

# Land, Forest and People

Facing the Challenges in  
South-East Asia



Photo: Sean Foley

## Rights and Resources Initiative

*Listening, Learning and Sharing*  
*Asia Final Report*  
*September 2007*

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**Forest Peoples  
Programme**

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## I. Listening, Learning and Sharing

The Listening, Learning and Sharing (LLS) exercise was designed and carried out to further ground the RRI partners<sup>1</sup> in the regions and at the national and local levels of key countries. The primary objectives were four:

1. Create or strengthen linkages between RRI partners and key players at the regional, national and local levels who are active in promoting land and forest tenure and related policy reforms;
2. Capture new information and develop analysis on threats and opportunities, ideas and strategies that will form the basis for future RRI activities in Asia;
3. Facilitate the international expression of local voices or communities who are marginalized or disenfranchised by decision making processes that concern land use, forest area classifications and forest management priorities;
4. Develop a RRI long-term Asia strategy based on solid partnerships and a mutual understanding of the roles and responsibilities of Initiative members

The Southeast Asia office of the World Agroforestry Centre (ICRAF) worked with current RRI partners and selected individuals in the Asia region in the development of a regional overview of the main legal and regulatory questions concerning ownership or access to and management of land-based natural resources.

Two consultative meetings were conducted. The first in May 2007 involved representatives from Vietnam, Laos, Cambodia, Thailand, and Nepal. This meeting was organized in Bangkok by the Regional Community Forestry Training Center (RECOFTC) and the World Agroforestry Center (ICRAF) with assistance from the Forest Peoples Programme (FPP). A second meeting was held in Bayanga, Mindanao in the Philippines. This included representatives from Indonesia and the Philippines. Summary reports of these gatherings can be found in the appendices of this report.

Each meeting emphasized a combination of discussions that centred on both the personal and professional experiences of the participants. Significant attention was paid to the individual needs, experiences, and insights of the participants, all of whom have been involved in rights-related work for significant periods of time. The meetings were also designed to bring out new analysis on the situations in each country. To accomplish this, the organizers developed the “LARS framework”. This proved to be an efficient and effective method of gathering information and analysis on the Legal frameworks, the Actual situation on the ground as it relates to or deviates from the legal framework, the Response of civil society and other actors

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<sup>1</sup> For a description of the Rights and Resources Initiative see appendix 1

to the frequent disconnect between the legal framework and the actual situation and finally the Support needed to strengthen the response efforts.

The insights, experience and analysis, to the best of our ability, have been captured in this report and will feed into a major Asia-wide meeting on Poverty Reduction and Forests: Tenure, Market and Policy Reforms, being sponsored by RECOFTC and the RRI in September 2007. Several of those who participated in the LLS regional process will be present at this meeting and will respond to and elaborate on this synthesis report.

In addition, eight country studies were carried out as background material for RRI members and others interested in getting a relatively quick picture of the situation in each country. The format was designed to be consistent in order to facilitate information flow and uniformity. While still in draft form, these are available for review and comment on the Rights and Resources Initiative website: [www.rightsandresources.org](http://www.rightsandresources.org).

The authors of this report take full responsibility for its content. The information and analysis presented does not necessarily reflect the official position of the institutions and individuals involved in this process.

## II. Land Tenure, Forest Policy and Forest Peoples

Over the past 20 years, the region reviewed in this report - South East Asia stretching from Laos across to Indonesia - has experienced major changes in forest cover, social development and forest policy. Natural forests have shrunk dramatically and continue to be degraded and cleared at startling rates. Forest areas set aside for protection have increased. At the same time large areas of land and forest have been 'converted' to timber plantations and estate crops. During the same period, both for better and for worse, the forest peoples who inhabit these areas have also been through tumultuous changes.

Local realities have always been and remain very diverse, but it was generally the case, both before and during the colonial era, that South East Asian states, kingdoms and sultanates, did not recognise the rights of the peoples whose lifeways and livelihoods depended on forests. Entrenched discrimination was widespread against those officially classed as 'natives', 'uplanders', 'hill tribes', 'ethnic minorities', 'national minorities' and 'minority nationalities', known by a host of prejudicial names which all too often translate as 'slave' or the name of an animal.

Although the constitutions and international treaty obligations of the majority of the now-independent countries in the region prohibit such discrimination, in practice these prejudices remain culturally ingrained and are only slowly beginning to wane. True, the denial of community rights during pre-colonial eras was not confined to forest-dwellers and uplanders. As the ethnic Lao king of Lan Na announced to his subjects,

*the land where you plant rice is mine. You should work the field for me with a will. The tribute from the ricefield shall be divided into five parts; three parts are the fee for my exhausting work of governing the kingdom;*<sup>1</sup>

yet the restrictions on those living in forests were even more severe.<sup>2</sup>

These tendencies were only exacerbated when 'scientific forestry' was imposed by the colonial powers or, in Thailand's case, adopted with western advice. Areas classed as 'forests' were decreed to belong to the King or state and administered by forestry departments. Customary rights were commonly denied and customary livelihoods based on access to and use of forest resources were hemmed in by restrictive legislation. For the most part these policies and laws were maintained by post-colonial states.

Centuries of discrimination have had visible results. Forest peoples are today among the most marginalised and poor sectors of South East Asian societies. Whether measured in terms of rights, access to education, cash income or political security, they tend to score worse. Even in terms of the availability of data, forest peoples are marginalised. Good information about the numbers of people living in forests is lacking – they are not meant to be there. Many even lack citizenship.

Since the late 1980s, exclusionary forestry policies have been increasingly challenged. The failure of centralized forestry to control deforestation, the escalating toll of conflicts and illegality on profits and access to markets, the adoption of the Millennium Development Goals giving a new urgency to measures to meet basic human needs, and above all the increasingly articulate insistence of forest peoples themselves, have all demanded a change of approach. Throughout the region, new policies, laws and procedures are being adopted aimed at giving communities stronger rights, greater control of resources and greater incentives to manage, protect and generate wealth from forest resources.

Yet, at the same time, pressure on forests and forest peoples is also intensifying. Rapidly growing global markets for timber, pulp and paper, rattans, palm oil, 'biofuels', food crops, minerals, oil and gas have spurred massive investment in industries located on forest lands. Sometimes these developments bring gains to local people, but too often have caused further exclusion, poverty and conflict. Corporations have responded by adopting policies of 'corporate social responsibility' and with a renewed interest in out-sourcing production, with uncertain results.

This report seeks to assess these trends. How real are they? What rights are being recognised? What are the real benefits for forest peoples? Are they equipped to deal with the new challenges that result from devolved rights in forests and new pressures on land?

### III. Country Overviews

#### Laos<sup>3</sup>

The Lao People's Democratic Republic is a land-locked country largely made up of some 11,000 villages, who inhabit its spectacular rugged terrain. About half of the national population of 6.2 million people is comprised of traditionally Buddhist, paddy-farming, ethnic Lao, the other half being upland and highland peoples from some 55 officially recognised ethnic groups, including other Thai speakers.<sup>4</sup> Areas classed as 'forests' cover 16 million ha. of the country, and in addition there are 3.3 m. ha. of protected areas. Although official figures are lacking some 3.5 million people are thought to live in or depend directly on these forests.

According to the Constitution, all forest lands belong to the 'national community represented by the State'. In the 1970s and 1980s, forestry policies mainly promoted logging by State Forest Enterprises and army units, including for the payment of war reparations to Vietnam. Since the 1990s, forest policy has been reformed with the aim of promoting sustainable forest management, watershed protection, biodiversity conservation and village use, although extensive ill-regulated logging continues. The law allows the government to allocate rights of 'rational usage' of forest areas to villages and individuals, while the customary use of natural resources within village boundaries is also explicitly recognised.

Under a procedure referred to as 'Land Use Planning and Land Allocation' (LUP-LA), villages' administrative boundaries are surveyed, zoned and then allocated for use by individuals, households and the village as a whole. Up to 25 ha. per household can be allocated for various uses. Five yearly renewable village management plans are then required to permit land use. In addition the law allows the issuance of Land Use Certificates for permanent farm land and Temporary Land Use Certificates for three years for swidden plots up to a maximum of 3 ha. per family (insufficient for a sustainable swidden rotation). The government accepts that many LUP-LA exercises were carried out hastily with inadequate participation, putting the squeeze on upland economies without providing means of boosting production on restricted lands. To date some 67% of villages have been through the LUP-LA process. All the 3-year provisional entitlements based on the LUP-LA have now lapsed, while the government reviews its approach. The land titling process, being promoted by the World Bank in urban areas, has yet to extend to the forests and uplands.

Although the Lao Constitution prohibits discrimination against ethnic minorities, the government still pursues a policy of resettlement of upland villages

to 'focal sites' and lowland areas with the aims of facilitating access to services, promoting national security and curbing swidden. It remains State policy to eradicate swidden by 2010 and crop-substitution programs to replace opium cultivation with vegetable and fruit tree growing receive UN support.

Official national statistics with respect to forest cover, numbers of forest peoples and levels of poverty are not considered reliable. A survey by the Lao State Planning Commission and the Asian Development Bank notes that the LUP-LA, anti-swidden and resettlement programmes have been one of the primary causes of poverty and hardship in rural villages. It is also noted that the 1,000 villages now within forest protected areas are amongst the poorest in the country owing to restrictions placed on their forest-based livelihoods. Ethnic minorities are the poorest.<sup>5</sup>

NGOs argue that with most suitable lowland areas already being used for rice paddies, swidden farming on the steep, relatively infertile hills and slopes is an appropriate land use choice by uplanders. Many local government officials tacitly agree and turn a blind eye to it. Moreover, pressure on land is intensifying. Population is increasing; meaning valley lands suitable for paddy are very scarce.

Government policies favour the establishment of rubber, teak plantations, timber plantations for paper pulp and palm oil in both lowland areas and old swiddens. Hydropower development for the export of electricity to the regional grid puts further pressure on land. Imposed plantation concessions handed out to State, army and foreign concessionaires have caused land conflict and outbreaks of violence.

Development agencies argue that more suitable communal tenures based on customary use could be provided to forest villages using current laws.<sup>6</sup> Land use improvements and boosting of village economies should be based on land security and more participatory approaches which give local people a free choice of land use.



## **Vietnam<sup>7</sup>**

The country's 12.6 million hectares of natural forests and 2.3 m. ha. of plantations together cover about 38% of the national territory. About 25 million people are estimated to live in and around these forests, a large proportion of whom are from the 54 officially recognised ethnic minorities who predominate in the highlands and remoter areas.<sup>8</sup> Until the 1980s almost all lands and forests were administered directly by the State and its subsidiary bodies. In the 1980s, the State began to experiment with means of devolving rights over land to households and individuals and to the private sector. These reforms led to spectacular increases in agricultural production and since the 1990s, similar reforms have begun to be undertaken in forests.

The constitution vests all lands and forests in the State. However revised land and forest laws now encourage the allocation of long term, transferable leases to individuals, households and enterprises, providing them with strong rights to control and manage resources. About 23% of forests and plantations have been allocated to individuals, households and firms in this way. The law is less clear about transfers to communities. While the laws allow communities to hold lands and forests, the tenure afforded them is weaker than that available to individuals and households. Moreover the Civil Code does not recognise communities as having legal personality. Only 4.4% of forests in Vietnam are currently allocated to communities as such.

Since the 1990s, forest policy has also favoured the re-organization and elimination of State Forest Enterprises. Shorter term contract forestry has led to some 18% of forests being allocated to individuals and firms to manage.

All the same, even in areas subject to contract forestry and under individual and household leases, forestry officials and local government officials, retain considerable control of forest management. For example, permits are required to clear land for swidden, to harvest trees and to market timbers.

Nationally, Vietnam has made notable progress in combating poverty in the past decades and economic growth remains spectacular. However, no disaggregated data exists about the relative situation of people in forests. Case studies show that household forestry has brought significant gains to those establishing planted forests. However household management of natural forests has brought uncertain returns. Forests may be remote and hard to reach and control and treated as open access resources by surrounding groups. On the other hand, remuneration for forest protection is paltry.

It is admitted that ethnic minorities have gained less security in land and forests than the national majority (*Kinh*). State agencies still pursue policies aimed at curbing swidden farming and bringing these ethnic minorities out of their 'backward' state. Traditional forest-related knowledge and customary systems of land use are not promoted. Ethnic minority women, in particular, feel disenfranchised by the land allocation process. Officials admit a growing wealth disparity between *Kinh* and ethnic minorities.

Policies encouraging capital investment and allowing joint ventures and corporations to control lands and forests have begun and are now expanding.

Donors have been influential in policy development and they continue to promote community forestry options. Further progress will depend on developing more culturally sensitive approaches to ethnic minorities, promoting respect for customary rights, strengthening community institutions, building up local officials' understanding of tenures and management rights and developing more comprehensive assistance packages and clearer access to markets.

## **Cambodia<sup>9</sup>**

Emerging in the 1990s from thirty years of ruinous civil wars, Cambodia has had to re-start its efforts to develop appropriate systems for land and forest management almost from scratch. Natural forests cover some 63% of the national territory but are being fast depleted by ill-regulated logging, conversion to plantations and the agricultural frontier. Between 1997 and 2002, the country lost 1.3 m. ha. of forests especially along road corridors and around larger villages. Data are lacking on the numbers of people dependent on forests in Cambodia. In any case the boundaries of official forests have yet to be delineated. Forest residents include millions of the majority Khmer people as well as Cham in the South East and other indigenous peoples in the North East.

When the Khmer Rouge took power all land was declared the property of the State and all land ownership records were destroyed. Under the period of Vietnamese administration State ownership continued and land was parcelled out to collectives. When these failed, use rights on farmlands were handed out to families in lots of up to 5 hectares. Only a few of the four million applications for land holdings were ever registered, however.

Since 2000 a number of new laws have been passed designed to regulate lands and forests. Under the Land Law, private property is again recognised. A land registration process, with cadastres, is being re-established and allows for the titling of individual farmlands if occupied before 2001. Importantly, but somewhat vaguely, the law recognises the communal properties of indigenous peoples, though regulations are lacking on how this is done. It also, controversially, allows for 'land concessions' for the establishment of plantations and estate crops.

The Forest Law sets up a process for the establishment of a Permanent Forest Estate (PFE) subject to the jurisdiction of a Forest Administration, which also has oversight over timber plantations on private land and protected areas. PFE includes State Forests and private forests. To date PFE has not been gazetted and the process for determining the status of lands and forests is still to be worked out. The Forest Law includes provisions for traditional use and access (not management) and allows for community forestry in production forests.

However, the weakness of government implementation capacity and competing interests in forestlands from the State and private sector have prevented effective application of these laws. Delimitation of indigenous lands is at an experimental stage; individual land titling has focused on urban areas and has yet to be applied to farmlands and forests, while community rights over forests are being ignored by concessionaires leading to serious land conflicts. While nearly 1 million

ha. of land concessions have been handed out, only 20% of farmlands have been registered and only 200 small pilot community forestry areas set up.

National data on the status and poverty of forest peoples is lacking. Hardship and increasing conflict have evidently resulted from the loss of forest resources, the (illegal) felling of resin trees, encroachment of land concessions and pressures from landless migrants. Rural landlessness is also increasing (16% of rural households). On the other hand the government has been impressed by the 63% increases in crop yields achieved by farmers with land titles - noting that secure tenure has led to crop diversification, tree planting and land improvements - and is keen to apply the same approach to forest management. By contrast, controversial 'land concessions' for agro-industrial crops like cassava, sugar cane, rubber, pulpwood and palm oil have aggravated the situation of local people.<sup>10</sup>

Given the progressive, if still incomplete, legal framework, next steps in achieving effective reforms to secure and stabilise community rights in forests depend mainly on: building up the institutional capacity of State institutions, including the judiciary; overcoming the poor coordination and competition for donor funds between State agencies; strengthening the capacity of civil society to monitor progress and; creating community awareness of their rights.

## **Thailand<sup>11</sup>**

Forty percent (20.5 m. ha.) of the national territory of Thailand is classed as various forms of forests. The country lost some 10 m. ha. of forests between the 1960s and 1990s. In response to widespread floods, landslides and public protest, in 1989 the government imposed a logging ban and adopted a policy classing 25% of the country as conservation forest and 15% as production forest. These land use categories are applied especially in the northern, hillier part of the country. As much as 80% of Nan Province, for example, is conservation forest. In addition, upland watersheds are classed into a number of management categories aimed at limiting or entirely excluding human occupation and use of forests.

Although exact figures are still lacking, there are several thousand upland communities in these 'forests', including most of the half million members of the country's 'hill tribes', and at least as many marginalised Thai and Luø migrants.<sup>12</sup> These peoples practise varied mixed and economies that include swidden agriculture, permanent farming, livestock and tree crop-raising, extensive use of non-timber forest products and migrant labour.<sup>13</sup>

Prior to the establishment of a constitutional monarchy in 1932, all forests in Thailand were considered to be owned by the King and his tributary Princes. The 1941 Forest Act declared all forests to be Royal Forests under the control of the Royal Forest Department (RFD). The law does not make provision for private ownership of forests. Since 1990, there has been a long-running dispute over various proposed drafts of a Community Forestry Bill. The most 'progressive' version of the Bill would allow long term, forest-based communities with proven records of land care to use, control and manage forest areas which would be entrusted to them under long term leases. The Bill has strongly pushed by a coalition of NGOs, academics and the Assembly of the Poor,<sup>14</sup> but has been blocked by conservation organisations that mistrust communities' abilities to manage watershed forests and by others who fear the Bill is really being pushed by loggers trying to regain access to forests by the 'back door'. It is not clear how the Bill would accommodate more recent migrants into forests or rotational farming (swidden) and permanent crops.

Under Royal patronage and through various foreign assistance programs, efforts have been made to promote alternative upland economies in 'forests', including substituting flowers, fruit and vegetable growing for swidden farming and opium cultivation. Co-management of protected areas is also being tried out. The results have been mixed but, where successful, have not been transferable to other communities for lack of a legal enabling framework. Yet, the spontaneous spread of 'community forestry', in which village committees assert management

over forests and woodlots, is notable. Studies by the University of Chiang Mai suggest these community forests extend over some 1.3 m. ha., a figure that does not include the wider areas under customary land management systems. Some 0.2 m. ha. of community forests have been 'permitted' by the RFD, although the legal basis is unclear. On the other hand, the government continues to pursue an intermittent policy of exclusion and resettlement of upland communities, while encouraging tree plantations, tea estates and watershed conservation in uplands forests.

Disaggregated national data for the numbers, status and welfare of forest residents don't exist. National government figures show that while, overall, poverty has been declining in recent years, it has been increasing in rural areas. Extensive surveys and case studies show 'hill tribes' to be among the poorest sectors in Thai society, though the situation is far from uniform. The main causes are social discrimination, lack of land and land security, denial of citizenship, education and services, and lack of access to transport and markets.<sup>15</sup>

It is hard to see how the situation of forest peoples in Thailand can be improved without legal reforms granting communities greater rights and security to use, manage and control forest resources. This will require a shift in policy away from commercial tree plantations and strict protection and attitudinal changes in the majority Thais' perceptions of the 'hill tribes' and ways of achieving conservation and watershed management.

## Malaysia<sup>16</sup>

Some 14.4 million hectares (44%) of Malaysia is classed as Permanent Reserved Forest and an additional 2.4 m. ha. are set aside as National Parks and Wildlife Sanctuaries. Good data on the numbers of people dependent on forests are lacking. In the Peninsula, 84% of the approximately 140,000 'aboriginal people' (*Orang Asli*) live in or near forests.<sup>17</sup> In Sarawak some 400,000 people, mainly Dayaks, make use of forests including about 3 m. ha. of lands held in various stages of shifting cultivation. In Sabah, hundreds of thousands of Kadazan-Dusun people still rely extensively on forested areas.

Under the constitution of the Malaysian Federation lands and forests are treated as State matters. As a result the legal frameworks in the Peninsular States, in Sabah and in Sarawak are distinct. In the Peninsula, provisions for community rights and access to forests are limited. Although *Orang Asli* historically, and still today, have livelihoods based on extensive use of forests for cultivation, hunting, fishing and gathering, their customary rights in land are not recognised by the government and only 19,000 ha. of State lands have been set aside as federally administered 'Reserves' for their occupation and use.<sup>18</sup>

In Sarawak, the Land Code recognises 'native customary rights' (NCR) in land, where these were established settlements prior to 1958 or have been extended by permit since. Although NCRs are not registered, community areas used to be recorded in Boundary Books held in District Offices. By 1954 some 22% of Sarawak was recognised as subject to NCR.<sup>19</sup> The Land Code also allows the establishment of Native Communal Reserves, which can be divided up and titled to individuals. The Forest Ordinance permits the continued exercise of use rights in forests including areas granted as concessions. When forested areas are being gazetted as permanent forest reserves, natives have 60 days to register their claims in forests. They are then entitled to compensation for the extinguishment of their rights, or ordinances permit the continuation of their customary uses or the forest boundaries may be adjusted to exclude claimed areas. The law also allows the establishment of communal forests, medium-term leaseholds from which communities may meet their subsistence needs but less than 5,400 ha. have ever been established and most have now lapsed.

In Sabah, the Land Ordinance recognises customary lands after more than 3 years of occupation. These rights are recognised even in the absence of titles. Households or individuals may request native titles, which are non-transferable although lands can be sub-leased to non-natives. In settlement areas, customary owners must register their claims and be issued native titles to avoid expropriation.

When lands are gazetted as forests, natives must declare their interests to preserve their usufructuary rights.

Data on the poverty status of forest peoples is very uneven. In the Peninsula, according to official figures 81% of *Orang Asli* are below the poverty line (compared to 8.5% for the national population) and they are worse off in terms of schooling, sanitation and housing. Despite real improvements, their health status still lags behind other citizens, with women suffering particular hardship.<sup>20</sup> In Sarawak, studies also show the relative poverty of forest peoples and declines in nutrition and health in areas where forests have been depleted by logging.<sup>21</sup>

Forest policies throughout Malaysia have favoured industrial-scale logging and the establishment of timber plantations on Permanent Forest Reserves, as well as the conversion of Stateland forests to estate crops. Despite the various legal procedures designed to protect indigenous peoples' rights, these have been unenthusiastically applied and offer little security or protection. Consequently the imposition of logging, plantations, dams, mines and agribusiness have triggered long term disputes and, especially in Sarawak, blockades, leading to arrests and criminalization of community members. The courts however, in line with legal precedents set in other Commonwealth countries which establish the principle of 'aboriginal title', have found that *Orang Asli* and 'natives' in Sarawak do have proprietary rights in lands and usufructuary rights in forests where they can demonstrate customary occupation and use. Native communities in Sarawak have filed some 100 outstanding cases claiming unfair breach of their rights by logging and plantation companies.



## **Indonesia<sup>22</sup>**

Indonesia is a country of enormous social and biological diversity. Some 62% - 120 million hectares - of the national territory of the Republic of Indonesia has been classified as forest. Actual forest cover is estimated at 86 m. ha., of which 8 m. ha. grow outside areas classed as forest, meaning some 40 m. ha. of areas classed as forests are unforested. Nationally, rates of forest loss have exceeded 1 m. ha. per year for the last three decades and have approached 2 m. ha. per year in recent years, as a consequence of: poor forest governance; illegal logging and land clearance; deliberate and uncontrolled fires and; authorised conversion to other uses such as palm oil.

Reliable figures for the number of people living in these forests are not available. Common estimates suggest that between 40 and 60 million people inhabit areas classed as forests.<sup>23</sup> They use some 5 to 7 m. ha. as community-planted agro-forests, as well making use of much wider areas for swidden agriculture, hunting and gathering and for community-based territorial and forest management. Many, perhaps the majority, of these people, at least in part, govern their affairs through customary law.

The Indonesian Constitution accords the State a controlling power over land and natural resources, an authority echoed in the 1960 Basic Agrarian Law (BAL) which remains the main law regulating land. The Constitution also recognises customary law communities. The BAL provides for the recognition of individual rights to use and own lands and for business tenures as long term renewable leaseholds. The BAL also recognises the collective rights in land of customary law communities but treats these as weak usufructs on State lands subordinate to State plans and interests.

Under the 1999 Forestry Law, forests are placed under the jurisdiction of the Forestry Department which has the authority to zone forests according to whether they should be for production, protection, conservation or conversion. The law recognises both private forests - forests on lands encumbered with rights - and State forests and established procedure for deciding which they are, the results being declared through gazettment. So far only 10% of forests have been fully gazetted, but the Forest Department treats the entire forest area as State Forest, meaning most rights in forests are ignored.<sup>24</sup> Limited use rights in forests can be accorded as long-term 'customary forests', 'special purpose areas' and 'village forests' and as short term 'community forests'. Less than 0.2% of the forest estate has been accorded to communities under these options. By contrast some 27% of forests have been allocated to private companies for logging and plantations. Outside forests less than 20% of landholdings have been titled.

Since 1998, legal reforms have favoured decentralization and district level autonomy. This has led a number of district legislatures to pass local laws recognising community rights to lands and forests. However, the authority of district governments to authorise the commercial use of forests remains contested.

Although reliable figures are lacking the forestry department admits the seriousness of poverty among forest dwellers. A CIFOR study suggests that more than 20% of the nearly 49 m forest residents are below the poverty line.<sup>25</sup> Overlaps between unsecured customary rights areas, spontaneous forest settlers, official transmigrants, illegal loggers and concessionaires have spawned widespread conflicts which have aggravated illegality and hardship. Notable pressures on land and forests come from the expansion of timber plantations and oil palm estates, too often accompanied by harassment and arrests, violence and criminalization of local community members who resist.

In an effort to regularise tenure, combat poverty and make use of degraded forest areas, in April 2007, the Forestry Department announced a new programme to promote a new tenure 'people's plantations',<sup>26</sup> which provides communities the option of securing long term (up to 100 years) leaseholds in State Forest Areas to establish and benefit from planted forests. Just how this will be applied remains to be demonstrated. The Government has also announced a policy to re-allocate a further 5 to 9 million hectares of degraded forest areas for agrarian reform through re-classing these forests as conversion forests and allowing them to be released from Forestry Department jurisdiction. The modalities have yet to be agreed or legalised.

## **The Philippines**

In the Philippines, legal options exist to secure almost all aspects of ownership rights: to exclude, use, occupy, possess, manage, dispose (to a certain extent), except if these clash with existing rights/privileges but the laws also give the State extensive powers to control the use and development of natural resources for the national interest and this has extended over very wide areas of lands classified as forests. Within this framework, measures to secure the tenure rights of indigenous peoples and local communities have evolved slowly as the legal framework has gradually grown more 'progressive'.

During the 1970s and 1980s, some indigenous peoples and communities secured small parcels of agricultural or 'released' lands, which did not provide for resource rights, and were expensive to acquire, under the Commonwealth Act 141. Lands have also been parceled out under the 1988 Comprehensive Agrarian Reform Program. This program did not distinguish between those communities who consider themselves indigenous and those are migrants.

Between the mid-1970s and late 1990s, the Department of Environment and Natural Resources (DENR) developed a 'smorgasbord' of tenurial options that extend some access, use and management rights to communities. These include tenures issued under the Forest Occupancy Management and Communal Tree Farming Program (1974), the Integrated Social Forestry Program (1982), the National Forestation Program (1987), which includes Contract-Reforestation, the Community Forestry Program, the Forest Land Management Program, which include Agro-forest management and the Community-Based Forestry Management Program (1996), the Protected Areas Community Based Resource Management Areas and Social Industrial Forestry Management Areas. None of these programs operated on the principle of indigenous ownership of ancestral territories, but merely provide lease or usufructuary contracts, limited to a period of 25 years renewable for 25 years. Many migrant and some indigenous communities did secure some rights under these contracts.

In 1997, after more than a decade of advocacy, the Indigenous Peoples Rights Act was passed. It provides several options for the legal recognition of indigenous peoples' rights to lands and resources as (ill-defined) Native Title and through the delineation and recognition of Certificates of Ancestral Domain Title (CADT), Certificates of Ancestral Land Title (CALT) as well as allowing for Judicial Confirmation of Imperfect Title (JCIT). These can all be recognized in areas that were previously classified as public domain.

The reality is that an estimated 12 million indigenous people and migrants live in the forest zone. About 0.95 million ha. have so far been titled to indigenous peoples as ancestral domains, while a further 4,800 ha. have been allocated as (mainly individually or family owned) ancestral land titles. This is far short of the 2.9 million ha. of ancestral land claims that have already been officially registered. In the current political context there is a clear lack of political will both to recognise and to uphold rights (e.g. no political guarantee to ensure protection against intrusion). The most recent appointees to the Department of Environment and Natural Resources show a high degree of political accommodation of other interests (military, mining and agribusiness) in natural resources and environmental governance. The lack of commitment to upholding rights is especially evident in the implementation of the Indigenous Peoples Rights Act as seen in the now very slow rate at which ancestral domain and ancestral land titles are being processed. The National Commission on Indigenous Peoples (NCIP) has little government support and receives a minimal budget, the majority of which it allocates to delineation, leaving few funds for providing the more comprehensive package of support that is actually needed. A similar set of problems underlies the lack of effective implementation of the nearly 5, million ha. of Community Based Forest Management Areas.

Priority is also often given to other interests seeking access to these same areas for mining, agricultural development, industrial forestry, government uses (schools, military reserves etc.) and the establishment of protected areas. Target-driven line ministries compete with each other for control of land and land use to the exclusion of community interests. Currently pressure on lands and forests is intensifying owing to national laws and policies which encourage foreign (and national) investment in mining and agribusiness, notably of pineapples, bananas and oil palm. Oil palm areas are set to expand in response to new investments and markets for biofuels in China. However, at least in the southern Philippines, the main pressure on forests and indigenous peoples comes from landless migrants, while the erosion of community institutions, values, identity and pride is undermining their capacity to resist expropriation.

The meeting noted the widespread problems caused by rural violence, insurgency and militarization. Violence, harassment and intimidation are all too often used to compel communities to allow outsiders access to their lands and resources. Specific cases were mentioned illustrating all these problems, in particular noting a growing conflict in Mindanao between the Moro Islamic Liberation Front (MILF) and the island's non-Muslim indigenous peoples (Lumad), not helped by the fact that Moro groups have made extensive claims to ancestral lands that encompass Lumad peoples' territories.

## IV. Conclusions

In conclusion, there is general consensus among the participants in the LLS process that significant progress over the last 20 years has been made in many countries in the development of legal frameworks that empower forest dependent people to gain greater resource security and play a larger role in national forest development and protection. Yet there is equal consensus that the harsh reality on the ground is that the implementation and even knowledge of these gains by local people remains deeply inadequate. The responses to these inadequacies are growing stronger and more organized, due in part to gradual political openings in each of these countries. Finally, there is clear consensus that support from both inside as well as the international community is needed now more than ever to ensure that actual positive change, in terms of rights to manage resources in forest landscapes from takes place.

The following are examples of the main issues and themes:

- ❖ Land consolidation by forest industries and/or agribusiness is increasing rapidly, threatening the livelihoods and futures of millions of small farmers and their communities. Palm oil plantations and large tree farms for pulp used in paper production are the most prominent examples. New attention being given to the production of bio-fuels and/or carbon offset schemes will likely lead to increased “large holder” land grabbing in the counties studied;
- ❖ Land use classifications that emerge from national planning processes rarely coincide with landscape realities. Large areas are classified as forest lands and land use options for local people are restricted even through there is little or no tree cover or the need to create environmental services that are particular to forest ecosystems. Conflict between local people and government planning and forestry agencies is therefore common (as well between local and national governments). This points to a need, in most countries looked at, for a process of land use rationalization, one that prioritizes achieving a rational of combination of actual forest areas and agriculture;
- ❖ The recognition of the rights of indigenous peoples rights is either missing or incomplete in all countries surveyed. Even when the legal framework supports recognition, delineation procedures and experience is weak;
- ❖ Efforts to increase areas of “Protected Forests” in each country have led to confusion and conflict over land and forest tenure. It is not uncommon that little attention was given to actual forest cover, biodiversity assessments, and

forest hydrology in the decision making processes that created many of these protected areas. For actual natural forests in need of protection, the participation of local, particularly indigenous communities in the conservation planning and management of these areas is most often missing or even worse, local communities have been, at times, been evicted from these areas;

- ❖ Governance over natural resources both in terms of the legal protection of local rights to ownership or use has been weak. This, in most countries, can be traced to a lack of government accountability and transparency as well as dysfunctional judicial systems.
- ❖ Concerning community-state relations, government regulations often make it difficult or impossible to transport and market timber and other forest products;
- ❖ A meaningful understanding of the relationship between Forests and Poverty is still lacking. This is largely due to the lack of reliable data and consensus on the best methods to measure this relationship at multiple scale;
- ❖ Cultural and legal discrimination against forest dependent peoples continues to be common throughout the region;
- ❖ Poor understanding of traditional systems of shifting cultivation and subsequent restrictions on this land use strategy remain prevalent;
- ❖ One of the main challenges faced by people living in areas classified as forest is that their economies are defined in terms of 'forestry'. Yet in fact most, if not all, forest residents practise mixed economies in which use of timbers and non-timber forest products are only part of their livelihood strategies.
- ❖ A continued trend towards individualising tenure, for example, a study of the land tenure situation of the largest ethnic minority in Vietnam, the Hmong, suggests that the individualising of land tenure in the agrarian reforms has led the ethnic minorities to lose access to land in the vigorous land markets that ensued. This is both because poor people have sold land to get out of short term financial difficulties and because 'the new system requires that the individual farmer or property-owner has a good knowledge of management and, preferably, good 'connections'. Inevitably, many ethnic minority people are bound to come out as losers in this competition for scarce resources.'<sup>27</sup>

- ❖ Towards self-governance: A common theme which emerged from the discussions concerned the extent to which community efforts to govern themselves and control their affairs, in line with the principle of self-determination, have been diverted by the manipulations of outside interests as varied as left wing insurgencies, NGOs, local and national government agencies and private sector corporations. For example, in the Philippines, the Indigenous Peoples Rights Act does recognise indigenous peoples' right to give or withhold consent to projects affecting their domains but implementation of this right has been sub-optimal owing to serious deficiencies in the guidelines, the bribery and intimidation of community leaders, the creation of false or divided leadership and through the weakness or even fraudulence of the NCIP. Indigenous participants noted the need to strengthen community governance and territorial management and provide basic training and information to communities to help them deal in more informed ways with outside interests.

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**Endnotes:**

- <sup>1</sup> Sarassawadee Ongsakul, 2005, *History of Lan Na*, Silkworm Books, Chiang Mai: 94.
- <sup>2</sup> Op.cit.: pp....
- <sup>3</sup> This section is based mainly on Keith Barry, 2006, Laos, Manuscript for ICRAF.
- <sup>4</sup> Vathana Pholsena (2006, *Post-War Laos: the Politics of Culture, History and Identity*, Silkworm Books, Chiang Mai) notes that the numbers of officially recognised ethnic groups varies widely in different official documents.
- <sup>5</sup> For detailed examples see also Jan Ovesen, The Hmong and Development in Lao People's Democratic Republic, in: Nicholas Tapp, Jean Michaud, Christian Culas and Gary Yia Lee (eds.), 2004, *Hmong/Miao in Asia*, Silkworm Book, Bangkok:457-471; Ian Baird and Bruce Shoemaker, 2005, *Aiding or Abetting? Internal Resettlement and International Aid Agencies in the Lao PDR*, Probe International, Toronto.
- <sup>6</sup> Katrin Seidel, Khamla Phanvilay, Bounlath Vorachit, Lau Mua, Somthong Boupphachan and Robert B. Oberndorf, 2007, Study on Communal Land Registration in Lao PDR: Land Policy Study No. 6 under Lao-German Land Policy Development Project, ms.
- <sup>7</sup> This section is based mainly on Tan Quang Nguyen, 2006, Vietnam, Manuscript for ICRAF.
- <sup>8</sup> Dang Nghem Van, Chu Thai Son and Luu Hung, 1993, *Ethnic Minorities in Vitenam*, The GIOI Publishers, Hanoi.
- <sup>9</sup> This section is mainly based on Robert Oberndorf, 2006, Cambodia, manuscript for ICRAF.
- <sup>10</sup> World Rainforest Movement, 2005, *The Death of the Forest: a report on Wuzhishan's and Green Rich's tree plantation activities in Cambodia*, WRM, Montevideo.
- <sup>11</sup> This section is mainly based on Tim Forsyth, 2006, Thailand, manuscript for ICRAF and Suree Lakanavichian, 2007, Forest Ownership, Forest and Land Tenure in Thailand, Presentation to the RRI LLS workshop, 9-10 May 2007, RECOFTC, Bangkok.
- <sup>12</sup> Since a substantial proportion of so-called 'hill tribes' lack Thai citizenship, their numbers do not appear in official census data.
- <sup>13</sup> IMPECT study .....
- <sup>14</sup> Bruce D. Misingham, 2003, *The Assembly of the Poor in Thailand: from local struggles to national protest movement*, Silkworm Books, Chiang Mai.
- <sup>15</sup> John McKinnon and Bernard Vienne (eds.), 1989, *Hill Tribes Today*, White Lotus/ORSTOM, Bangkok and Paris.
- <sup>16</sup> This section is based mainly on Adrian Wells, 2006, Malaysia, Manuscript for ICRAF.

<sup>17</sup> Colin Nicholas, Tijah Yok Chopil and Tiah Sabak, 2003, *Orang Asli Women and the Forest*, Centre for Orang Asli Concerns, Subang Jaya.

<sup>18</sup> Colin Nicholas, 2000, *The Orang Asli and the Contest for Resources*, IWGIA and Centre for Orang Asli Concerns, Copenhagen and Subang Jaya.

<sup>19</sup> ITTO, 1990, *The Promotion of Sustainable Forest Management – a case study in Sarawak, Malaysia*. Report submitted to the International Tropical Timber Council, ITTC(VIII)/7.

<sup>20</sup> Nicholas et al 2003 and Nicholas 2000.

<sup>21</sup> Julian Caldecott, 1986, *Hunting and Wildlife Management in Sarawak*, WWF(Malaysia), Kuala Lumpur; Marcus Colchester, 1989, *Pirates, Squatters and Poachers: the Political Ecology of Dispossession of the Native Peoples of Sarawak*. Survival International and INSAN, Kuala Lumpur; Noleen Heyzer, 1996, *Gender, Population and Environment in the Context of Deforestation: a Malaysian Case Study*. United Nations Research Institute for Social Development, Geneva.

<sup>22</sup> This section is based mainly on Myrna Safitri, 2006, Indonesia, Manuscript for ICRAF.

<sup>23</sup> Estimates vary wildly, however, ranging between 14 m and 95 million.

<sup>24</sup> Arnolfo Contreras-Hermosilla and Chip Fay, 2005, *Strengthening Forest Management in Indonesia through Land Tenure Reform: Issues and Framework for Action*, ICRAF, World Bank and Forest Trends, Bogor and Washington DC.

<sup>25</sup> Wollenberg cited by Safitri

<sup>26</sup> *Hutan Tanaman Rakyat* (People's Plantation)

<sup>27</sup> Claes Corlin, Hmong and the Land Question in Vietnam: national policy and local concepts of the environment, in: Nicholas Tapp, Jean Michaud, Christian Culas and Gary Yia Lee (eds.), 2004, *Hmong/Miao in Asia*, Silkwood Book, Bangkok: 295-320

<sup>28</sup> This section is based mainly on Augusto Gatmaytan, 2007, Indonesia, manuscript for ICRAF.

## **Acknowledgements**

In addition to the sources cited, this report draws on three main bodies of information, compiled during the Rights and Resources Initiative's 'Listening, Learning and Sharing' programme. It includes information from a series of country studies carried out by Keith Barry, Tan Quang Nguyen, Adrian Wells, Robert Oberndorf, Naya Sharma Paudel, Myrna Safitri, Tim Forsyth, and Augusto Gatmaytan. It also brought together the wealth of information provided from the two regional workshops organised by RRI members ICRAF, RECOFTC with the assistance of the Forest Peoples Programme. The first workshop was hosted by RECOFTC in Bangkok, Thailand, in May 2007 and examined the situations in Nepal, Laos, Vietnam, Cambodia and Thailand and the second hosted by the Samdhana Institute in Cagayan de Oro, the Philippines, in July 2007 reviewed the situations in the Philippines and Indonesia. We would like to thank the following who attended these workshops for their extremely insightful inputs. Thanks also to Patrick Anderson for his facilitation and organizing contributes and Mikaela Rosander and Nonette Royo for acting as participant/rappateurs. The names and contacts of all participants can be found in the appendices of the meeting reports.

This effort was supported by the Ford Foundation through a grant to the International Union for the Conservation of Nature. Gratitude goes to Suzanne Siskel and others at Ford for their continued commitment to seeing this work continue to move ahead. Additional contributions in kind to cover staff time were provided by RECOFTC, ICRAF and the Forest Peoples Programme. The authors would like to thank the staff of the Rights and Resources Group, in Washington DC,



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notably Andy White, Arvind Khare and William Sunderlin, for helping to steer the process as well as Yam Malla and John Gurnier from RECOFTC for their similar guidance. We would also like to thank the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests and the Asia Indigenous Peoples Pact for helping us identify suitable participants. Organising these meetings and ensuring everything worked smoothly involved the efforts of very many people but we would like to single out for special thanks Wallaya Pinprayoon and Beth Villamor, for their hard work, cheerfulness and efficiency.

### **Appendix III**

#### The Rights and Resources Initiative:

The Rights and Resources Initiative (RRI) is an informal coalition of organizations dedicated to advancing the jointly agreed goals and activities of the Initiative. It consists of various organizations that have been discussing the major transitions in forest sector and priority steps to guide these transitions to achieve pro-poor forestry outcomes. Founding Partners include IUCN, CIFOR, Forest Trends, and RECOFTC. Individuals from DFID, IDRC and the Ford Foundation have provided intellectual and financial support for the Initiative. ACICAFOC and FPCD joined the Initiative during the interim period between October '05 and February '06. During the February meeting, ICRAF and Intercooperation were admitted as Partners. In June '06, Forest Peoples Programme (FPP) was admitted, and Civic Response in April '07.

The Rights and Resources Initiative (RRI) engages governments, social movements and community organizations to consider and adopt institutional reforms. The RRI advances a strategic understanding of the global threats, opportunities, and promising models of tenure and business, and catalyzes effective and efficient intervention on forest tenure and governance globally.

The RRI members supports communities, national and local research, advocacy and outreach organizations, governments, donors and international institutions to achieve two targets within the framework of the MDGs:

1. To substantially increase the forest area under local ownership and administration, with secure rights to conserve, use and trade products and services; and
2. To dramatically reduce poverty in the *forested* areas of the world.

The RRI monitors, assesses and reports on global progress on these goals, and is a global node of information on forest tenure, poverty and policy issues.

The design and approach of RRI is based on previous collaboration among Partner organizations that has had proven impacts in key countries, including China and Indonesia, and among strategic constituencies that include community leaders, leaders of public forest agencies, and intergovernmental institutions such as the World Bank, the ITTC and the FAO.

The RRI is a strategic coalition, going beyond the traditional set of international development actors to directly involve a wide spectrum of organizations, each of which occupies a critical niche and provides a critical perspective in the larger chain of actors necessary to advance change. Partners span the range from research to advocacy; from local community to international; and from human rights to conservation. And Partners span the globe. Representatives for Asia, Africa and Latin America ensure regional expertise and

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political connections, and several based in Europe and the United States engage with donors and other international organizations to transform their roles in policy dialogue.

The coalition operates within a program structure that is at once nimble but clearly focused on specific targets, coordinated by a staff dedicated to and evaluated on their effectiveness and progress on the targets, and held directly accountable to the coalition Partners. The value proposition of the Initiative is that with a limited incremental investment in collective coherence, strategic planning and coordination, these existing organizations can dramatically increase their impacts in favor of the world's poor.

## **Meeting Report**

### **“Listening, Learning and Sharing in Mainland South and South East Asia”**



**9-10 May 2007  
RECOFTC, Kasetsart University  
Bangkok , Thailand**

## Who Met?

The two day meeting included spokespersons from indigenous peoples, ethnic minorities, NGOs, academics, international agencies and governments. They met to review the progress being made in the region in securing peoples' rights in forests. Presentations and discussions reviewed the situation, needs and possible actions in Thailand, Cambodia, Vietnam, Lao PDR and Nepal. The meeting was jointly coordinated by the *World Agroforestry Centre-South East Asia* (ICRAF-SEA) and the *Regional Community Forestry Training Centre for Asia and the Pacific* (RECOFTC) with assistance from the *Forest Peoples Programme* (FPP) and hosted by RECOFTC at the centre in Kasetsart University Bangkok.<sup>1</sup> The meeting was held simultaneously in both English and Thai while other national languages were used in break out groups.<sup>2</sup>

## Methods and Agenda

The meeting was organised into four main sessions.<sup>3</sup> After introducing the RRI, the purpose of the LLS and the structure of the meeting, the first session sought to bring out the personal motivations of the participants, as one objective of the meeting was to link together the key actors in the region both personally and professionally. Participants were thus asked to summarise briefly how they became committed to these issues, what they find most frustrating in their work, what most inspiring, and what their hopes are for five years time. During the second session participants were grouped into countries and made short presentations about the situation in each, to give everyone a sense of how different players and countries were addressing the issues. The third session was organised as an interactive questions and answer discussion using what was referred to as the "**LARS approach**", which meant summarising the legal framework with regard to community tenures in forests, assessing the actual situation in terms of community land use and the extent to which this was being accommodated, summarising the responses of local actors, civil society, government and the judiciary to this situation and then discussing what support seems warranted in the circumstances, scientifically, professionally, institutionally and individually. The fourth and final session reviewed the findings from the meeting and elaborated a set of national and regional priorities for action. Finally, just before closing, a short evaluation session was held to ascertain participants' satisfactions with, or criticisms of, the workshop.

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<sup>1</sup> See annex 2 and 3 for a list of participants and their brief biographies.

<sup>2</sup> See annex 1 for extended notes from the meeting.

<sup>3</sup> See annex 4 for the opening agenda and more details of the 'LARS approach' used.

## Personal Motivations

The first session identified participants' motivations in working in this field. Despite the great variety of experiences and backgrounds, some common elements were clearly shared. People had become committed after witnessing or experiencing social injustice, environmental ruin and the persecution of forest dwellers by the authorities and in the courts. Many had started young, as field researchers, student activists or just from being brought up close to nature. On the ground realities had showed them close connections between sustainable management of the environment and respect for human rights.

Participants got particularly frustrated by narrow anti-people environmentalism and by old-fashioned ideas about progress and development. Several mentioned their frustration with persistent discrimination and prejudice against alternative ways of life, translating into State laws and policies which deny their existence or viability. Others highlighted the fickleness of donors and the way some policy-makers held to their pre-conceptions despite the contrary evidence of scientific research. The consequent lack of progress in securing community rights in forests was accounted for in terms of institutional inertia, defence of vested interest and lack of capacity to implement new laws and policies even once they had been adopted. One other participant mentioned in particular his frustration at 'cynics' who always highlight problems but never propose any solutions.

Inspirations came from community resilience and resistance in the face of abuse, the sophistication of local peoples' skills in living from their resources, and the way forests, cultures and identities are integrated wholes. Others got inspiration from shared solutions and from multi-stakeholder processes which led to agreements. It was noted also, more optimistically, that while people's frustrations with the slow pace of change in forest policies was understandable, in the context of over 500 years of denial and dispossession, the progress made in the last 20 years getting communities' rights in forests recognised was a source of inspiration in itself.

Within 5 years participants hoped to see: the collective rights of indigenous peoples recognised explicitly in international law; national laws recognise peoples' rights to self-determination and to their lands and forests; State recognition of community forestry; greater regional cooperation in delivering such changes; effective participation in reform processes; greater government accountability and capacity; a just trade in forest products, not produced in violation of community rights; fair deals for forest guardians perhaps through providing rewards for environmental services such as avoiding deforestation; and a general appreciation that people and forests can live together in harmony.

## Country Snapshots

The country presentations showed the great variety of situations in the region. In Thailand, despite a strong civil society and a now vigorous indigenous peoples' network, and despite drafts of a community forestry bill having been in circulation for over 15 years, options for community management in forests are very limited and laws have not elaborated on rights recognised in the Constitution. Conservation organisations working with the Royal Thai Forestry Department have opposed pro-people forestry reforms. Forests remain heavily controlled by the Forest Department and the Department pursues policies of social exclusion and forced relocation, arguing that swidden is an inappropriate system of land use in upland watersheds.

By contrast in Nepal, pushed initially by the donor community, the depleted upland forests which had become seriously degraded under State (mis-) management have now been substantially transferred to the management of community forestry user groups. This has triggered the emergence of a strong, organised social movement of community foresters who have been able to resist pressure from the Forestry Department to reassert control over forests where timber values have been restored. This social movement has even played a wider role in maintaining a democratic, national political process but still faces challenges in extending the community forestry model to the lowland forests (*terai*) and to allow community foresters to sell timbers outside their areas.

In Vietnam, rights recognition in forests has followed from tenure reforms in the agricultural sector which have successfully boosted production. Most allocations have been to individuals, and unconscious or overt prejudices have tended to exclude ethnic minorities and women from their share of entitlements. Community forestry options are recognised in both the land and forestry laws but the lack of recognition of communities as legal persons has slowed widespread transfers. Donors have been influential in policy development and they continue to promote community forestry options. While commercial pressures on forest lands are mounting, State Forestry Enterprises are declining.

In the Lao People's Democratic Republic changes have been widespread but are of uncertain durability. Since 1994, a process of mapping community systems of land use, allocating farmlands to individuals and recognising community management agreements has extended to some 67% of rural villages. However, owing to weak government implementation capacity, the quality of these exercises has varied greatly and the 3-year provisional entitlements issued have now all lapsed. It remains State policy to prevent swidden farming and to relocate and concentrate

rural settlements in larger managed villages. Imposed concessions handed out to State, army and foreign concessionaires cause land conflict and outbreaks of violence.

Emerging in the 1990s from thirty years of ruinous civil wars, Cambodia has had to re-start its efforts to develop appropriate systems for forest management almost from scratch. Laws now recognise indigenous peoples' rights, allow for the titling of individual farmlands if occupied before 2001 and allow for community management. However, the weakness of government implementation capacity and competing interests in forestlands from the State and private sector have prevented effective application of these laws. Delimitation of indigenous lands is at an experimental stage, individual land titling has focused on urban areas and has yet to be applied to farmlands and forests, while community rights over forests are being ignored by concessionaires leading to serious land conflicts. The meeting elaborated a table summarising these situations:

**Comparative Table of Tenures**

	<b>Indigenous rights</b>	<b>Communal rights</b>	<b>Citizens' rights</b>	<b>Community forestry</b>
<i>Rights basis</i>	<i>Customary use/ customary law</i>	<i>Collective property rights</i>	<i>Individual property rights</i>	<i>Equity/ Poverty reduction/ Env. stewardship?</i>
<b>Cambodia</b>	Recognised (not yet allocated: 9 ILO/UNDP pilots and 1 WCS)	Not recognised	If in occupation before 2001	Recognised but not implemented (bitter clashes over resin trees)
<b>Laos</b>	Traditional rights of use are recognized including timber	Under discussion (GTZ led)	Constitution recognises use rights, including transfer, exchange, mortgage, inheritance.  LUP/LA allocates use rights. Lapsed	Agreements on results of community planning using LUP/LA as basis. Lapsed
<b>Nepal</b>	Not recognised (but often customary use used as basis for defining FUGs)	Historical but all now privatised	40 year leases for household groups (few)	Forest User Groups have management and use rights with contested restrictions on sales
<b>Thailand</b>	Not recognised	Not recognised	Not in forests, land titling on agricultural land	Implicit in Constitution but not yet in law (draft is contested). (Usufruct rights.)
<b>Vietnam</b>	Not recognized	Recognised (use and management right, special owner)	Constitution recognises use rights, including transfer, exchange, mortgage, inherit. 20 agriculture - 50 year perennials and plantations - renewable.	Forest and Land Law recognize community forestry but civil code does not recognise legal personality and needs to be updated to recognize legality of community.



## Emerging Themes

The analysis and discussion brought out a number of major themes. Among those identified in the meeting were the following:

- With the exception of Thailand, significant progress has been or is being made in the region to develop tenures recognising community rights or interests in forests.
- However, any analysis needs to take account of the very different tenures being recognised or granted, ranging from rights based on customary law, through collective land titling based on grants and individual titling based on property rights or strong use rights, to community rights to manage forests.
- Rights thus range from full ownership, through leaseholds and usufructs to mere tolerance or acceptance of limited access and use. Rights may be limited to non-timber forest products or extend to valuable timbers. Rights may apply to land but not to forests. Where they apply to forests they may be to degraded forests and for establishing small plantations and woodlots and not extended over natural forests. Rights may be limited to subsistence or to sales in local markets or may allow free sales. Land taxation and timber royalty regimes have significantly affected outcomes. Least progress has been made in protected areas and protection forests.
- Attention to the legal frameworks and their degree of application should not be allowed to obscure the *de facto* reality that much, perhaps even the great majority, of the forests in the region are under community forest management. This is the especially evident in most of the Nepali uplands, includes at least 12,000 villages in Thailand, not all of whom are 'Hill Tribes', and is widely prevalent in Vietnam, Cambodia and Laos and not just in 'Ethnic Minority' and 'Indigenous Peoples' areas.
- The gap between laws and actual practice is thus startling. Laws are not just failing to provide appropriate recognition of rights, they are failing to match on the ground situations.
- Major reasons for this mismatch between law and reality include:
  - policies which prioritise perceived national interests, be they economic or environmental, over local rights, needs and alternatives
  - lack of government awareness of forest policy reform options
  - competition between line Ministries and government departments for control of lands and budgets
  - overlapping jurisdictions
  - lack of clarity of the geographical boundaries between different classes of land and between 'lands' and 'forests'
  - poor government enforcement and capacity

- prejudices against the rural poor and ethnic minorities
- lack of popular awareness of rights, laws and administrative procedures
- On the other hand pro-people forestry reforms also face a number of equity challenges, notably how to:
  - accommodate the rights and interests of migrants and new comers, especially landless and marginal groups
  - limit village elites from capturing control of forests and village revenue
  - ensure that women are not excluded from titles or land registers
- Pressure on forests from logging concessions and plantations is growing. This may slow reforms, polarise policy debates, and spark conflicts. Mechanisms of conflict resolution are limited by the lack of recognition of rights and limited possibilities of securing justice in the courts. Alternative conflict resolution options, such as through village councils and other local government bodies, need to be explored.

## Next Steps

In exploring possible ways to promote policy reform in the region, discussions and analysis highlighted the great degree of local and national specificities. In particular it was noted that tactics for pressing for policy reforms vary greatly depending on the different countries' political systems.

In Thailand, reforms are being pressed for through extensive mobilisation by indigenous peoples' organisations, community based movements and NGOs with support from other sectors like academia. Progress has been frustrated by opposing NGOs and the failure of the popular movement to secure enough support in the legislature. In Nepal, community forestry reforms are now being pushed by a mass movement of communities with much NGO and CSO support and continuing support from the donor community. Likewise the important role of donors and international agencies in piloting policy reforms was highlighted for Laos, Vietnam and Cambodia. In Cambodia, NGOs are beginning to consolidate their work often linked their efforts to intentional NGOs and UN agencies but admit they lack capacity, skills and knowledge. In Vietnam, the government accepts a multi-stakeholder approach within limits and is responsive to evidence from successful pilot schemes and donor influence. A new law now allows civil society networks which, however, have yet to be activated to explore this new political space. In the Lao PDR, political space continues to be more limited and reform efforts are being pursued largely within the confines of government departments, with some encouragement from multi-lateral and bi-lateral donors and the few international NGOs active in the sector.

The meeting then concluded this discussion by developing a table summarising 'next steps'. Follow up could take the form of solidarity campaigns against human rights abuses in forest struggles in Cambodia and Thailand and policy advocacy with donors and government in Vietnam and Lao PDR. RECOFTC was encouraged to act as an information clearing house to continue to share information from the region and RRI should consider whether it could promote experience sharing between continents, for example with Mexico.

**Next Steps Table**

	<b>Pressing Issues, action needed</b>	<b>Next Steps</b>	<b>Support</b>
<b>Cambodia</b>	<ul style="list-style-type: none"> <li>-<u>Enforcement and full implementation</u> of existing laws</li> <li>-Greater transparency in the legal development and policy implementation process</li> <li>-Need for greater awareness of among local people of their rights, i.e., resin tapers have rights but generally are not aware of these rights</li> <li>-Simplify process that provide natural resource use rights</li> </ul>	<ul style="list-style-type: none"> <li>-Raise awareness among local community of their legal rights and increased</li> <li>-Empower communities in participatory approaches, local institutional strengthening to protect their lands and resources</li> <li>-Strengthen judicial system and other government agencies responsible for assisting local communities to protect their rights</li> <li>- Develop and implement conflict resolution methods</li> <li>-Independent assess of the policy development/reform process (as agreed upon with international donors) forestry, fisheries and land</li> </ul>	<ul style="list-style-type: none"> <li>-Regional Networking</li> <li>-Support for local media to be informed of issues of local resource issues, local issues are reported at the national level</li> <li>-Improve the ability of local communities to strengthen their local institutions</li> <li>- Support for regional, national networking, knowledge building and sharing</li> </ul>
<b>Laos</b>	<ul style="list-style-type: none"> <li>-Need to Strengthen the ability of villages to deal with the outside pressures on their lands and other resources (land concessions)</li> <li>-The pending land use review on land concessions</li> <li>-Improve the land use planning process</li> </ul>	<ul style="list-style-type: none"> <li>-Assure full participations of local people in the land use review</li> <li>-Pilot project on awareness raising</li> <li>-Promote and increase awareness of local rights and clarify responsibilities among local people</li> <li>-Sharing information workshop on awareness building and communication (planned already)</li> </ul>	<ul style="list-style-type: none"> <li>-Technical Support, research on social and environmental impacts of land concessions-</li> <li>-Assistance in developing legal aid programs for local villages</li> <li>-Assistance to improve judicial system</li> </ul>
<b>Nepal</b>	<ul style="list-style-type: none"> <li>-Community forestry must be implemented in the Terai</li> <li>-Need for increased autonomy to community forestry user groups</li> <li>-Address the landlessness crisis</li> <li>-Improved legal/policy framework to better support community-based enterprises</li> <li>-Remove difficult registration requirements for local user groups simplify legalization processes</li> <li>-More democratic approach to protected area management</li> </ul>	<ul style="list-style-type: none"> <li>-Promoting multistakeholder dialogue <u>on forest policy development process</u></li> <li>-Formulating an national "LLS" process</li> <li>-Institutional empowerment for local community groups (ie.victims groups in protected areas</li> <li>-Documentation of and sharing of local experiences</li> </ul>	<ul style="list-style-type: none"> <li>-Community internships, cross visits of community leader to broaden experience outside their home areas</li> <li>-Support for community cooperatives and enterprises with better more equitable market access</li> </ul>

**Appendix 1: 9-10 May 2007 LLS in Mainland South and SE Asia  
RECOFTC, Kasetsart University, Bangkok, Thailand**

<b>Thailand</b>	<ul style="list-style-type: none"> <li>-Stopping forced evictions of local communities from “forest areas” Legal assistance needed</li> <li>-Revisit bureaucratic reform process, finding the right “institutional home” for community forestry</li> <li>-Promote the full implementation of the Biodiversity Convention, particularly article 10c</li> <li>-Passing a community forestry bill the accommodates the above</li> <li>-The state must accept local initiatives declaring their local rights (bottom up)</li> <li>-Local communities must have clear legal certainty and security</li> </ul>	<ul style="list-style-type: none"> <li>-Assess effectiveness of the “New Planned Forest Village” project</li> <li>-Assess the effectiveness of the “Small House in Big Forest” project</li> <li>-Fully decentralize NRM/forest area decisions to the district level</li> <li>-Assess the effectiveness of IFI finance development projects</li> </ul>	<ul style="list-style-type: none"> <li>-Support for legal assistance to local people</li> <li>-Support for impact assessment of these two projects</li> <li>-Comparative Research on Thailand and neighboring countries</li> </ul>
<b>Vietnam</b>	<ul style="list-style-type: none"> <li>-Need for <u>legal recognition</u> of local communities</li> <li>-Actual rights are not realized even after the allocation process</li> <li>-Incidence of poverty still very high in mountain areas, particular among ethnic minorities</li> <li>-Very low awareness among local people of their land and resource rights</li> <li>-Serious lack of data on forest tenure</li> </ul>	<ul style="list-style-type: none"> <li>-Make allocation process have genuine impact at the local level</li> <li>-Support to the government to improve the civil code, making it more responsive to local needs</li> <li>-Civil society development both at national and local levels towards improved application of land use and land allocation procedures</li> <li>-Expand the land allocation process to larger area</li> <li>--Improve NRM extension methods and scope for mountain peoples</li> <li>-Better dissemination of information of existing rights, raise awareness , local people understand implications of their decision making on NRM</li> <li>-Identify data needs and improve collection and management systems (not necessarily high tech)</li> </ul>	<ul style="list-style-type: none"> <li>-Sharing of expertise and practical experience from neighbouring countries</li> </ul>
<b>Regional?</b>		<ul style="list-style-type: none"> <li>-Regional alliance for Community Forestry</li> <li>-ICRAF?</li> <li>-RECOFTC?</li> <li>Link this experience to the global</li> </ul>	<ul style="list-style-type: none"> <li>-International support to Thai local community efforts to gain greater control over their natural resources, particularly when IFIs are involved</li> <li>-Comparative Study on current situations</li> </ul>
	<b>Pressing Issues, action needed</b>	<b>Next Steps</b>	<b>Support</b>



## Evaluation

At the close of the meeting a short evaluation session was carried out. Participants noted that this had been very productive meeting. They complemented the way the meeting was opened with a personalised approach and was well facilitated and conducted in an open, friendly, spontaneous and respectful way. This had achieved a good atmosphere and an enjoyable, intense session with the optimal number of people. It was noted that it was good that government officials had also been included so they could learn from NGOs and researchers and from the situations in other countries. ‘It really was ‘Listening, Learning and Sharing’ commented one participant.

Further improvements could have been made by giving clearer guidance to participants prior to the meeting of what was expected of them, ensuring a fairer allocation of time, using ZOPF methods to develop the shared tables and not delaying lunch! The organisers RECOFTC, ICRAF and FPP were thanked and special thanks were given to Wallaya for the main burden of work in organising the logistics of the event.



Annex 4: Agenda and the LARS approach

**Agenda**

**Day 1: Wednesday, 9 May 07**

TIME		Leading session
9.00	What is RRI?	Yam
9.15	What is LLS?	Chip
9.30	Personal introductions: 3 min each max	All
10.30	<i>Break</i>	
10.45	Presentations: Max 10 minutes each Cambodia –20 min, Nepal - 20 min Vietnam – 30 min	13 in total
12.15	<b>Lunch</b>	
13.15	Lao PDR – 20 min, Thailand – 20 min	13 in total, continuing
14.15	<b>Break</b>	
14.30	Introduction to afternoon session	Chip: guiding and questions
14.45	Break away country groups + theme group	
16.00	Cambodia session & discussions	
17.00	Close	
18.30	<i>Depart for dinner</i>	

**Day 2: Thursday, 10 May 07**

TIME		Leading session
8.30	<i>Recap from Day 1</i>	Marcus and Chip
8.40	Nepal session	
9.40	Vietnam session	
10.40	<i>Break</i>	
11.00	Lao PDR session	
12.00	Thailand session	
13.00	<i>Lunch</i>	
14.30	Theme analysis (Main themes and comparative gap analysis of each country)	
15.00	Discussion on analysis, Support mechanisms, what needs are there at; -regional level, country level, local level, institutional level, individual level? Brainstorming	
16.00	Next steps	Yam
16.30	<i>End of meeting</i>	

**Tasking**      **Facilitation:** Day 1 am: Mikaela  
 Day 1 pm: Tan  
 Day 2 am: Chip  
 Day 2 pm: Patrick  
**Note taking and reports:** Marcus

## Annex 4: Agenda and the LARS approach

### *The LARS Approach*

#### Legal Framework:

- law
- policy
- judicial system
- governance

#### Actual Landscape/Rights reality

#### Response

- local
- civil society
- government
- judicial

#### Support

- personal
- professional
- institutional

## Meeting Report

### “Listening, Learning and Sharing in Insular South East Asia”

26-27 July 2007  
Samdhana Institute Retreat Center  
Bayanga, Cagayan de Oro, Mindanao, Philippines



ICRAF  
RECOFTC  
Samdhana Institute  
Forest Peoples Programme



## **Background**

This meeting brought together leading thinkers from Indonesia and the Philippines to discuss the challenges and opportunities for strengthening the development and implementation of a rights-based integrated natural resources management framework in their respective countries.

The gathering was sponsored by the recently formed Rights and Resources Initiative (RRI) (see [www.rightsandresources.org](http://www.rightsandresources.org)) and designed as part of the Listening, Learning and Sharing global exercise. Discussions will contribute to the international conference 'Poverty Reduction and Forests: Tenure, Market and Policy Reform', planned for Bangkok in September and sponsored by the regional Community Forestry Training Centre (RECOFTC) and the RRI.

A similar meeting was held in early May and sponsored by the Regional Community Forestry Training Center (RECOFTC) in Bangkok. That meeting had included participants from Nepal, Thailand, Cambodia, Laos, and Vietnam.

The meeting was jointly coordinated by the World Agroforestry Centre-South East Asia (ICRAF-SEA) and the Regional Community Forestry Training Centre for Asia and the Pacific (RECOFTC) with assistance from the Forest Peoples Programme (FPP). It was hosted by the Samdhana Institute at its newly established retreat centre in Bayanga, south of Cagayan de Oro City in Mindanao in the southern part of the Philippines.

### **Primary Objectives of the Cagayan de Oro Meeting were to:**

1. Create or strengthen linkages between key players at the regional, national and local levels and who are active in promoting land and forest tenure and related policy reforms;
2. Capture new information, develop analysis on threats and opportunities, ideas and support for local strategies in Asia;
3. Facilitate the international expression of local voices or communities who are marginalized or disenfranchised by decision making processes that concern land use, forest area classifications and forest management priorities.
4. Provide an opportunity for participants to comment on and contribute to the development of a regional review of how selected Asian countries are addressing the rights and resources in their countries.

## Who Met?

The two day meeting included about 20 spokespersons from indigenous peoples, NGOs, academia and international agencies.<sup>1</sup> They met to review the progress being made in the region in securing peoples' rights in forest areas. Presentations and discussions reviewed the situation, needs and possible actions in Indonesia and the Philippines. Representatives from Malaysia and Papua New Guinea who had been invited to the meeting were unable to attend due primarily to prior meeting commitments for Malaysian participants and the unexpectedly high costs of travel to Mindanao from PNG. The meeting was held in English with some presentations being made in Tagalog, Manobo and Bahasa Indonesia. National languages were used in break out groups.

## Methods and Agenda

The meeting followed the same structure as the previous one for Mainland South and South East Asia held in Bangkok in May,<sup>2</sup> and so was organised into four main sessions.<sup>3</sup> After introducing the RRI, the purpose of the Listening, Learning and Sharing process and the structure of the meeting, the first session sought to bring out the personal motivations of the participants, as one objective of the meeting was to link together key actors in the region both personally and professionally. Participants were thus asked to summarise briefly how they became committed to these issues, what they find most frustrating in their work, what most inspiring, and what their hopes are for five years time. During the second session participants were grouped into countries and made short presentations about the situation in each, to give everyone a sense of how different players and countries were addressing the issues. The third session was organised as an interactive questions and answer discussion using what was referred to as the "LARS approach", which meant summarising the legal framework with regard to community tenures in forests, assessing the actual policy implementation and situation on the ground in terms of community land use and the extent to which this was being accommodated, summarising the responses of local actors, civil society, government and the judiciary to this situation. The fourth and final session reviewed the findings from the first day and then discussed what support seems warranted in the circumstances, scientifically, professionally, institutionally and individually. Finally, just before closing, a short evaluation session was held to ascertain participants' satisfactions with, or criticisms of, the workshop.

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<sup>1</sup> See annex 1 for a list of participants.

<sup>2</sup> See summary report of the previous meeting.

<sup>3</sup> See annex 3 for the opening agenda.

## Personal Motivations

The first session identified participants' motivations in working in this field. Despite the great variety of experiences and backgrounds, many common elements were shared. Most participants had become committed to the work when still young, in response to experiencing, witnessing or comprehending situations of poverty, marginalisation, social injustice, dictatorship, human rights abuse and pervasive discrimination and / or through being inspired by indigenous leaders and influential colleagues. Some noted the importance of recognising wider more spiritual forces beyond human comprehension while others mentioned their confidence in rational problem solving and the usefulness of applied research.

Participants are particularly frustrated by the slow pace of reforms, the prevalent failures of governments to implement new laws and policies and the poor governance that resulted in weak delivery. Reformers also noted their frustration with the realisation that so often laws are an instrument of oppression and the sense that today people face the very same problems that they felt they faced 30 to 40 years ago. Indigenous Filipino participants recounted in detail their sense of frustration when they realised the extent to which they had been led astray during the national liberation struggle against the Marcos dictatorship by the political manipulations of the left wing ideologues, whose model of social reform had little room for indigenous peoples' own identities, priorities and polities. The extent to which governments and conservationists deny indigenous peoples' rights, treat them with intolerance and have no trust in their capacity to manage their lands and resources was also highlighted, as was the consequent sense of hopelessness in many communities. Frustration was also expressed at development agencies' continued confidence in a failed World Bank development model, sectoral thinking, the project mentality of donors and the continuing equation of materialist progress with real human development. One participant highlighted his frustration with his own ignorance once local contexts, realities and visions became apparent.

Inspirations came from community persistence, resilience and capacity for transformation in the face of continued abuse and cases where, given the right circumstances, communities have successfully taken charge of their lands and resources. The personal commitment, risks and self-sacrifice of colleagues and community members was an inspiration to others as was the wisdom of local communities. Others noted the importance of trust-based collaboration, the satisfaction they got from their jobs, human love and the support of others.

Within 5 years participants hoped to see: new generations of activists and communities taking on the same struggles; the collective rights of indigenous peoples recognised explicitly in international law; national laws recognise peoples' rights to self-determination and to their lands and forests; time for reflection and renewal and opportunities to take stock of the wider changes affecting people and forests; the gap between new policies and laws and actual practice closed; convincing evidence that these approaches work and deliver real changes on the ground in terms of a restoration of community governance, effective decentralization and, going beyond rights, the achievement of real economic development and better lives; forestry departments which move from policies of command and control to policies of support and service delivery and; strategic coherence between approaches. There was a widely expressed hope that greater unity and collaboration could be achieved between the various parties pressing for change.

There was also an appreciation within the group of the intergenerational nature of this work as there were three generations of leaders present at the meeting. There was also the acceptance that it is neither uncommon nor inappropriate that subsequent generations are not satisfied with the gains and policy breakthroughs facilitated by the previous generation.

## Country snapshots

The country presentations showed the great contrasts of situations not only between but also within the two countries. They also emphasised the importance of understanding and responding to local histories, contexts and conditions, and social particularities.

### Legal Options

In the Philippines, legal options exist to secure almost all aspects of ownership rights: to exclude, use, occupy, possess, manage, dispose (to a certain extent), except if these clash with existing rights/privileges but the laws also give the State extensive powers to control the use and development of natural resources for the national interest and this has extended over very wide areas of lands classed as forests. Within this framework, measures to secure the tenure rights of indigenous peoples and local communities have evolved slowly as the legal framework has gradually grown more 'progressive'.

During the 1970s and 1980s, some indigenous peoples and communities secured small parcels of agricultural or 'released' lands, which did not provide for resource rights, and were expensive to acquire, under the Commonwealth Act 141. Lands have also been parceled out under the 1988 Comprehensive Agrarian Reform Program.

Between the mid-1970s and late 1990s, the Department of Environment and Natural Resources (DENR) developed a 'smorgasbord' of tenurial options that extend some access, use and management rights to communities. These include tenures issued under the Forest Occupancy Management and Communal Tree Farming Program (1974), the Integrated Social Forestry Program (1982), the National Forestation Program (1987), which includes Contract-Reforestation, the Community Forestry Program, the Forest Land Management Program, which include Agro-forest management and the Community-Based Forestry Management Program (1996), the Protected Areas Community Based Resource Management Areas and Social Industrial Forestry Management Areas. None of these programs operated on the principle of indigenous ownership of ancestral territories, but merely provide lease or usufructuary contracts, limited to a period of 25 years renewable for 25 years. Many migrant and some indigenous communities did secure some rights under these contracts.

In 1997, the Indigenous Peoples Rights Act was passed which provides several options for the legal recognition of indigenous peoples' rights to lands and resources as (ill-defined) Native Title and through the delineation and recognition of Certificates of Ancestral Domain Title (CADT), Certificates of Ancestral Land Title (CALT) as well as allowing for Judicial Confirmation of Imperfect Title (JCIT). These can all be recognized in areas that were previously classified as public domain.

In Indonesia, the extent to which people's rights can be secured in the forests and in the wider agro-forestry context is much more limited. Although policy, constitutional and / or legal options do exist to secure rights - at least partially - implementation is limited and institutional capacity very weak. In some cases, while the constitution and State policies allow for certain kinds of tenure, laws and regulations have not followed. Or laws may have been passed but implementing regulations are absent. Or both laws and regulations may exist but their application has been limited by lack of political will and / or institutional capacity.

A major problem is that while 70% of the national territory is classified as forest areas (*kawasan hutan*) and a procedure exists for assessing which of these areas are encumbered with rights, this procedure has not been widely applied. Yet the whole

area is treated as if it had already been determined that the areas were unencumbered with rights and so are treated as State Forest Areas. This provides a major opportunity for reform. Recently the Forest Department accepted the validity of this analysis and two new policies have now been announced which may result in a re-allocation of rights.

In April 2007, the Department of Forests announced a new flagship programme and tenure instrument - HTR<sup>4</sup> - which provides communities an option to secure long term (up to 100 years) leaseholds to establish and benefit from planted forests. The regulation, passed two weeks ago, is meant to allow communities choice over tree species but a concern was voiced that in reality this choice may depend more on local companies, which will provide farmers with loans, seedlings, markets and transport.

The Government has also announced a policy of re-allocating between 5 and 9 million hectares of degraded forest areas for agrarian reform through re-classing these forests as conversion forests and allowing them to be released from Forestry Department jurisdiction. The modalities have yet to be agreed or legalised. The following table summarises some of the main tenurial options currently available in the two countries.

**Comparative Table of Tenures**

	<b>Indigenous rights</b>	<b>Communal rights</b>	<b>Citizens' rights</b>	<b>Community forestry</b>
<i>Rights basis</i>	<i>Customary use/ customary law</i>	<i>Collective property rights</i>	<i>Individual property rights</i>	<i>Equity/ Poverty reduction/ Env. stewardship?</i>
<b>Philippines</b>	- <i>Certificate of Ancestral Domain Title (CADT):</i> inalienable collective title to lands and resources. - <i>Certificate of Ancestral Land Title (CALT):</i> transferable mainly individual titles to land.		<i>Certificate of Land Ownership Award (CLOA)</i>	Social Forestry, Forest Stewardship Contract, Contract Re-forestation, CBFMA, PACBRMA, SIFMA. Leaseholds providing management rights.

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<sup>4</sup> *Hutan Tanaman Rakyat* (People's Plantation)

**Appendix 2: 26-27 July 2007 LLS in Insular South East Asia**  
**Samdhana Institute Retreat Center, Bayanga, Cagayan de Oro, Mindanao, Phil.**

<b>Indonesia</b>	<i>Hak ulayat</i> (customary communal tenure) lack implementing regulations for application <i>Hutan adat:</i> (customary forest) provides limited usufruct rights but only in State Forest Areas: none actually allocated <i>PERDA:</i> (District or Provincial level regulation) Has secured customary tenures in only 3 of > 450 districts.	KDTK – Special purpose forest area allocated in State Forest Area	<i>Hak milik</i> (private ownership right) Currently not applied in ‘forest areas’.  New policy promotes agrarian reform in conversion forests with the awarding of individual title	<i>Hutan Ke-Masyarakatan</i> leaseholds by cooperatives: many five-year agreements have been awarded but only a handful has been extended beyond its initial period. <i>Hutan Tanaman Rakyat</i> – New policy of government to promote reforestation through community-based plantation <i>Hutan Desa</i> – Long term use area for village forest in State Forest Area
<i>Rights basis</i>	<i>Customary use/ customary law</i>	<i>Collective property rights</i>	<i>Individual property rights</i>	<i>Equity/ Poverty reduction/ Env. stewardship?</i>
	<b>Indigenous rights</b>	<b>Communal rights</b>	<b>Citizens’ rights</b>	<b>Community forestry</b>

**Actual Situation**

In the Philippines, an estimated 12 million indigenous people and migrants live in the forest zone. About 0.95 million ha. have so far been titled to indigenous peoples as ancestral domains, while a further 4,800 ha. have been allocated as (mainly individually or family owned) ancestral land titles. This is far short of the 2.9 million ha. of ancestral land claims that have already been officially registered.

In the current political context there is a lack of political will both to recognise and to uphold rights (e.g. no political guarantee to ensure protection against intrusion). The most recent appointees to the Department of Environment and Natural Resources show a high degree of political accommodation of other interests (military, mining and agribusiness) in natural resources and environmental governance. The lack of commitment to upholding rights is especially evident in the implementation of the Indigenous Peoples Rights Act as seen in the now very slow rate at which ancestral domain and ancestral land titles are being processed. The National Commission on Indigenous Peoples (NCIP) has little government support and receives a minimal budget, the majority of which it allocates to delineation, leaving few funds for providing the more comprehensive package of support that is actually needed. A similar set of problems underlies the lack of effective implementation of the nearly 5, million ha. of Community Based Forest Management Areas.

Priority is also often given to other interests seeking access to these same areas for mining, agricultural development, industrial forestry, government uses (schools, military reserves etc.) and the establishment of protected areas. Target-driven line agencies compete with each other for control of land and land use to the exclusion of community interests. Currently pressure on lands and forests is intensifying owing to national laws and policies which encourage foreign (and national) investment in mining and agribusiness, notably of pineapples, bananas and oil palm. Oil palm areas are set to expand in response to new investments and markets for biofuels in China. However, at least in the southern Philippines, the main pressure on forests and indigenous peoples comes from landless migrants, while the erosion of community institutions, values, identity and pride is undermining their capacity to resist expropriation.

The meeting noted the widespread problems caused by rural violence, insurgency and militarization. Violence, harassment and intimidation are all too often used to compel communities to allow outsiders access to their lands and resources. Specific cases were mentioned illustrating all these problems, in particular noting a growing conflict in Mindanao between the Moro Islamic Liberation Front (MILF) and the island's non-Muslim indigenous peoples (Lumad), not helped by the fact that Moro groups have made extensive claims to ancestral lands that encompass Lumad peoples' territories.

In Indonesia, ICRAF has estimated that there are some 60 million people living in areas classed as forests, including about 5 to 7 million hectares of community-planted agro-forests. There are no reliable estimates of the wider areas that are under community swidden, are used for hunting and gathering or are subject to community-based territorial and forest management. The government also lacks data about the characteristics of 'local communities', their customary and current tenure and management systems and the extent and condition of state forest areas. The government also remains unclear as to how it should define and recognize customary law communities. The highly sectoralised way that policy is made in Indonesia between, and even within, line Ministries is a major challenge. As a result there are huge overlaps in tenures and land use categories between State Forest Areas, community use areas, customary rights areas, logging and plantation concessions, agribusiness leases, mining permits, conservation areas and urban development. Conflicts over lands and forests are very widespread, as a consequence of insecure community tenures and overlapping allocations to third parties. Notable pressures on land and forests come from the expansion of timber plantations and oil palm estates, too often accompanied by harassment and arrests, violence and criminalization of local community members who resist.



A common theme which emerged from the discussions concerned the extent to which community efforts to govern themselves and control their affairs, in line with the principle of self-determination, have been diverted by the manipulations of outside interests as varied as left wing insurgencies, NGOs, local and national government agencies and private sector corporations.

In the Philippines, the IPRA does recognise indigenous peoples' right to give or withhold consent to projects affecting their domains but implementation of this right has been sub-optimal owing to serious deficiencies in the guidelines, the bribery and intimidation of community leaders, the creation of false or divided leadership and through the weakness or even fraudulence of the NCIP. Indigenous participants noted the need to strengthen community governance and territorial management and provide basic training and information to communities to help them deal in more informed ways with outside interests.

There was also a reflection on the relation between community self-governance and the law. It was noted that the law cannot replace self-determination and the IPRA itself is imperfect in that it was hastily crafted, does not adequately accommodate customary law/ local differences and does not really give full control to communities. The law has been successfully applied by some communities but this has required complementary actions outside the scope of the law itself.

### **Response**

In the Philippines, the main responses by civil society and indigenous peoples to this situation include organizing and mobilizing community actions in areas of conflict such as where Ancestral Domains overlap with plantations. A number of communities, with the support of human rights lawyers, have taken legal action and other NGOs have developed programs to assist communities in negotiations with incoming interests including the Moro Islamic Liberation Front. On the whole however, the capacity of local NGOs to support communities is limited and the lack of national and even regional caucuses of both NGOs and indigenous peoples' organization is considered a serious weakness.

Some local governments have made use of their devolved legislative powers to issue ordinances and resolutions that can restrict harmful practices, such as banning aerial spraying and applying appropriate zoning and land use planning methods, while others have facilitated DENR and private sector interests, for example by facilitating indigenous communities to give their Free, Prior and Informed Consent (FPIC) to mining on ancestral lands. Local government units are considered much

more effective than central government in delivering appropriate services to communities through mobilization of *barangay* (local authority) funds. NGOs have yet to coordinate effectively to decide on a strategy for addressing the growing threat from oil palm and other biofuels.

In Indonesia, while the national Government has recognized the need for a response to the legal, policy and institutional weaknesses in natural resource management it has given higher priority to other matters, meaning that leadership for concerted reforms has been lacking. This has allowed central line Ministries to continue with their contradictory sectoral efforts, characterised as 'empire building' by the Indonesian participants.

While the autonomy laws have devolved much control of lands and natural resources to district governments, most lack capacity and are reactive rather than pro-active, with decisions being guided more by opportunities for revenue generation than community priorities. Spatial planning at national and provincial levels still tends to override district decision-making and local community rights.

NGOs continue to pursue a reform agenda in pushing for policy coherence as well as new laws, notably on Natural Resource Management, Indigenous Peoples and Freedom of Information, while growing social movements continue to contest access to lands and forests. Currently communities and NGOs have little confidence in litigation, partly because of the unfavourable legal framework but more because of the lack of independence of the judiciary. A national judicial reform program has only got underway recently.

For their part, corporations and investors have taken stock of the risky investment climate. Corporate social responsibility policies are favoured as a way of dealing with civil society and community concerns and there is growing interest in out-grower and smallholder schemes both to allow benefit-sharing and to externalize risk.

Participants highlighted the extent of corruption, at all levels, as a response to unclear laws and policy inconsistencies. The way the entire Indonesian legislature was, allegedly, bought out by the mining companies for US\$ 5000 per vote to overturn a bill proposing a ban on all mining in protected forests areas illustrated the extent of the problem. Faced with these multiple challenges, the overall response of communities could be seen as highly pragmatic and rational and based on realistic assessments of politically plausible options, even though the long term social or environmental sustainability of land use choices could be questioned.

## **Support**

The discussion on support tended to focus on the additional types of assistance participants felt they needed to provide to local communities who are struggling to get their rights recognized and to exercise and protect those rights. Without exception, participants agreed that more effective and efficient methods for community preparation are needed. This need is particularly acute in communities who are being approached by outside parties, primarily corporations, who are interested in making deals with the local leaders to gain access to community lands and forests. As a result, one of the major areas of support needed is in leadership strengthening and overall community organizing. Participants agreed that there are simply not enough individuals and organizations who are able to provide this type of support.

Participants also noted a number of related support priorities:

- Support for existing community enterprise and develop comprehensive support packages for new ones;
- Build capacity of community leaders, local support NGOs to engage in and monitor processes of 'Free, Prior and Informed Consent';
- Build up basic information about people and forests and local realities;
- Undertake a comprehensive review of the implementation of new tenures in terms of the effectiveness of rights recognition, protection and livelihood support;
- Assess potential connections/synergies with agrarian reform programmes and policies;
- Develop/build the political will of government institutions to recognize and respect local rights;
- Build up connections with local governments to secure communities' rights and livelihoods and involvement in land use planning;
- Research and monitor the impacts of government development priorities in mining and agribusiness;
- Share experiences in the practical application of legal pluralism, especially in the operation of 'native courts'.

## Useful and Reliable Data

There was also a discussion about the reliability or otherwise of national data sets on forests, numbers and the situation of forest dwellers, indicators of welfare, services and economic information. The academics and researchers participating in the meeting noted that in both countries national data sets, such as those used in the FRA, were not to be relied on. In the absence of such information, trends can only be assessed through the laborious compilation of 'data mosaics' or through case studies of local situations. Participants also argued vehemently against developing policy prescriptions based on national or global trends anyway urging that, in the context of national policies of autonomy and decentralization, the aim should be to develop policies that are responsive to local realities.

## Evaluation

At the close of the meeting a short evaluation session was carried out. Participants noted that this had been very productive meeting which had been personally useful and stimulating, particularly in strengthening links between indigenous peoples' organisations and NGOs, developing cross-sectoral insights and identifying national and local priorities. It was suggested that a three day meeting might have been preferable with time and space for exercise, an opportunity to engage with local communities and with the inclusion of representatives from Muslim Mindanao. The value of continuing sharing was affirmed and RECOFTC noted how it was committed to helping this happen in the future. It was also urged that partners should in future be informed longer in advance about RRI initiatives.

The host organisations, the Samdhana Institute, was thanked for providing a superb location for the meeting, as were the facilitators and note takers and special thanks were given to Beth Pua for carrying the main burden of work in organising the logistics of the event.

On the 28<sup>th</sup> July a team-building exercise/field visit was carried out. The team studied the wet season flows of the Cagayan River just below the retreat center (in other words white water rafting) which proved an exciting, even upsetting!, experience for all as one raft decided to carry out an intensive hydrological assessment by capsizing in the strongest rapids (all emerged from the river safely).

**Annex 1: Agenda and the LARS approach**

*Agenda*

**Day 1: Thursday July 26th**

<i>TIME</i>		<i>Facilitation</i>
8.30-9.00	<i>Welcome and Coffee</i>	
9.00	What is RRI? Marcus	Chip
9.15	What is the LLS and outcomes of the Bangkok meeting: Chip	Chip
9.30	Personal introductions/open ended questions: 3 min. each max: all	Chip
10.30	<i>Break</i>	
10.45	Summary presentations of your work: max 10 minutes each 1. Philippines: <ul style="list-style-type: none"> <li>▪ Jimid Mansayagan</li> <li>▪ Ipat Luna</li> <li>▪ Gerthie Anda</li> <li>▪ Earvin Juit</li> <li>▪ Jocelyn Villanueva</li> <li>▪ Ingrid Gorre</li> <li>▪ Tony La Viña</li> <li>▪ Pedro Walpole</li> </ul> Discussion	Chip
12.30	<i>Lunch</i>	
13.30	Summary presentations of your work: max 10 minutes each 2. Indonesia: <ul style="list-style-type: none"> <li>▪ Diah Raharjo</li> <li>▪ Andiko</li> <li>▪ Agus Setyarso</li> <li>▪ Nonette Royo</li> <li>▪ Martua Sirait</li> </ul> Discussion	Patrick
15.00	<i>Break</i>	
15.15	LARS approach introduction: Chip	Patrick
15.30	Break out into country groups : LAR(S) analysis	Patrick
17.00	Plenary/brief review of day one: Chip	Patrick
17.15	Rest time/optional walk down to the river	Nonette
18.00	<i>Reception and dinner</i>	

**Appendix 2: 26-27 July 2007 LLS in Insular South East Asia**  
**Samdhana Institute Retreat Center, Bayanga, Cagayan de Oro, Mindanao, Phil.**

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**Day 2: Friday, July 27th**

TIME		Facilitation:
8.30	Recap from Day 1: Marcus	John
8.45	Philippines: <b>LAR(S)</b> presentations and question and answer (talk show format)	Chip
10.45	Break	
11.00	Indonesia: <b>LAR(S)</b> presentations and question and answer (talk show format)	Chip
13.00	Lunch	
14.00	Emerging themes: Marcus	John
14.15	Discussion/comments on emerging themes	John
14.30	Break out brainstorm on possible <b>Support: (LAR)S</b>	John
15.00	Report back on (LAR)Support mechanisms, what needs are there at the: regional level, country level, local level, institutional level, individual level? Present results from brainstorming and then discussion	John
16.00	Next steps	Chip
16.30	Evaluation/closing comments	Nonette
17.00	<i>End</i>	Nonette

*Tasking*

**Note-takers:** Marcus and Nonette.

**Report:** Marcus

**Appendix 2: 26-27 July 2007 LLS in Insular South East Asia**  
**Samdhana Institute Retreat Center, Bayanga, Cagayan de Oro, Mindanao, Phil.**

**Annex 2: Participants List**

<i>Country</i>	<i>Name-surname</i>	<i>Organisation</i>	<i>E-mail/Telephone</i>
<b>Indonesia</b>	1. Diah Raharjo	Dewan Kehutanan Nasional	<a href="mailto:drahrjo@lgsp.or.id">drahrjo@lgsp.or.id</a> Tel. 628129360417
	2. Agus Setyarso	Dewan Kehutanan Nasional	<a href="mailto:asetyar@yahoo.com">asetyar@yahoo.com</a> Tel. 62811267948
	3. Martua Sirait	World Agroforestry Center	<a href="mailto:M.SIRAIT@CGIAR.ORG">M.SIRAIT@CGIAR.ORG</a> Tel. 62811893104
	4. Anidko	Huma	<a href="mailto:andiko@huma.or.id">andiko@huma.or.id</a> Tel. 6281386120260
	5. Patrick Anderson	Walhi	<a href="mailto:panderson@cbn.net.id">panderson@cbn.net.id</a> Tel. 62816991649
<b>Philippines</b>	6. Pedro Walpole	Asia Forestry Network	<a href="mailto:pedrowalpole@asiaforestnetwork.org">pedrowalpole@asiaforestnetwork.org</a> Tel. 629175306024
	7. Jimid Mansayagan	Lumad Mindanaw	Tel.
	8. Ipat Luna	Tanggol Kalikasan	<a href="mailto:ipatluna@yahoo.com">ipatluna@yahoo.com</a> Tel. 639175048265
	9. Nonette Royo	Xavier University Samdhana Insitute	<a href="mailto:Nonette@samdhana.org">Nonette@samdhana.org</a> Tel. 639177183779
	10. Beth Pua	Samdhana Institute	<a href="mailto:beth_pvill@yahoo.com">beth_pvill@yahoo.com</a> <a href="mailto:beth@samdhana.org">beth@samdhana.org</a> Tel. 639189396393
	11. Jocelyn Villanueva	Legal Rights and Natural Resources Center	'yennes0602@yahoo.com'
	12. Tony La Viña	Ateneo de Manila University	<a href="mailto:tonylavs@gmail.com">tonylavs@gmail.com</a>
	13. Ingrid Gorre	Legal Rights and Natural Resources Center	
	14. Gerthie Mayo-Anda	ELAC	<a href="mailto:gerthie@mozcom.com">gerthie@mozcom.com</a>
	15. Earvin Juit	Lumad Mindanaw	
16. Roel Ravenera	Xavier University		
17. Gorby Mansayagan	Lumad Mindanaw	<a href="mailto:sglanm@yahoo.com">sglanm@yahoo.com</a>	
18. John Guernier	RECOFTC	<a href="mailto:ojohn@ku.ac.th">ojohn@ku.ac.th</a>	
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Rappateur	20. Marcus Colchester	Forest People's Programme	<a href="mailto:marcus@forestpeoples.org">marcus@forestpeoples.org</a> Tel. 441608652893