of Rights (Years)	Limited	The first draft of the regulations stated that Community Land Use Permits should be granted for a period of 30 years. This was, however, omitted, and the final version of the regulations gives the Government Committee the responsibility to decide for what duration a Community Land Title may be issued. A title is renewable (Art. 8, Regulation on Community Land Title Deeds, 2010; Written comments by Rattanakrajangsri and Sinthipong).