TRENDS IN FORESTRY LAW IN AMERICA AND ASIA

Asia and The Pacific

By

Ellen Kern and Tomme Young

(Excerpt from Trends in Forestry Law in America and Asia
FAO Legislative Study No. 66, Rome, 1998)

CONTENTS

Summary 3

I. Introduction 4

II. Decentralization, Devolution and Privatization in Forestry 5
  2.1 Decentralization of Forest Administration 5
  2.2 Broadening Private and Community Rights and Opportunities 6
    2.2.1 Ownership and other Long-term Use Rights in Forests 6
    2.2.2 Community Forest Rights 8
    2.2.3 Recognizing Customary Rights 9
  2.3 Public Participation 11

III New Developments in Forest Management and Administration 12
  3.1 Forestry Management in Countries Undergoing Economic Transition 13
  3.2 Innovations in Forestry Management Planning 14
    3.2.1 Staged Approach to FMP 14
    3.2.2 Reforestation Incentives and Reforestation Programmes 15
    3.2.3 Extension Services 15
    3.2.4 Collection and Use of Forestry Data 16
  3.3 Licensing and Enforcement 16
This chapter highlights trends and innovations in forestry legislation, focusing, primarily on legislation and legislative proposals in sixteen countries in Asia and the Pacific: Bhutan, China, Cambodia, Fiji, India, Indonesia, Laos, Malaysia, Mongolia, Myanmar, Nepal, Papua New Guinea, the Philippines, Tonga, Vanuatu, and Vietnam.

Major legislative trends include (i) decentralisation of forest operations and management, (ii) adaptation of forest practices, institutions and markets to changing economic situations and approaches, and (iii) embracing new concepts of sustainability of forest resources and maximisation of biodiversity. These trends are reflected in many diverse elements of forest legislation, including provisions that promote the adoption of community and private forest systems, provide clearer recognition of customary use rights, provide for broader public...
participation in the management planning process, and allow for greater flexibility in the control of forest use and management. Although this chapter does not assess the changing national policy environment which produces laws and regulations in each country, these legislative documents appear to evidence basic underlying changes in forestry policy and forest management.

Legislative innovations to achieve these policy goals have included the redefinition of "forests", the requirement of legally-binding management plans, the integration of environmental impact assessment into the forestry sector, establishment of forestry friends and provision of financial and technical incentives to nongovernmental forest-using entities. This study concludes by summarising some of the areas for further legislative reform and highlighting those obstacles which are likely to be faced in changing forest legislation in the region.

I. INTRODUCTION

Asian forests and forestry span a wide range on nearly every scale which can be applied. The variety of forest types and topographies is only equalled by the variety of forest objectives and approaches. Governmental objectives run the gamut from the primarily commercial (Myanmar, Cambodia, Malaysia) to a primary emphasis on conservation and recovery (Bhutan, Mongolia, Vietnam).

Moreover, the socioeconomic factors which shape the countries' needs and attitudes with regard to the forest sector are extremely diverse and in many cases undergoing dramatic changes. In many countries an increase in the importance of market factors is a result of direct governmental transition from centrally planned economic systems. In others, a variety of factors (including proximity to transitional economies) may be shaping or re-shaping forestry markets and the legislative approaches needed to deal with them.

Finally, principles and commitments are described in a number of recent international documents, including (in addition to the Rio Forest Principles), the Framework Convention on Climate Change (Rio 1992), the Convention on Desertification (Paris 1994), Agenda 21, and the Convention on Biological Diversity (Rio 1992). All have informed and affected governmental policy throughout the region to a degree. As a result, greater emphasis on environmental and social principles (conservation, local empowerment, etc.) is apparent ill the legislation.

This chapter focuses on some Asian countries whose forest legislation has been adopted or revised during the last 15 years or so. Its objective is to describe "trends and innovations". As such, while it attempts to identify concepts which are common to all or even a majority of the countries studied, it will also identify useful approaches that are innovative as well as those which have been implemented in only a few countries, where appropriate. Identification of trends has been based on a review of the legal documents themselves and of recent scholarly evaluations of those documents. This chapter makes no attempt to evaluate implementation or underlying policy. It presumes, however, that the existence of national legislation evidences a governmental intention to address the problems discussed below.

Overall, the trends in Asian forestry law can be considered in three categories broadening of private rights with regard to the ownership and use of forest lands and forest resources; re-
examining the structure of the sector in light of national economic and social chances; and emphasising non-timber forest values (ecological, social) as a complement to timber production uses.

The following discussion utilises these categories for organizational purposes. However, in a very real sense, it is impossible to separate them as many (perhaps most) of the more specific provisions discussed below have impacts and objectives under all three headings.

II. DECENTRALISATION, DEVOLUTION AND PRIVATISATION IN FORESTRY

A clear trend, reflected in nearly every country studied is that of decentralisation — both in forest administration and in forest management and use. With the exception of countries already fully utilising decentralised institutions and approaches, all countries appear to have taken, at least, some steps toward enhancing the roles of local administrations and forest users in the creation and implementation of forestry objectives, legislation, planning, projects and management. Even in countries where the state’s ownership monopoly on forest lands and products remains essentially intact, rights of community and private forest use and management have been enhanced, and governmental commitments to their extension have been voiced. These developments are legislatively reflected in changes in forestry administration, enhanced opportunities for forest ownership, and public participation in forestry decisions.

2.1 Decentralisation of Forest Administration

Decentralisation of governmental responsibilities by increasing direct authority at local and district levels has always required a balance between the advantages of local administration (local responsibility, awareness and flexibility) and the need for oversight of local officials. Governmental responsibilities in the forest sector involve the granting and policing of rights to a valuable resource; hence, the need to ensure scrupulous compliance often leads to a minimisation of the power and authority of local officials, who have sometimes been forbidden to take any action without central approval. Although central authorities continue to bear primary responsibility for forest planning and management, reorganization of the forest administration has emerged as an important element in recent forestry law reforms. In several countries, this restructuring is embodied, at least in part, in laws rather than rules or administrative documents (Myanmar, Law 1992, articles 9-11; Philippines, Code 1975, articles 4-12; Fiji, Decree 1992).

Recent legislation generally tends to extend the role of local officials¹, who are given direct permitting, project and other sectoral responsibilities in certain situations. In the Philippines, for example, responsibilities relating to all community based upland development projects were devolved or transferred to local government units pursuant to the Local Government Code of 1991. Following devolution, the need for serious review of implementation of these projects has been noted (Bacalla 1993: 77).

In a number of countries (e.g. Vietnam, Mongolia), decentralisation in forestry is ongoing as part of a national restructuring process. In some countries, the extent of decentralisation is expected to be very great. Vietnam, for example, contemplates transferring management responsibility to local authorities and users with regard to lands in every forest category,
including protected areas (Decision 1992; Young 1998: 103).

### 2.2 Broadening Private and Community Rights and Opportunities

There is a general trend in the region towards greater recognition of private and community interests in forestry activities. This trend is clearest in relation to forest ownership/use rights, community forestry, and customary rights in forests.

#### 2.2.1 Ownership and other Long-term Use Rights in Forests

Recent legislation extending private and community rights in forests is part of a much longer-term trend away from the generally monopolistic approach to forest ownership and use in colonial times, toward a balance of government, community and private rights and uses. For a variety of reasons, there is an increasing (though still ambivalent) focus on extending and securing private and quasi-private rights in forests, and, by fostering non-governmental participation in forestry, enhancing co-ordination between national planning and the needs and objectives of users.

There is wide diversity within the region with respect to the treatment of ownership issues. Although in many countries, actual ownership of most forest lands and resources generally resides with government, there are examples of private ownership being, recognised by national law. Additionally, of course, other rights in forests are regularly granted, involving (to a greater or lesser degree) some components of forest ownership. The following discussion gives an idea of the variety of approaches to this issue throughout the region.

In many Pacific countries, for example, strong patterns of customary land ownership have generally prevailed, in contrast to the state-ownership patterns found elsewhere. Thus in Fiji, Tonga and Vanuatu, recent national legislation has focused on the establishment of new conservation oriented forestry programmes, utilising co-operation with private landowners. In Papua New Guinea, virtually all forests are privately owned pursuant to customary rights (mostly involving community ownership). The forest owners are forbidden from harvesting timber themselves, however, being legally required to contract for this service with the PNG Forest Authority, which has the exclusive right of cutting and removing timber (or granting concessions to third parties to harvest timber) from their lands (Forest Act 1992, art. 60, quoted by Lynch and Talbott 1995).

Even in "state-ownership" countries, however, limited private ownership of forests may be permitted, as evidenced by recent forestry laws in Bhutan, Lao PDR, Myanmar and Nepal. In the Lao PDR, for example, although the state owns natural forests and associated land, individuals and nongovernmental entities may possess, use, transfer, own and inherit trees and forests planted by them under certain conditions and with the State's acknowledgement (Law 1996, art. 5). Chinese law although first stating that forests may be owned either by collectives, or by the whole people of China, later refers obliquely to forests "owned and used by individuals" (Law 1985; Provisional Measures for Forest Land Management 1993).

More commonly, private and community rights in forests are generally given in the form of leaseholds, concessions, licenses, contractual use rights, easements, profits and conditional privileges over forests as government-owned property. In many cases, these rights are long-term and legally durable. The trend in this area is clearly toward increased private and community rights, by recognising new categories of ownership and use; allowing the grant of
longer term longer-term use rights, akin to ownership; and increasing the users' commercial security with regard to his interest.

New categories of user: Although the recognition of new user categories is sometimes an element of forestry policy, such categories are often created under other authority. In China, for example, following the decision to convert the sector to market-based operation, commercially utilised forest areas which had been "government production units" have been distributed among a number of contract-created, profit-oriented forest management entities (Young 1998: 12).

Broader definitions of the ten-n "person" extend participation rights, and permit broader delegation of forest management and decision-making to a variety of nongovernmental entities. In Myanmar, any person or organization has the right to carry out forest plantations with the Government's permission (Law 1992, art. 14(b)). Forests in Nepal may be made available through auction to national and international governmental or nongovernmental entities, so long as they carry out the work plan (Forest Regulations 1995, art. 20). Many countries now give forest officials fairly broad authority to delegate forest management duties and implementation as in Nepal, where the warden is generally authorised to carry out his duties "by himself or through others" (Buffer Zone Management Regulations 1996, art. 7).

Duration of forest use rights: Many countries face problems of inspiration of confidence in forest entrepreneurs. Often the memory of some prior practices prevents forest users from making any significant investment in reforestation or management. Additionally, the termination of some government programmes has created a level of business uncertainty and a disincentive to potential investors from within the participant countries, whose available capital is limited.

In several countries (e.g. China, Mongolia, Vietnam) governments have in the past reallocated lands for a variety of purposes. As a result, investors are generally wary of entering into any new projects involving a long cycle between investment and recoupment/profits. Forestry is a classic example of a long turnaround on investment since, for many species, the growing cycle can be longer than 50 years.

The converse problem has a similar impact. In centrally planned economies, farmers and foresters had a certainty that the government would purchase all of their output of crops, timber and forest produce, so long as harvesting was done in accordance with the central plan. As those countries convert to market orientation, these assurances are being phased out (or, in some countries have been peremptorily discontinued). The forest users have little guarantee that they will receive any profits or even a return of their investment. While the need for investor confidence is not generally a problem which can be solved by legislation, some legislative attempts may be found in the region. For example, in Mongolia and Vietnam, the adoption of limited statutory guarantees and repurchase covenants is being considered.

Commercial security: The availability of methods to foster the investment of time, effort, and money in private and community forests is another barrier to management efforts. Often, in addition to the nature of his interest (as grant, lease, etc. rather than freehold), a second type of limitation restricts the forest user's dominion over his holdings - legislative restraints or prohibitions on the user's ability to mortgage or transfer his forest use rights (e.g. Nepal, Forest Regulations 1995, arts. 31(1)(a) and 45(1)(a)). This type of restriction may have an (expected or unexpected) impact on the user's ability to commercially manage his forests, and may also
limit his ability and incentive to manage forests for long-term utilisation.

Sources of and justifications for these restrictions vary. In some of the countries in the region, these restrictions have a constitutional basis, and may apply to lands. more generally. In others, they apply specifically to forest lands and rights, motivated by the goal of maximum government control over who may use the country's forest resources. From a perspective of sustainable forestry, the current validity of these justifications should be reconsidered, and attention given to the goal of providing a secure basis for financial management of forest activities.

In the meantime, in many countries, the most direct tension between the need for more secure use rights and the legislated restrictions on alienation is tempered somewhat by provisions which may allow forest users limited rights to pledge their interests as collateral for obtaining loans from financial institutions (e.g. Nepal, Forest Regulations 1995, art. 31(2)). This "solution" is hardly a final one. As yet, the legal tangle which may arise where alienation of forest lands is forbidden, but hypothecation is permitted, has not been addressed in any of these countries.

**2.2.2 Community Forest Rights**

As discussed in Part IV, the legislative and practical development of "community forestry" programmes is one of the most significant trends in the region. One critical component and impact of community forestry is the creation of a locally important "stake" in the sustainability of forests - a mechanism for local groups (rural residents and/or traditional or customary forest users) to obtain recognised status as holders of forest use rights. The mechanisms used in this process vary across a broad spectrum. In Bhutan, for example, a community users' group will lose that status if its membership falls below 10 households (Proposed Rules 1997, art. 41). Other programme in Vietnam and the Philippines are designed to enhance the ability of individual households to acquire use rights in specific forest lands. The objectives of community forestry programmes cover a broad spectrum, in some countries focused on providing a legal source to meet the demands of local use, in others anticipating commercial involvement.

Recent legislation often extends eligibility provisions, allowing a more diverse group of local residents to qualify under community forestry authority, usually by forming a "users' group" in accordance with statutory requirements. To some extent, the nature of these eligibility criteria is a function of the policy objectives underlying the legislation.

In Nepal, for example, there are two separate sources of community forestry authority — one general, and a second focused on communities located in buffer zones surrounding national parks. Under the 1993 Forest Act, which is directed at preserving and fostering rural economies, current users of a forest who wish to utilise that forest's products, by developing and conserving the forest for the collective interest may constitute and register a users' group (arts. 41 and 42). By contrast, Nepal's buffer zone provisions arise out of a desire to protect the national parks. The goal is to create a stable forest harvesting area which local residents will use in lieu of illegal harvesting inside protected areas. In light of this objective, eligibility to form a users' committee must be more limited, in order to avoid abuses and other problems. Hence, the term "user" means a person living in a (national park) buffer zone who qualifies as a "direct beneficiary [of]... forest resource use and projects to be implemented for the local people's community development." (art. 2(e)). Similarly, in Myanmar's Community Forestry Instruction of
1995, the definition of "users' group" restricts participation to those households residing, in the community (art. 3(g)).

Formation of a legally recognised entity gives the village, users' group or community the legal status required by entities entering commercial transactions. This may be accomplished with or without additional formalities. In Myanmar, a statutory provision bestows legal status on any users' groups which holds a currently effective community forest certificate (Instruction 1995, art. 20(2)). In Nepal's community forests, a procedure has been adopted for formally constituting and registering user's groups, which are thereafter autonomous, corporate bodies, able to hold property, sue, or be sued (Act 1993, arts. 41-43). In buffer zone forests, registration with the National Park Warden is required (Buffer Zone Management Regulations 1996, art. 9).

An added level of complication arises where some commercial operation is anticipated. Here, the eligibility must be more closely monitored, to prevent abuses by outside individuals with commercial interests, who might otherwise attempt to qualify as "users' group" or to obtain an interest in one.

2.2.3 Recognising Customary Rights

A difficult element in many countries' forestry legislation is the intersection between legal delegation of forestry use rights and traditional or customary rights. Often, the exercise of customary rights conflicts with legislative-based timber concessions, leading to tensions between traditional forest users and concession holders (Lynch and Talbott 1995; Fox 1993). A trend in recent forest legislation toward recognition of customary rights, and reconciliation of those rights with more recently acquired rights and legislation, is in keeping with the international consensus on customary rights in forest resource use and management2.

Recent legislation which recognises and (where possible) formalises traditional and customary usage is intended to minimise such conflict. One method is formal documentation of customary claims. Community forestry programme may accomplish this goal, since much of the justification and method of community forest programmes is based on customary land and forest rights. In fact, many of these programmes have been created as a legislative response to such tensions. Community forestry often provides a system by which traditional claims can be identified in a concrete and enforceable manner, after which the issuance of forest leases and concessionary rights can better be planned to avoid conflict.

For example, certain traditional uses of forests and forest land are recognised in the Lao PDR, and given priority in the Forestry Law of 1996. Legal status is given to the long-standing use of forests, forest land and forest produce as acknowledged by the society or law, specifically including wood collection for fence, firewood, forest produce gathering, hunting and fishing of non-restricted species for family consumption or other traditional uses (art. 30). Subsidiary legislation further legitimises customary forest use rights, defined as "those rights and obligations held by an individual, a group of households which have their root in custom and (are] generally accepted by law, mid generally not written, but customary rights are nonetheless true rights that exist on their own merit" (MAF Decision of March 1996, art. 2). "Custom" is defined as a set of practices which are regular, old (a minimum of one generation), widespread and perceived as creating rights and obligations (MAF Decision of March 1996, art. 3, and MAF Recommendations of April 19963).
A number of countries have opted to facilitate the exercise of forest users' customary rights, in all forests, without or regardless of specific allocation. In Bhutan, the Minister may make rules to permit the taking of forest produce for one's own domestic use from any Government Reserved Forest without a permit (Act 1995, art. 12(2); Proposed Rules 1997, art. 21(a)). Royalties may still be required, however. Similar household use exceptions apply in many countries (e.g. Mongolia, Law 1993). In Myanmar, within prescribed quantity limits, no permit is required to extract forest produce for personal use or for agricultural or fishery enterprises on a non-commercial scale (Law 1992, art. 17).

Critics have sometimes argued that customary rights should not only be codified, but should be given legal priority. Some recent forest legislation has accepted this idea as well. Hence, in the Philippines, the rights of traditional and customary users (indigenous tribal communities and lowland migrants) are fully retained under many laws (Bacalla 1993: 70). Since, "ancestral lands and customary rights and interest arising shall be accorded due recognition," government authority over traditional use areas may be exercised only in cooperation with traditional groups (National Integrated Protected Areas System Act 1992, art. 14).

In Nepal, the priority of traditional and community rights is expressed directly. Government is forbidden to lease any part of the National Forest which would be suitable for handing over to a users' group as community forest (Act 1993, art. 30). Moreover, the final choice between potential users' groups is made on social criteria rather than either traditional or legal status - in case of competing interests over the same forest area, priority is given to the community with the majority of people living below the poverty line (Regulations 1995, art. 39(6)).

In other countries, particular difficulties with formal co-ordination with and recognition of customary rights are still unresolved. In Indonesia, forestry law recognises customary rights where they are still in use and do not contradict national objectives (General Explanation of the Basic Forestry Law 1967). Development activities such as the Indonesian policy of Forest Concession Rights, however, supersede customary rights in practice and in law. Without resolving the conflict, the 1970 Government Resolution on forest concession rights freezes the exercise of community rights and requires that customary rights do not "disturb the implementation of forest exploitation" (Resolution 21/1970, arts. 6.1-6.13; Hutapea 1993: 65-66). Clearly, greater legislative attention to integration of customary forest use rights within the forestry framework remains a general need.

Customary rights are also difficult to ascertain and codify. Determining them based on passage of time is complicated by large population movements in some countries (e.g. India, Laos and Cambodia) due to external or internal wars. Few villages in certain provinces of the Lao PDR, for example, have been in their present location for the past thirty years (Eggertz 1996).

Countries in the region share numerous difficulties regarding the integration of customary rights into forest management, including community forest programmes. Many central Governments resist recognition of customary rights. In some cases, formal recognition of customary rights are seen as contrary to official national policies based on political ideals like the need for a strong central Government to unite diverse populations and, in some cases, constitutional guarantees of freedom of movement. In other cases, forest owners whose legally recognised claims are near community forest pilot projects may be effectively forced to forfeit pre-existing sovereign land claims.

2.3 Public Participation
The third element of the trend toward greater local responsibility in the forestry sector is increased provision for public participation in forest-related laws in the region. Public participation takes many forms, from participation in decisions and planning processes, through participation in physical implementation and sharing in the benefits.

Participation in decision-making has been adopted only in a limited form, as governments try to evaluate its operation. Overall, however, there is a trend toward opening up the forest planning and management processes to nongovernmental actors and non-forest Governmental interests. In the Lao PDR, the law states as an objective to promote "the participation by individuals and organizations in the preservation, revival, forestation and development of forest resources by outlining policies, regulations and measures aimed at developing forests into wealthy, valuable and sustainable resources" (Law 1996, art. 6). By requiring public meetings and other public involvement in forestry administration and decisions, forestry officials both (1) open a dialogue for incorporating public-concerns in government decision-making, and (2) devolve onto the public the responsibility for ensuring that their concerns are raised at the appropriate time. By nature, public participation is a decentralised (local) activity, since one can rarely expect rural and remote forest users to come to national capitals or other commercial centres. In some instances, even where legal provisions are not available, similar impacts can be obtained through practical action, as is the case in Bangladesh (Farooque and Bhuiyan 1993).

In many cases where national forest legislation does not address the issue, greater participation occurs through experimentation and decentralised implementation, often in subsidiary legislation such as regulations, orders, notices, instructions and circulars. The strength of such documents as binding legal authority varies and is sometimes difficult to ascertain; however, in many countries, details in manuals used by forest departments may be as important as regulations. In Nepal, one regulation specifically states a duty of forest lessees, concessionaires and others to comply with manuals issued by the Ministry (Forest Regulations 1995, art. 67). Moreover, given that persons most familiar with implementation draft these documents, they may be more likely to be more fully and promptly implemented, than centrally drafted laws and regulations. This less formal "legislation" is often the primary vehicle for promoting international objectives such as the participation of women in sustainable resource use programmed.

III. NEW DEVELOPMENTS IN FOREST MANAGEMENT AND ADMINISTRATION

Throughout the region, forest management planning (FMP) forms an integral part of the operation of the forestry sector. In some countries in the region, introduction of the FMP concept is relatively new. In a majority of the countries studied, however, FMP is a well established concept. Several recent innovations, implemented in some of these countries, are indicative of apparent trends in this area. Other administration issues include enhanced reforestation mandates, greater roles of licensing and permitting, and an increase in the use of forestry funds.

3.1 Forestry Management in Countries Undergoing Economic Transition

Several countries in the region are currently in the midst of a national economic transition from central planning to a market-based system. This transition has many direct impacts on forestry,
some of which are addressed in legislation. In addition to increasing individual and community opportunities in the forestry sector, this transition has necessitated a basic change in the way forests are managed and policed at every level and stage of operations. Although there are many common issues among these countries, "their differences are equally important. Even the interpretation of the phrase "transition of forest industries to market-oriented economy" involves very different approaches. In Mongolia, for example, the transition proposed is a very abrupt, almost complete transition from central control to market-driven forest industry - a transition that has occurred in documents, but not, as yet, in practice. By contrast, in Myanmar, the state-owned forest enterprise will retain virtually all forest harvesting and marketing as its exclusive or near-exclusive prerogative. In Vietnam, private forest holders obtain not only the right to use forests, but also in most cases a nearly complete decision-making power regarding forest harvesting, and management. In China, where conversion to market is happening on an industry-by-industry basis, (occasionally even on a trial or interim basis) forest industries have been "privatised" vertically, but many related systems and infrastructures have not (Young 1998).

A major obstacle to forest management in countries-in-transition involves local understanding and application of the concept of FMP. Substantial difficulties arise in this area, owning to the prior usage of the word "planning" - a term used extensively in a different context under the old system. When operated as central planning systems, these governments had significant experience in "planning", including forestry planning, using that word to mean a process, undertaken by economists and focused on (1) determination of demand and (2) concomitant development of production quotas and financial inputs needed to achieve these production goals. Even today, discussions of "forestry planning" in these countries focus on the development of production quotas.

Post-conversion laws and policies also call for planning, of an entirely different order - an FMP process focusing on technical forestry issues, and the diverse needs of sustainable development. While economic projections form a component of this process, they are a small effort compared with the major work of FMP - evaluating ecological effects of forestry management, balancing consumption against annual regrowth, identifying activities and controls needed to ensure sustainability, setting reforestation goals and mechanisms, and enunciating standards by which local, provincial and central forestry officials can apply the plan for the benefit of the forests and the forest-dwelling or forest-dependent people, etc.

These concepts, although included in new legislation, are not explained in any detail. In China, for example, forest management measures call for the creation of "plans of forest land preservation and utilisation," and a "long-term plan of forestry development" by all Departments of Forestry above the county level (Provisional Measures for Forest Land Management 1993). In Mongolia, the 1994 Law on Environment Protection requires the adoption of a "financially secure national programme for environmental protection" which includes, inter alia, the identification of "maximum levels of natural resource use" (art. 10). The 1993 Law on Forests, although it contains no direct mention of FMP, does require the government to prepare a number of documents on a variety of issues, which, if integrated into a single consistent document, might form the basis for FMP development. Given the history, however, the ten-n "planning" has taken on a particular meaning for government officials. Hence, particularly-where the law is so unspecific, these officials often expect either that the conversion to market-based economies will eliminate the planning system or that the "natural resource management planning," referred to under new law is essentially the same as former "central planning". As a result, government officials - almost entirely trained under the former
governmental system - frequently apply the principles, programmes, protocols and procedures of the former system.

Serious gaps in the overall forest plan still exist, however, in all countries-in-transition. Virtually none of them has yet established any legal infrastructure to support a direct-access market in timber, lumber and forest products. Such infrastructure must be developed, to ensure that market-oriented processes are properly effected and generally successful. Legal mechanisms common in the rest of the region (governing transportation of forest goods, establishment and control of local markets for timber, and marketing alliances among forest users) are needed in these countries.

3.2 Innovations in Forestry Management Planning

Several countries have amended or enhanced their FMP programmes in a number of ways. Trends include the use of multi-level planning, increased scope of extension services, and greater technological specificity of forestry data-gathering processes.

3.2.1 Staged Approach to FMP

Recent legislation requires management plans for commercial forestry, community forestry and conservation, at both national and local government levels. In addition, as mandated by legislative provisions, individual licenses and agreements to use forest resources (e.g. timber concessions, community forest agreements) must incorporate these principles in the creation of user management plans which must be approved by government as a prerequisite to forest utilisation and management activities. In Bhutan, for example, the government must prepare a full national management plan addressing its forests, wildlife and related natural resources in totality. In addition, private or community management plans must be developed by the user (in conjunction with the government) for each area to be utilised for extraction or reforestation, and protected area management plans (coordinating, inter alia, forestry elements of protected area management) for all conservation areas (Act 1993, art. 5(a); see also Nepal's Forest Regulations 1995, art. 28, and Buffer Zone Regulations 1996, art. 13).

3.2.2 Reforestation Incentives and Reforestation Programmes

Many of the countries have enunciated clear and high-priority objectives in the area of reforestation and plantation. In some cases, these priorities are combined with community forestry programmes. Among the methods being implemented or considered are:

- the establishment and regulation of government-owned and private owned forest farms\(^6\);
- the development of market-based incentives and other mechanisms for financing more general and conservation-based reforestation activities (rather than relying solely on government funding);
- preparation and proposal of legislation and institutions to support reforestation activities and to authorise necessary government enforcement activities; and
- (where possible) empowering local groups and community forestry projects to undertake these activities.
In addition to the empowerment of community and rural reforestation programmes, legislation may in some way enhance incentives to participate. Several countries have noted legal inconsistencies (usually as a result of many unrepealed forest laws still on the books) such as provisions which say that all trees in the country are the property of the state, regardless of who planted them. Such persistent inconsistencies decrease public confidence that their reforestation efforts will be financially recompensed.

3.2.3 Extension Services

One notable trend found in forestry legislation requires governments to provide technical and financial assistance to users’ groups and other nongovernmental forest users to prepare and implement management plans (Nepal, Act 1993, art. 69; Forest Regulations 1995, arts. 28(3) and 38; Buffer Zone Management Regulations 1996, art. 13(2)). In many instances, this assistance can take a concrete form, where in addition to advice, the forestry department is required to provide seeds and seedlings to such persons or groups (Bhutan, Proposed Rules 1997, arts. 29, 41 and 46; Myanmar, Instruction 1995, arts. 21 (a) and 21(b)). Although current legislation in this area focuses on community users, more general obligations may apply to more entrepreneurial private forestry, as well. In Myanmar, efforts to privatise some aspects of commercial forest harvesting were halted when it became clear that training and extension mechanisms were needed and lacking. Similarly, in Mongolia, the single biggest need in the forest industry may be training for forest entrepreneurs in how to operate and finance their businesses (Young 1998: 69).

3.2.4 Collection and Use of Forestry Data

As forestry objectives (market development, ecological sustainability, social contribution to rural communities, biodiversity development and conservation, etc.) become stronger, more diverse and sometimes conflicting, the need for technical (scientific and sociological) data on every element of forests, forest ecosystems and forest-dwelling communities is accentuated. Recent legislation appears to anticipate that the bulk of national forestry planning and decision-making will be based on information acquired during forest resource inventories at national and local levels. Several countries in the region have enacted legislative mandates for the regularisation of that process, specifying both the breadth and frequency of national forest surveys (e.g. Lao PDR, Law 1996, art. 10; Myanmar, Law 1992, art. 11). A significant part of this data comes from forest users, in the form of the detailed recordkeeping and reporting required under national and subsidiary legislation in all countries (e.g. Nepal, Act 1993, art. 44; Bhutan, Proposed Rules 1997, arts. 39 and 43).

Recent forest laws, like their predecessors, include principles of maximum sustained yield in their requirements for sustained yield annual allowable cuts. Standards are stated in the laws, however, to guide the government in identifying these levels. In the Philippines, for example, the 1975 Code states that "all measures shall be taken to achieve an approximate balance between growth and harvest or use of forest products in forest lands" (art. 21).

In addition, although many elements of central planning remain in countries-in- transition, some have been changed or added. For example, "consumption quotas" (i.e. formal upper limits on the amount of timber and forest produce that may be harvested in a given year) are now required in addition to or in place of former production quotas (minimum amounts required of each local or regional production unit).
3.3 Licensing and Enforcement

Despite often strict (and regularly increasing) legislative penalties, forestry laws tended to be poorly enforced. A combination of factors (poorly designed concession conditions, conflicts with customary rights, ineffective or non-existent Government monitoring, and lack of financial and human resources) contributed to this problem. In fact, recent changes to forest laws which legitimise customary rights and establish community forest programmes do so in part to reduce the burden of enforcement. This has been accompanied in a number of cases by new approaches to the use of permits, licences, concessions and other instruments concerning private use of forests.

3.3.1 Licences, Permits, Concessions, etc.

The need for oversight of private and governmental entities in forest use has led recent forest legislation to emphasise licensing as a management tool. (As used here, the term "licence" is an umbrella term including permits, concessions and similar types of instruments). Licence cancellation or suspension, a purely administrative internal activity, is often a more practical penalty for violation than criminal prosecution. Moreover it can be a much greater deterrent to license violators, who view loss of license as a significantly greater penalty than legislated fines. Greater emphasis on permits and licences requires an effective regulatory entity with well-trained, well-paid staff. While the recent forest laws cannot address this directly (only civil service reforms could), stiff penalties are often stated to punish corruption within forestry staff (Myanmar, Law 1992, art. 46: 1-7 years imprisonment).

Commercial timber licences are now increasingly used to achieve resource goals such as reforestation or social infrastructure, not just economic production objectives. Concession and lease conditions require environmental restoration or reforestation (Philippines, Code 1975, art. 27). In addition, several countries include a list of statutorily-mandated minimum conditions for such agreements, including anti-pollution, anti-erosion and other environmental protective measures (e.g. Philippines, Executive Order 1987, art. 5).

Typically, the creation and approval of a management plan is specified as a precondition to permit issuance (e.g. Bhutan, Act 1995, art. 6). Longer licence periods are being specified to maximise benefits to commercial loggers and to the government, and to encourage reforestation and afforestation if permissible under the general legal framework. The maximum ten (1) for a forest lease in Nepal, for example, is forty years (Forest Regulations 1995, art. 50 (1)). In the Philippines, the maximum period for a forestry concession or timber harvesting-permit is fifty years (Code 1975, arts. 27 and 28).

Additional conditions in recent forest legislation require permit and licence holders to prove, through banker's guarantees and bonds, that they have adequate financial resources to fulfil financial and environmental obligations (Vanuatu, Act 1982, art. 14; Nepal, Act 1993, art. 31 and Forest Regulations 1995, art. 48; Philippines, Code 1975, art. 60; Fiji, Decree 1992, art. 13 (2(c)). These provisions are beginning to have a wider application as well. Nepal requires applicant users' groups to post a bond prior to certification under community forest provisions (Forest Regulations 1995, arts. 27(6) and 29).

Breach of any of these conditions or environmental obligations can lead to a variety of consequences, such as permit or licence suspension or cancellation as well as criminal penalties. In the Philippines, the President may, after prescribed due process, suspend any
agreement for violation of any conditions, including reforestation, pollution or environmental protection (Code 1975, art. 20; also, Nepal, Act 1993, art. 33).

3.3.2 Enforcement

With permits and administrative oversight taking some forest-related pressure off courts and police, traditional enforcement efforts are increasingly focused on those problems most likely to contribute to serious deforestation. For these violations, the trend is to increase the severity of crimes from misdemeanours to felonies and to attempt to set high enough fine amounts that they constitute real deterrents (rather than being viewed by violators as just another potential cost of doing business). Legal reforms enacted have also focused on matching punishments with severity of offences; on suspending or revoking licences as sanction instead of or in addition to fines and imprisonment; on requiring compensation by the offender for damage to public good; and on requiring confiscation of illegal produce and equipment (Bhutan, Act 1995; Lao PDR, Law 1996; Myanmar, Law 1992; Nepal, Act 1993).

Despite progressive elements in recent forest legislation, forestry administrations still try to include strict controls and punitive measures in enforcement sections of forest legislation. Thus, for example, Nepal's Forest Act's extensive community forestry provision retains, from its predecessor law, the special power of forest officers to shoot offenders below the knees (art. 56).

3.4 Forestry Funds and Other Incentives

Commercial timber production continues to be a major revenue producer for many countries in the region. Increasingly, national laws utilise forestry funds to return forest revenues to forest protection, maintenance and management. The impetus behind such legislation (and designated financial sources) may run the gamut from restructuring former central planning allocation processes to providing a financial basis for reforestation and other public benefit projects. Legislation mandating such funds may be associated with other national reform of the public expenditure process. In the Lao PDR, the Forest and Forestry Resource Development Fund is capitalised with contributions from the State budget, as well as from individuals, juridical entities, collectives, social organizations, international organizations and others. The Fund must be used for forestry activities, including the preservation of protected and reserve forests, reforestation, forest regeneration for the preservation of water sources and the environment, preservation and development of aquatic and wildlife, education on forestry policies, regulations, laws and techniques, protection of water sources, the environment and others related to forests and forestry resources (Law 1996, art. 47).

Similar funds, some with rather specific use limitations, are found in many countries. The fund in Vanuatu focuses on reforestation, and is funded by a reforestation charge (Act 1992, arts. 27 and 28). In China, all "units that cut or purchase or sell trees or bamboo" are required to contribute afforestation funds to be managed at the provincial level by the province's forestry department, agriculture department, finance department, and banking department, acting in a coordinated fashion (Provisional Measures for the Management of Afforestation Funds 1972). These funds are to be used both for subsidising afforestation activities, and for the culture and preservation of state-owned lands. The mechanism for collecting these funds varies. In China, for example, collection is entirely at the discretion of provincial governments.

The decision to make a statutory commitment of forest revenues to forest conservation and
management is controversial in many countries. National and local economic and social development plans include forestry as a major contributor to the country's development and in some cases to its economy, hence, even funds from forest operations are not always applied to forest programmes first.

In many instances, external assistance with forest programmes (conservation, development, infrastructure, etc.) is easier to obtain if the country has established a fund, and of sufficient (legislative and other) controls and assurances regarding its inviolability and ultimate use only for specified purposes (Joshi 1993: 113). The Legislature, in creating such funds, is often desirous of similar assurance of proper use. However, it may be difficult to meet these requirements in some countries, in which the establishment of a forestry fund is limited or prohibited by Constitutional restrictions on the use of government revenues (Burchi 1992).

Another difficulty relates to the distribution of revenue to provincial, district and local levels for direct implementation activities, and especially to villages or communities utilising, community forest authorisation. In Nepal, this difficulty is avoided through the use of separate funds for each users' group (Act 1993, art. 45). This mechanism permits the return of income to communities, as an incentive to engage in community forest activities. These separate users' group accounts may include government grants, proceeds from forest produce sales, fines and donations or assistance from any person or organization (Forest Regulations 1995, art. 36). Each users' group decides on allocation of its own funds although they must be used, first, for community development projects (Act 1993, art. 45). Similar provisions are found in Bhutan (Proposed Rules 1997, art. 41) and Myanmar (Instruction 1995, art. 28).

3.5 Co-ordination with Non-forestry Legislation

One particular problem, found in many countries in the region, is the number and extensive coverage of new laws being enacted. In Mongolia, for example, in the first six years following the formal shift, the Ministry of Natural Resources and Environment alone has successfully sponsored 23 laws through Parliament, and adopted more than one hundred regulatory documents to implement these laws. Similar situations are found in Vietnam and Laos, as well (Young 1998). The initial problem arising from such a situation is simply one of human capacity to absorb information. In nearly all instances, laws in these countries are being implemented and enforced by the same officials who operated under prior laws. The demands of the job often make it difficult for such officers from spending the time to become completely familiar with even one new or amended law. Where massive changes have been adopted, they may be completely overwhelmed, and may continue to enforce the superseded provisions for a long time. Forest users may be similarly unaware of and unequipped to deal with changes.

In addition, nearly all countries in the region experience difficulties and overlaps with the legislation of other sectors, including (but not limited to) the areas of lands, transportation, finance, entity creation, market development and controls, environmental protection, pollution control, export/import, taxation, foreign investment, intellectual property law, governmental powers, quality control and grading standards, consumer protection laws, banking and securities laws, etc. Particularly in countries in which a lot of new forest legislation is being developed, other sectors are being revamped as well. The forestry agencies' operations necessarily combine ecological and commercial objectives. Hence, this sector is affected by many other laws and sectors. Inter-sectoral co-operation and protocol development is a challenge throughout the region.
IV. EMPHASISING ENVIRONMENTAL AND SOCIAL VALUES IN FORESTRY

The Rio Forest Principles sum up international consensus on the holistic nature of forest resource management and conservation in several linked principles. In keeping with this international consensus, legislation reviewed here reflects new attention to environmental and social responsibility in the management of forest lands and resources. This reorientation away from purely commercial timber extraction purposes to include non-timber values such as environmental amenities and biodiversity may be the most fundamental and prevalent shift in legislation throughout the region, affecting countries from the most commercially active, to those with the strongest conservation focus (e.g. Fiji, Decree 1992, art. 7(1); Bhutan, Act 1995, arts. 5(b), 9; Myanmar, Law 1992, arts. 4 and 5; the Philippines, Code 1975, art. 19).

In a real sense, this shift constitutes a transition to resource management, from exploitation. The trend is evident not only in cosmetic changes, but can also be seen in the continued emphasis on centralised forest administrations, which are perceived as protecting the national interest in forests as environmental resources against short-term narrow local interests. Recognising that forests are linked with other resources (and laws regulating them), forest management legislation has extended beyond its traditional concern for the protection of natural areas and species. In many cases, it may now be thought to integrate into the holistic nature of resource management, utilising commercial timber licences to achieve social welfare objectives and environmental conservation goals, and to assess the impact of commercial forestry practices on other resources and species.

4.1 Meeting Social Welfare Objectives: Community Forestry

A critical connection, recognised in nearly all the legislation examined in this chapter, exists between forest resource management and the welfare of rural communities in forest and afforestation areas. Perhaps the strongest recent trend in the region mandates the use of forests in a manner that fosters sustainable community development as well as sustainable forest management. The primary mechanisms of this trend are community-based forestry programmes.

Community forestry addresses three essential goals: sustainability, equity and participation. The legislative trend toward community forests often appears to be the first step in a closer integration of forest management and conservation of forest resources with rural development and the involvement of rural communities. While the bulk of these programmes are enacted under forest mandates, a few provide similar results under other types of authority. Thus, for example, although Nepal's Buffer Zone Management Regulations were promulgated under its National Parks and Conservation Act - and not its Forest Act under which separate community forest provisions have been developed, applicable to forests in non-buffer zones, they provide a relatively complete system of community forestry to be applied in buffer zones. Their coverage is, in fact, more attendant on forestry resource utilisation issues, than on conservation, as evidenced by the fact that they are administered by the forestry administration. Similarly, India's "Tripura Resolution" provides for community forestry in the context of addressing rural poverty issues (Resolution F17 (14) For-Dev/90-91/470-30-529, in Update 1992).

Several countries in Asia and the Pacific have been leaders in the community forestry
movement, and similar programmes elsewhere in the world have studied their pioneering community forestry programmes. Following their example, Bhutan, Laos and Nepal have formalised commitments to community forestry in recent and proposed legislation.

In other countries, community forestry has progressed in spite of a virtual absence of explicit support from forest legislation. In Malaysia, for example, the National Forestry Act does not address community forestry, which is only minimally present in the National Forestry Policy. Utilising other authority, however, Malaysia has gained experience in the area with four programmes containing community forestry components (Ismail 1993: 79-84). In Mongolia, although community forestry is a recognised policy objective, the forest administration has made an affirmative choice not to seek legislative provision, instead building its community forestry programme on general governmental authority to enter into lease and contractual arrangements for resource use. It is anticipated that early experiences under this approach will form the basis for later legislation, if needed (Young 1998: 9).

Where community forestry has been codified in formal legislation, underlying policy issues may still require resolution. In particular, if community forestry is considered primarily as a means to relieve pressure on forests and forest resources, rather than a means to promote sustainable livelihood for local population, support for the programme may be sectoral and limited. Progress on these points is often greatest at provincial and local levels and in subsidiary legislation.

The most common features in recently-enacted and proposed national legislation supporting or tolerating community forestry have addressed the most intractable problem of past legislation: insecurity of land and tree tenure (discussed above), uncertainty of rights to local resources, and restrictions on land use, species, harvesting, processing, transport and marketing. Principles common to much of the recent community forest legislation in the region include the questions discussed below.

4.1.1. Resource Management and Rule-making Powers

Actual decentralisation of management decisions characterises a number of community forestry provisions. In Nepal the functions, duties and powers of users' committees in buffer zone forests include making rules governing forest access, fees and use (Buffer Zone Management Regulations 1996, art. 11). In Myanmar community-developed management plans must contain rules on forest access, use, users' group membership and penalties (Instruction 1995, art. 14(2)(d)-(f)).

These issues can be politically difficult. In particular, the provisions giving community management and rulemaking authority focus on an especially sensitive issue in many countries. Central governments in most of these countries have often harboured the suspicion that local-level forest management and autonomous community decision-making threaten the long-term sustainability of the forest resource base (Lindsay 1994).

The first generation of community forest-related laws organized efforts on the basis of local political subdivisions. Such subdivisions change and do not always reflect the actual forest use area or patterns. Thus, under some recent forest legislation users' groups are specifically separated from political subdivisions - in Nepal, for example, by a specific statement that political boundaries shall have no effect on the constitution of a users' group (Forest Regulations 1995, arts. 27(4) and 29(3)). Generally, when users' groups are congruent with
local administrative units, they have additional rulemaking powers under relevant laws. In Laos, for instance, the village committee has the power to issue rules which are not contrary to statute laws (Decree 1993, art. 9(4)). In recognition of this disparity, when users groups and local administrative structures differ, recent forest legislation has specified the rule-making powers of the users’ group (Nepal, Act 1993, arts. 41-43 and Buffer Zone Management Regulations 1996, art. 11; Myanmar, Instruction 1995, art. 14(2)(f)).

4.1.2 Secure Rights of Long-term Use

Several laws address public doubts about the long-term dependability of forest-related use rights - an issue which, given the long growing cycles of many forest species, has a major impact on community incentive to undertake long-term forest management. Myanmar, for example, sets an initial term for community forest certificates at 30 years with possibility of renewal (Instruction 1995, art. 18). Concerns about the security of community forest rights remain, however. The Myanmar Community Forest Instruction offers a comprehensive programme, and is the basis for, several ongoing projects. Even so, doubts about long-term-use rights are strong, leading to an often expressed recommendation that that Instruction be given a stronger legal position. Adoption as a Rule is likely, as is the possibility of inclusion in revisions to the Forest Law, of more direct statements regarding the strength of community forestry authority and contracts.

4.1.3 Security against Arbitrary Interference

Governmental concerns have usually focused on mechanisms to ensure that users' groups do not improperly exploit their special status; only recently has any attention been given to the reciprocal concerns of users' groups about interference by government. Nepal's Buffer Zone Management Regulations of 1996, while allowing the Warden to dissolve a users' committee that violates its approved work plan or fails to accomplish its responsibilities, also provide a procedure requiring notice to the committee, giving a set deadline for cure, and a right of appeal (art. 14). The Bhutan draft rules limit the government's right to revoke a community forestry users' group's authority. This power of revocation may be utilised only in cases of serious and continuing violations of the management plan which have gone unremedied after notice.

4.1.4 Protection against Outsiders and Non-participants

Local management can be stymied by outsider activities, particularly illegal entry and commercial competition. Bhutan addresses the first problem by making it an offence to destroy or take forest produce on community forest land (Act 1995, art. 18). It does not empower the communities to enforce this provision, which is referred to local forest officials. The Lao PDR limits the ability of outsiders to take advantage of a programme designed to address rural well-being, by restricting transfer of community forest rights to persons or entities outside the community (MOA Decision 1996, art. 5).

Exclusivity provisions address related concerns about the value of participation, recognising that there is no apparent value to the members of the users’ group if non-members can obtain similar benefits without participating or paying. In this regard, Myanmar provides that, while community forest certificate is in effect, no conflicting rights over the managed resources shall be granted to non-participants, and specifically adjures the Forest Department to assist in vigorously enforcing the law and preventing the unauthorised use of the community forest by
persons outside of the users' group and to assist in settling disputes between the users' group and outside parties. (Instruction 1995, arts. 19, 20(1) and 21 (c)-(d)).

**4.1.5 Special Exemption from some Permit Requirements**

The existence of definite and detailed community forestry programmes often means that some of the normally applicable timber harvesting and transit permits and other requirements are duplicative or even inconsistent with the objectives of the community forest creation. Many laws specifically exempt community forests from permit and transit requirements for limited amounts of wood or other forest produce taken for personal or non-commercial purposes. In the Lao PDR, tree felling and forest produce collection within village production forest for family's use is automatically authorised, although the individual must abide by village regulations and those of District Forestry Officer (Law 1996, art. 28).

Myanmar allows community forests extraction without a permit, when it is for personal use or use in non-commercial agricultural or fishery enterprise (Law 1992, arts. 17 and 23(b)(2)). No removal pass is required for non-commercial amounts of "minor forest produce (Law 1992, art. 23(b)(2)). Where a pass is required, however, a receipt from the users' group will be substituted for the removal pass when transporting the extracted timber (Instruction 1995, arts. 30-32).

In Bhutan, although a permit is required for sales of forest produce from community forest, the users' group itself is authorised to issue such permits (Proposed Rules 1997, art. 42. 1). Transit of such produce is subject to permit requirements, however, with exemptions only for non-timber forest produce and Firewood being transported by a person for his or her own uses (art. 42.3).

In Nepal, community forest users' groups may issue transit permits themselves, and each has its own registered marking stamp with which to authorise timber for transport (Forest Regulations 1995, arts. 34 and 35). In the buffer zone forests, although the intra-community transport of users'-committee forest produce is permitted without a forestry permit, permission from National Park Warden is required before any transport out of the buffer zone (Buffer Zone Management Regulations 1996, art. 22(12)).

**4.1.6 Royalty Adjustments and Reductions**

For a variety of policy reasons, royalty arrangements for community forestry are frequently quite different from those generally applicable. In some cases, the legislation provides a complete waiver for timber harvested by users’ groups in accordance with legal and plan requirements (Bhutan, Proposed Rules 1997, art. 42), while in others the waiver is limited to produce harvested for use by group members or others in the local community (Myanmar, Instruction 1995, arts. 24 and 25). In Nepal's buffer zone forests, rather unique provisions give the users' committee the power to set royalties, payment of which may entitle the purchaser to use (according to work plan) resources grown or conserved by that committee (Buffer Zone Management Regulations 1996, arts. 21 (10) and (11)).

**4.1.7 Police Powers**

The extent of the users' group's authorisation to take direct action in the support of its legal rights -is an important component of laws related to community forestry. Relevant provisions
may address the actions of outsiders, as well as those of non-complying members. In Nepal's community forests, the users' group has power to impose sanctions against its members for violations of work plan (Act 1993, art. 29). In buffer zones, however, users' committees are limited to recommending that the Warden issue stop or cure orders (Buffer Zone Management Regulations 1996, art. 18). Myanmar's provision goes farther expressing a "right and duty" of users' groups to enforce by-laws and impose penalties (Instruction 1995, art. 20(1)(b)).

4.1.8 Financial/Technical Assistance and Incentives

The creation of a users' group fund is the most common financial incentive provided under recent forest legislation. Many countries also continue to provide general incentives for commercial forestry interests, which may apply to community forest, as well. In the Philippines, incentives for industrial tree plantations include a nominal filing fee, rental payment holidays, substantially reduced forest charges and priority in obtaining credit from Government programmes (Code 1975, art. 36).

4.1.9 Regulatory Flexibility

In some instances, community forestry programmes authorise contract-based adjustment, under which the users' group can obtain special authority, or exemptions with regard to otherwise applicable administrative rules, whether generally available under permit arrangements, or negotiated on case-by-case basis. Legislation in Bhutan (Act 1995, art. 17 (d)) and Myanmar (Instruction 1995) exemplify two forms of this flexibility.

4.1.10 Other Issues of Concern

Recent community forest legislation continues to face a number of common difficulties which will require continued legislative attention. Particular concerns focus on dispute resolution issues, since the laws generally lack a specific means of resolving disputes within the users' group, between the users' group and outsiders, or between the users' group and the Government. With regard to the latter, given the contractual nature of community forest designation, it has generally been thought that contractual law will govern defaults by the users' group. However, the special nature of the rural communities involved, and the special objectives of community forest programmes suggest that strict application of contract law may not be appropriate. Hence, close attention must be given to the recourse available when community forest arrangements are broken. Current issues of concern include the designation of community forests, the balance between community and environmental objectives, and new demands on government resources.

Selecting land/forests for designation as community forests: In making, this determination, a number of factors must be considered by forest officials, whose responsibility includes determination of the balance of uses of forests throughout the region. Nepal's Forest Regulations, note the need to consider factors as diverse as the distance between forest and village, local users' wishes and local users' management capacity (art. 26). In some countries, critics claim that only the most degraded lands, unsuitable for utilisation, have been designated for community forest purposes (Talbott and Khadka 1995: 10). Some countries (e.g. Vietnam) count reforestation as one of the primary objectives of the community forestry system, which is geared towards providing communities with forest lands, some limited immediate financial incentives to reforest those lands, and/or long term interests in the forest product (Young 1998). In others, the objective of providing communities with commercial options is stymied if
only degraded lands are available to the programme.

Balancing community forest needs and ecological requirements: Fragile forest lands are sometimes identified, after designation as community forest. In some cases, such lands must be protected for reasons ranging from hydrological importance, and biodiversity protection, to unexpected forestry impacts. Security of the users' group's rights can be compromised, unless the government is obligated to provide compensation or secure equivalent rights elsewhere. This issue, although often addressed in the context of private forests, is rarely mentioned with regard to community forests. In Bhutan, the Forestry Act provides for monetary compensation or alternative land rights when the government declares private registered land as Government Reserved Forest (art. 9). No similar rights appear to apply when community-used land is taken.

Infrastructure and commitment of government resources: In the welter of attention to the benefits of community forestry programmes, relatively little attention has been given to the additional costs of the programme. While community forestry programmes are thought to decrease the need for government policing by giving the community incentives to control illegal harvesting and other activities, they can be expected to increase the need for extension services and other sorts of assistance, including legal assistance in ensuring, compliance with organizational requirements.

Other needs include provision for alternative sources of supply of forest produce or income, improvement of measures to protect community forest users' rights, integration of customary rights with community forest programmes, and specification of legally enforceable, longer-term forest tenure rights in the continuing absence of community forest land ownership.

4.2 Increasing Ecological Focus and Mandate

The earliest environmental protections and protectors were almost universally found in the forest sector. To this day the highest forestry official in many countries is titled the "Conservator" of Forests. It is therefore unsurprising to forestry officials that many conservation and environmental matters have been included within their province. Since the 1970's, however, many laws have divided responsibilities between forestry agencies (resource use) and environmental agencies (resource conservation). Recent trends show a return to a stronger expression of the ecological responsibilities of the forest sector, and its unique ability to contribute to the countries' conservation objectives.

4.2.1 Ecologically-oriented Definitions and Purposes

Recent legislation in the region almost uniformly reflects a reconsideration of the definitional elements circumscribing the actions of forestry officials. In stark contrast to colonial-era laws, definitions of "forests" and "forest resources", and "forest lands" recognise that forest governance is about more than timber harvests. In the Lao PDR, for example, "Forests' constitute the nation's precious natural resources and include plants, tree species growing in nature or grown and which existence is necessary for the environment's preservation and for humans' livelihood" (Law 1996, art. 2); and "Forest resources" include animate and inanimate resources, such as land, plants, trees, aquatic animals, wildlife and others existing in forest land (art. 3). While in Nepal, the term "forest" includes any area fully or partly covered by trees (Act 1993, art. 2(a)).

At the far end of this trend, some laws extend these terms well beyond their normal use. In
Bhutan, for example, for jurisdictional reasons, "forest" means "any land and water body, whether or not under vegetative cover" which meets certain government ownership criteria (Act 1995, art. 2).

While a few forest laws (Myanmar and Fiji) do not include definitions of "forests," the apparent trend is toward an expansive view which recognises the Forest Departments' responsibility to manage the whole matrix of forest-connected natural elements, and to co-ordinate the full range of forest uses and values. This change accords with various international objectives, including the Rio Forest Principle11.

Moreover, as the States' ownership monopoly over forest resources and lands diminishes, an objective definition of "forests" which eliminates the element of government ownership, enables governments to fulfil their domestic and international obligations to conserve and manage all types of forests regardless of underlying tenure.

Beyond this, several forest laws also specifically mandate forest administrations to promote environmentally-oriented policy objectives. In the Lao PDR, for example, the purpose of the Forestry Law is stated in the form of a charge on government to set the "fundamental principles, regulations and measures for the management, preservation and use of forest resources and forest land, promotion of the revival, afforestation and development of forest resources ... with the view of ensuring the balance of nature, of forests and forest land as the people's sources of livelihood and sustainable use, preserving water sources, preventing land erosion, preserving seeds, trees, aquatic animals and wildlife and the environment in contribution to the national socioeconomic development" (Law 1996, art. 1).

In classification of forests, greater attention and concern appears to be authorised for conservation-oriented categories, such as forests reserved for the protection of biodiversity, watershed catchment areas, and areas designated for use of local populations (fuel and food) (e.g. Myanmar, Law 1992, art. 4). This shift in policy toward more ecologically-balanced forest management, provides an explicit legal mandate for existing forestry administrations to pursue environmental and social objectives in all aspects of forest management and use, especially those not addressed in the forest legislation. In a few countries (e.g. Tonga), it represents a further move, signalling their shift away from commercial extraction focus entirely. Tongan forestry law and institutions, although continuing, to manage the remaining authorised forestry licensees and programmes, now key their efforts on reforestation and hydrological protection (Young 1996).

4.2.2 Environmental Impact Assessment and other Assessment Tools

Environmental Impact Assessment (ETA) is a tool for integrating environmental values into decision-making, which is well established in the region in policies relating to the forestry sector. Several recent trends have manifested themselves relating to the use of ETA and similar assessment tools in the forestry context.

It should be noted, however, that ETA is not commonly codified in forestry laws in the region. A few countries' forestry laws do not mention anything about ETA or other assessment requirements. In Myanmar, for example, although clear statements concerning the government's environmental/conservation policy are included in the 1992 Forest Law (art. 3 (b)), this makes no mention of ETA, nor does it specifically require any environmental component in forestry decision-making. Fiji's Forest Decree of 1992 conspicuously omits
detailed management planning provisions recommended during the legislative drafting process, which would have achieved some of the same goals as ETA (Christy and Cirelli 1992).

By contrast, some of the countries in this study mandate other, additional impact evaluation tools, enunciating special responsibilities for ongoing audit of the environmental condition of forests and surrounding areas. Where ETA provisions require the creation of all assessment prior to any development in forest areas, and mandate forestry department participation in either the creation or review of this document, some countries have -one beyond this in a number of ways.

Duplication of basic ETA requirements: One "trend" is the renunciation of the details of ETA responsibilities in forestry legislation. While the value of applying ETA principles in the forestry context is undisputed, the potential for future legislative conflict between two differently worded ETA laws (one in the forest law, and another more general provision) and other inconveniences suggest that, unless significant deviation is warranted, general ETA provisions should remain applicable, with only a general reference to such applicability in the forest law. This latter approach is exemplified by the Philippines' National Integrated Protected Areas System Act of 1992, which states specifically that all activities outside the scope of the protected area's management plan require an Environmental Compliance Certificate under the Philippine ETA system, leaving all details of this process to be enunciated under the basic ETA law (art. 12).

In many countries, however, there are significant differences in how ETA requirements are applied in the forestry sector from the general application in other areas of government decision-making. As to these differences, carefully crafted provisions coordinating the two laws are essential.

Trends in application of EIA to forestry: Many of the countries have legislated special provisions in EIA affecting government forestry projects. Although sometimes these differentiations are part of the basic EIA law, applicable to all government projects, the forestry law may contain special provisions exempting government forests in some cases or, in others, adding more intensive levels of environmental scrutiny.

In Nepal, for example, the general EIA law may not apply to government-managed forests and protected forests. Nepal's Forest Act does not contain detailed management planning provisions which would achieve the same purposes as EIA for Government forests. This government exemption may have the effect (possibly intentional) of restricting projects and other actions only by nongovernmental forest users. The Forestry Law in the Lao PDR contains a similar provision, with similar potential effect. It requires traditional users of forests and forest lands to avoid causing "damage to the forests or forest resources" and "prejudice to the interest of individuals or organizations" (Law 1996, art. 30).

In some cases, an EIA process has been extended to include a consideration of social impacts of forestry projects, which are studied in the same manner as environmental impacts. In Bhutan, for example, the person responsible for a forest project must prepare a management plan containing an assessment of the environmental and socioeconomic impact of the proposed management regime (Act 1995, art. 5(b)). This requirement applies regardless of whether the entity responsible for the project is a government official or a private or community manager. No inter-agency circulation of this information is required as a part of the plan.
process, however the Minister must approve all management plans (Act 1995, art. 5(a)).

Another component often addressed in forestry legislation is whether the creation and adoption of a management plan is a "project" for which an EIA is required. In Bhutan, the answer is a clear 'yes' (Proposed Rules 1997, Technical Regulation IIA, art. 5). Where not directly obligated to comply with actual EIA requirements, several laws mandate separate environmental scrutiny of the effects of the management plan, as a component of the planning process.

Future forest legislation in the region should ensure that environmental impact assessment and related decision-making tools apply equally to governmental and nongovernmental forest decisionmakers, minimising the extent to which they constitute a barrier to public participation in the resource management process.

Evaluating effects of ongoing projects - the "Environmental Forest Audit": One of the new trends, in the consideration of environmental impacts, is the reconsideration or updating of assessments. Both Bhutan and Nepal integrate either directly or indirectly an ongoing environmental audit requirement with definite impact on the rights of the forest user. In Bhutan, this requirement is direct. Both commercial forest users and community forest users' groups are required to submit, as a part of annual reporting and records, a detailed statement concerning the "state of the environments of the forest (Proposed Rules 1997, art. 45.3(c) and Technical Regulation IIA, art. 12).

Nepal takes a different, indirect, approach. Even where a user's group is operating under an approved forest work plan, a District Forest Officer may issue a directive ordering them to cease, within 30 days, any action under a work plan amendment which he considers likely to cause a significant adverse effect on the environment. Since the District Forest Officer, rather than the person or entity responsible for management, prepares EIAs on forest projects, his is the primary input on the subject of environmental impacts (Act 1993, art. 26(2)).

This approach to ongoing, environmental impact evaluation pervades Nepal's legislation. Of Nepal's three categories of forest users - community, leasehold and religious - the Government is required to evaluate the general impact on the environment only before handing over a leasehold forest (Forest Regulations 1995, art. 39). However, the Government has rights to "take back" any community or leasehold forest or cancel the lease, if it determines that it is being managed in a way that is likely to have a substantial adverse impact on the environment (Act 1993, arts. 27, 33 and 53; Forest Regulations 1995, art. 37). The legislation does not mention negative environmental impact as a reason for taking back a religious forest, although it may use negative environmental impact as a reason for taking back a religious buffer zone, and may restrict tree-felling in a religious forest if there is likely to be a significant adverse impact on the environment or soil erosion in a watershed area (Act, arts. 36-37; Forest Regulations, art. 50; Buffer Zone Management Regulations 1996, art. 22(3)).

V. CONCLUSION

This review has highlighted a number of areas for future forest legislation reform, including the following:
further improving the legal framework for community forest (With attention oil dispute resolution, criteria for suitability of lands, balancing potentially competing interests, finding alternative supply sources or income, improving, protection of use rights, mandating longer terms);

accommodating the coexistence of community forest rights, customary rights and government land claims;

development of legal infrastructure to support forestry markets, particularly in countries in transition to market-based economies;

continuing the process of reforming forest administrations, reorienting commercial forestry practices and opening forest management to nongovernmental actors;

integrating environmental and social values throughout the forest resource management decision-making process and ensuring that tools such as EIA do not impede this goal; and

sharing forest management and conservation funds with the local level.

Forest legislation by itself has limited effect, however, and is often not implemented effectively on the ground. No well-drafted, carefully designed, progressive forest legislation can overcome poorly-conceived forest policies implemented by Government institutions which do not have the political will to change for the future. In addition, policy and legal decisions in many sectors, especially, land tenure and economics, have direct and indirect impacts on forest legislation. If properly supported by governmental oversight, monitoring, and technical assistance, changes in the political system of a country, such as increased democratisation, can facilitate acceptance and implementation of decentralised, more autonomous local control over forest resources. Without proper governmental participation, however, local control can amount to a license to decimate marginal forests.

The legislation reviewed in this chapter reflects well the consensus that formal legal reform, while desirable in the long-term, is not always sufficient to benefit communities and to attain long-term forest sustainability. Experimentation and joint forest management activities are taking place under contracts, sometimes encouraged by legislation, but often only tolerated. Better scientific data is needed to manage and maintain forests for ecological functions and social welfare. Better training and financial resources for governmental and nongovernmental institutions can improve forest resource management and assist governmental and nongovernmental resource managers to implement forest laws and policies. Legal remedies can be strengthened while encouraging existing, use of media and nongovernmental advocacy tactics to resolve conflicts over forest use.

While some policy-makers may see entrenched interests in the law-making process impeding, the evolution of forest management decision-making, others will recognise the need for national forest legislation which redefines the regulatory and managerial role of the State in a sector which it previously monopolised. In that sense, only national forest legislation, by pulling, the State back, can facilitate private involvement in forestry, and the development of viable forest management institutions at the community level. The overall trend identified in this study toward more flexible national forest legislation, which reflects the international consensus on forests, demonstrates that significant progress has been made toward sustainable,
equitable and participatory forest resource management in the region.

LEGISLATION REVIEWED

Bhutan

- Forest and Nature Conservation Act 1995
- Proposed Forest and Nature Conservation Rules 1997 (with Technical Regulations)

China

- Forestry Law 1985
- Ordinance Concerning the Prevention and Control of Forest Diseases and Insect Pests 1989 - Provisional Measures for Forest Land Management 1993
- Measures for Handling Disputes over Property Rights for Forest Trees and Forest Land 1996.
- Management on Forest Country and Regeneration 1987
- Provisional Measures for the Management of Afforestation Funds 1972
- Interim Provisions for the Administration of the Environment in Economic Zones Open to the Outside World 1986

Cambodia

- Avant-profet de loi relative aux forests, December 1994

Fiji

- Forest Decree No. 31 of 1992

India

- Forest Act 1927
- Forest (Conservation) Act 1980 (No. 69 of 1980)
- Joint Forest Management Regulations Update 1992

Indonesia
General Explanation of the Basic Forest Law (No. 5/1967)

Lao PDR

- Forestry Law 1996 (No. 01-96; 11 October 1996)
- Ministry of Agriculture Decision No. 0054/NIAF on Customary Rights and the Use of Forest Resources (7 March 1996)
- Ministry of Agriculture Recommendations No. 0377/AF to Provincial, Municipal and Special Zone Agriculture-Forestry Services, District Agriculture-Forestry Officers on Customary Use of Forest Resources (17 April 1996)
- Prime Minister's Decree No. 102/PM on Organization/Administration of Villages (25 November 1993).

Malaysia

- National Forestry Act 1984

Mongolia

- Law of Environmental Protection 1994
- Law on Forests 1993

Myanmar

- Forest Law 1992
- Community Forestry Instruction 1995

Nepal

- Forest Act 2049 (1993)
- Forest Regulations 2051 (1995)
- Buffer Zone Management Regulations 2052 (1996)

The Philippines

- Revised Forestry Code 1975
- Executive Order No. 278 (1987) Prescribing the Interim Procedures in the Processing and Approval of Applications for the Development of Utilization of Forestlands and/or Forest Resources
- National Integrated Protected Areas System Act of 1992

Memorandum Order No. 162 (1993) Providing, Guidelines for the Disposition of Confiscated Logs, Lumber and Other Forest Produce for Public Infrastructure Projects and other Purposes

**Tonga**

- Draft Forest and Wildlife Protection and Management Act 1996 (FAO: TCP/TON/4454)

**Vanuatu**

- Forestry Act 1982 (No. 14 of 1982)
- Forestry (Orders) Order 1982 (No. 32 of 1982)

**Viet Nam**

- Forest Resources Protection and Development Law (No. 58/1991)
- Decree on Implementing the Law on Forest Protection and Development (Council of Ministers, No. 17-HDBT, 1992)
- Decision on Policies for the Use of Bare Land, Denuded Hills, Forests, Alluvial Flats and Water Bodies (Council of Ministers, No. 327/CT, 1992) (adjusted by Decision No. 556TTg, 1995)

**BIBLIOGRAPHY**


China, Ministry of Forestry. Forestry Development and Environmental Protection in China (undated).


Eggertz D. Tenure and the Sustainable Use of Forest Land in Lao PDR, Master's thesis, Faculty of Law, University of Uppsala, June 1996.


1 Some of the largest countries (China, India) disseminate central responsibilities to and through provincial and state authorities, which have a great deal of autonomy in implementing centrally mandated programmes. Given that these divisions are larger than some of the countries represented in this chapter, the devolution of central authority to state or provincial governments will not be considered "decentralization" for purposes of this chapter.

2 National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers, Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organizations, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests". (Rio Forest Principles, art. 5(a)).

3 Both of these documents were promulgated under forestry statutes which the new Forestry Law replaced in 1996. They do not appear to contradict the Forestry Law and, under Laotian legal interpretation, are still legally valid.

4 Although in some countries (e.g. Mongolia), such documents are not considered sources of law in a strict sense, they are invaluable in interpreting and guiding legal implementation. In the Philippines, a significant legislative interpretation affecting the legal rights of recent migrants and upland dwellers who occupied public forest lands was made, not in formal legislation, but in a Letter of Instruction (Gasgonia 1993: 53).

5 E.g, Gujarat's Resolution No. FCA-1090-125V(3) of 13.3.1991 requires that the village working committee have at least two women as members (India's Update 1992). Similarly, art. 5(B) of the Rio Forest Principles states that "full participation of women in all aspects of the management, conservation and sustainable development of forests should be actively promoted".

6 The term "forest farm" is used here instead of "forest plantation" because, in some countries, the word "plantation" is never used to mean "an area or estate which is under cultivation for agricultural or other use", but only used to mean "the act of planting".

7 The need for and provision of such assistance is another element of international consensus expressed in the Rio Forest Principles: "The agreed full incremental cost of achieving benefits associated with forest conservation and sustainable development requires increased international cooperation and should be equitably shared by the international community" (art. 1(b)).

8 The main relevant principles in this regard are:

Principle 2(b): "Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future Generations. These needs are for forest products and services, such as wood and wood products, water, food and fodder, medicine, fuel shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including airborne pollution, fires, pests and diseases, in order to maintain their full multiple value";
Principle 8(e): "Forest management should be integrated with management of adjacent areas so as to maintain ecological balance and sustainable productivity";

Principle 3(c): "All aspects of environmental protection and social and economic development as they relate to forests and forest lands should be integrated and comprehensive";

Principle 6(b): "National policies and programmes should take into account the relationship, where it exists, between the conservation, management and sustainable development of forests and all aspects related to the production, consumption, recycling, and/or final disposal of forest products".

9 The exact relationship between the general provisions for community forests and the provisions for buffer zone forests is not specified in the Regulations. The absence of any reference coupled with the comprehensiveness of the buffer zone provisions is telling, leading to the assumption that the general community forestry provisions are not applicable in the buffer zones.

10 Some countries in the region still have colonial-era laws, e.g. India (Forest Act of 1927) and Bangladesh (Forest Act of 1927).

11 Article 8 recognizes a need “to maintain and increase forest cover ... towards the greening of the world. All countries, notably developed countries, should take positive and transparent actions towards reforestation, afforestation and forest conservation ... [which] should include the protection of ecologically viable representative or unique examples of forests, including primary/old-growth forests and other unique and valued forests of national, cultural, spiritual, historical and religious importance”.

12 E.g, article 8(b) of the Rio Forest Principles states: "National policies should ensure that environmental impact assessments should be carried out where actions are likely to have significant adverse impacts on important forest resources and where such actions are subject to a decision of a competent national authority".