PREFACE

This note was prepared for the Mekong Basin Symposium on Forest Law Enforcement, held in Phnom Penh, Cambodia, 14-16 June 1999. It was prepared in response to the given agenda of the Symposium as quoted as follows: "overview of case studies and research conducted around the world to broaden participants knowledge of potential reference material and Sources of information that can be utilized when developing strategies to incorporate law enforcement into resource management programmes".

Although FAO has carried out studies on trends in forestry law in several countries, information concerning cases on law enforcement in forestry available in FAO is very limited. Thus, only general cases of law could be presented in this note, and it will provide information with emphasis on the importance of law in the process of developing forest resources management programmes.

In fact, forest resource management programme is part of strategic planning and it covers a wide range of activities, including: resource allocation, forest management, utilization, conservation, incentives, royalties or stumpage levels, taxes and other fees, product standards and grading rules, involvement of partners etc. Nowadays, forest resource management could cover timber, non-timber forest products, and services, including water, wildlife, ecology, and tourism.

Therefore, this note will provide general information concerning cases of forest resource management programme and planning and law as component of the forest resource management process.

This note is largely based on information found in various FAO documents on forest and forestry and related matters. As the information provided in this note is brief and to avoid miss-interpretation, it is not advisable to use this note as a reference.

Bangkok, June 1999

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I. INTRODUCTION

M.T. Cirelli, 1993, in his article entitled: "Forestry legislation revision and the role of international assistance", stated that the need for a revision of existing forestry legislation may arise for a number of reasons, including the emergence of a new development pattern.

In the forestry sector development, due to its nature, the concept and modalities of the forest resource management programme have been in use since the 17th century. A number of issues questioning the strategic planning concept and modalities have been raised, including its top down, narrow process, and the lack of partners. In addition, due to today’s global economy, which is too dynamic, too complex, and too unpredictable, a number of forest resource management models and concepts have been introduced.

To have a shared understanding of the terms used in this note, particularly concerning strategy, C. Chandrasekharan (1999) introduced the term as follows: "Strategies, when used in relation to the policy of a sector, are measures/logistics/programmes to achieve policy objectives. In this regard, they link the institutional, technical and other aspects/activities of the sector. They are the operational counterparts of principles enshrined in policies; and the arrangements to get the policy implemented at various successive levels".

It was not intended for this note to discuss several and different forest resource management models and concepts, but to present information concerning the important role of law and law enforcement within the forest resource management programme. As the follow up to UNCED, forest resource management has been intensively deliberated in the Intergovernmental Panel of Forest of the Commission on Sustainable Development (IPF/CSD).

In the FAO, 1996 document, it is spelled out that laws, rules and regulations, including their enforcement, are among the important components of the sound implementation of the forest resource management programme, which have to be specifically looked into and a key element in putting the programme into action.
In regard to forest law, a significant progress of revision has been taking place throughout the world, FAO has provided support to the revision and reformation of laws in a number of countries. However, the actual impact is difficult to assess and information concerning law enforcement is very limited. CITES and bilateral agreement on trade have significantly contributed to the enforcement of forestry law in their relevant matter.

To meet the aims of an information document for the Symposium, this note has been arranged as follows: Forest Resource Management Programmes; Policy, Laws and Law enforcement; Other Matters (CITES and Trade); and Conclusions.

II. FOREST RESOURCE MANAGEMENT PROGRAMMES

a. Principles and Process

C. Chandrasekharan (1999) stated that the earliest record of forestry planning, in the 1700's, was largely a technical exercise of estimating forest growth rates and computing allowable cuts. For a very long time, until the 1950-1960s, organized traditional forestry has mainly been concerned with production of timber for industry and other wood products; and forestry organizations were essentially concerned with sustained yield management in public forestland.

According to the analysis made by C. Chandrasekharan (1999) that in the developing countries many of the action taken in order to stimulate forestry development in the short-term failed to sustain the momentum of growth in the long-term. Short-term achievements sometimes resulted in degradation or destruction of the stock of natural capital needed in order to maintain growth in the future.

In addition, C. Chandrasekharan, 1999 stated that in most developing countries, the actual contribution of forests and trees to the economy is undervalued in the system of national accounts and political agenda. Today, it is widely recognized that policies outside the forestry sector such as macroeconomic policies, population growth, agricultural, trade or environmental policies, play an important role in forest use and conservation. Therefore, to be effective, planning for forests must support priorities in agriculture, parks and wildlife, energy, tourism, culture and education, industry and trade, and an emphasis on the contribution to poverty alleviation and vulnerable groups.

Traditionally, forestry has relied heavily on command and control laws, regulations, and penalties. Such an approach does not correct problems but creates new ones. Free market strategies also fail because forestry produces an abundance of non-market goods, services, and values. Nowadays, national development strategies require policies that integrate forests in rural development efforts, and that balance economic and environmental needs. Forests are no longer viewed as being separate in space, narrow in political interest or isolated in their economic function. They directly affect, and are affected by, local, national, and international concerns.

To have a better understanding of the above subject matters, a matrix below, quoted from a paper written by C. Chandrasekharan (1999) presents information concerning a perspective on forests and forestry in the 1700's and 1990's.

<table>
<thead>
<tr>
<th>1700's</th>
<th>1900's</th>
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<tbody>
<tr>
<td>Management aims to produce commodities</td>
<td>Management aims to adapt to changing circumstances and preserve future options</td>
</tr>
<tr>
<td>Management seeks to sustain harvest</td>
<td>Management seeks to sustain the holistic status and health of the forest as a complex ecosystem</td>
</tr>
<tr>
<td>Property owners do as they like with their forests and land</td>
<td>Authorities impose increasing restrictions on property rights in the interest of serving the public good</td>
</tr>
<tr>
<td>Foresters have faith in the premise of science and technology to rationalize forestry practices</td>
<td>Foresters apply science and technology; but, it is questionable whether they rationalize forestry practices</td>
</tr>
<tr>
<td>The forester is an expert and a decision maker</td>
<td>The public is the decision maker acting</td>
</tr>
</tbody>
</table>
Thus, there has been an evolution in the system of forest resource management, covering concepts, scope, principles, setting of objectives, outlook, strategic consideration, players, and the process involved. In line with this, FAO in 1996, in collaboration and consultation with partners, published a document entitled: National Forest Programmes (NFP) Basic Principles and Operational Guidelines. The Principles were adopted by the Fourth Meeting of the Intergovernmental Panel on Forest of the Commission on Sustainable Development of the United Nations (IPF/CSD) in 1997.

According to the FAO, 1996 document, laws, regulations, and rules are an important component during the forest programme process. Changes of these aspects are needed for a smooth forest programme implementation, including changes in laws, rules and regulations concerning resource allocation, forest management, utilization, conservation, incentives, royalties or stumpage levels, taxes and other fees, product standards and grading rules.

To illustrate this a flow chart is presented as Annex I showing the role of laws, regulation and rules within the forest programme process.

b. Status and Progress of the Forest Resource Management Programme

Countries in the Asia-Pacific Region have adopted several forest programme approaches, including: National Forestry Action Programme (NFAP), Forestry Master Plan (FMP), Biodiversity Action Plan (BAP), National Environment Action Plan (NEAP), Desertification Control Plan, Five Year Development Plan/ Programme, Integrated Area Development Plan, River Basin Development Plan, Hill and Mountain Area Development Plan.

In addition, according to the complexity and heterogeneity, size of the country, and the particular administrative system, several types of plans/programmes were adopted e.g. national (in most countries in the Region), sub-national/provincial/state (India, Pakistan, Malaysia), District (China), and physiographic (river basin in Japan).

Sustainable forest development is now the focus of forestry sector development throughout the Asia-Pacific Region. UNCED and Agenda 21 have inspired and been used as the foundation to reorient forest policies and strategies in achieving sustainable forest development.

Many countries in the Region have reoriented their forest management approaches towards a wider involvement of local communities by adopting several approaches such as: joint forest management, social forestry, community forestry, leasehold forestry, forest land allocation and utilization by farmers, community-based forest management, social benefit-oriented forestry. Some countries have included home gardens and trees outside forest areas in the formulation of their plans and programmes.

Regarding programme structure, it was noted that there is no such similarity of forest programme structure being developed in the Asia-Pacific Region. It reflects the fact that the issues faced by the countries in the Region are varied, many, heterogeneous, and complex.

According to an analysis made by C. Chandrasekharan (1999), some progress have been made in the areas of new forestry policies, new legislation, institutional reorganization, changing of the role of the State, decentralization of forest management responsibilities, transfer of responsibility to communities and local groups, transparency of debates and participation in the decision-making process, and coordination and harmonization of actions within coherent, holistic and intersectoral strategic framework. But, resource mobilization has been weak. Part of the reason is that financial mechanisms are still rather independent of the sectoral planning process.

It was noted that several forest management systems, laws and regulations to manage the forest resources exist in the Asia-Pacific Region, including the following samples:

- All forestlands belong to the government. The management of forests, particularly timber, could be given over to the private sector, people’s groups, NGOs etc. in the form of concessions, logging/cutting permit, contracts, leasing, etc. However, the status of some non-wood forest products in some countries is unclear, including wildlife.

- Forestlands belong to clans. The management of the forests is entirely carried out by clans with technical supervision by the Government.
• Private ownership. The management of the forests is entirely carried out by the private sector with supervision by the Government. In specific areas such as watersheds, river basins, and biodiversity conservation, the Government issues rules and regulations to be followed. In some areas the Government provides incentives in relation to harvesting and production.

• Forests have been used as community forests, cultural forests, protected areas, nature reserves, biodiversity reserves, national parks, marine parks, and other types of social and environmental forests.

III. FOREST POLICY AND LAW

a. Forest Policy

Forest policy can be considered as a system of inter-related elements, which constitute a logical and coherent chain. These elements are closely inter-linked and any omission can lead to errors in establishing objectives, strategies, plans, organization structure, and to errors in implementing such plans and programmes. The generally recognized elements of forest policies are:

• Imperatives;
• The statement of objectives;
• The strategies to achieve the objectives: short, medium and long-term;
• A body of legislation;
• Organization; and
• Development plans.

In discussing policy and legal aspects of forest management, M.R. de Montalembert and F. Smidthusen (1993) stated that it is necessary to clarify the shift from the traditional sustained yield concept to that of sustainable forest management for multiple benefits, which encompasses socioeconomic impacts, the participation of rural people, environmental benefits and ecological stability in a holistic continuity while maintaining the potential to respond to evolving demands.

According to the FAO, 1996 document, the difficulty encountered in many countries is due more to the inconsistency in or lack of implementation than the non-existence of good policies. Therefore, the enforcement of legislation and application of policy guidelines through appropriate means is a key element in putting the plan/programme into action.

In addition, in countries where external aid is necessary, launching the policy reform process can be supported by such aid. But it must be fully led by the country concerned, even when adopting new policies and legislation becomes a condition for obtaining support (either as loans or as grants) for investment in the sector.

Forest policies have been influenced by several factors, including legislation. As stated by de Montalembert and Smidthusen (1993): “Laws and regulations are thus the results of policy formulation processes as well as being the basis for implementation. Changes in the forest policies, such as putting more emphasis on sustainable forest resources development, must lead to a systematic review and, in many instances, to a considerable modification of legislation, whether it specifically addresses forests and forestry (nominal forest law) or has an indirect impact on forestry (functional forest law).”

Neil Byron (1997) stated that "Policy is what is implemented on the ground. It is not what is preserved and decorated on the shelf. There is no use in formulating a policy if it cannot be implemented". The major criticism of forest policies is in their implementation and their relevance.

b. Laws and Regulations
b.1. General

Existing forest legislation is largely of a regulatory nature. A basic assumption was that it would be sufficient to regulate the maintenance of the forest cover and prevent destructive utilization practices. This will certainly remain an important part of the standard pattern of forest laws. But, there is ample evidence that implementation of a comprehensive sustainable forest management policy can not be ensured exclusively through such measures.

The term functional forest law refers to a wide range of laws and regulations that have an indirect impact on forest conservation and development. Legislation of particular importance to sustainable development includes:

- Legislation referring to the general and specific aspects of environmental protection;
- Legislation principally concerned with renewable natural resources;
- Legislation dealing with social and economic measures for the development of rural areas;
- Legislation on nature protection

S.K. Bhargava (1996) (Senior Forest Policy Adviser, TCP/VIE/6715A) stated that legislation influences forest policy formulation and implementation in four ways, as follows:

- A policy must not be in conflict with the constitution or other fundamental laws;
- Consideration of whether and how forestry legislation should support policy implementation in a pragmatic way;
- By considering the effectiveness of the institutions involved in policy implementation, legislation could facilitate more effective functioning of institutions, and with relevant institutional reforms ensure more effective policy implementation;
- Legislation could provide a mechanism for people’s participation and management of forests.

b.2. Need for reform

M.R. Cirelli (1993) stated that the main underlying factors of the need for a revision of the existing forestry legislation are:

- The emergence of new development patterns, with the redistribution of responsibilities for resource management among central and local governments, local communities and the private sector;
- The growing concern for sustainability and increasing awareness of the interactions among interdependent activities;
- Inadequate of recognition of traditional ownership and usage rights;
- A change of the government system, for example in countries in transition toward market economies.

In addition, M.T. Cirelli (1993) stated that the process of formulation and implementation of policy and law should be considered as a single continuum rather than two-isolated stages. During forest policy formulation, legislation should be kept in mind for a number of reasons, and legislation facilitates future policy formulation or revision.

b.3. International Assistance

Over the past 20 years some 50 countries have requested assistance from FAO in developing national forestry legislation. In most cases, the assistance has led to the preparation of proposed legislative texts or amendments to existing ones.

Some countries have obtained similar assistance from other international organizations such as the United
Nations Environment Programme (UNEP), the World Bank, ADB, international NGOs such as IUCN, and bilateral donors. The rate of requests for international assistance in the revision or development of forestry legislation has been increasing since UNCED.

The actual impact of technical assistance in forestry legislation development is extremely difficult to assess. However, it was noted that even where forestry legislation appears to be satisfactory, the most serious problems remain in the implementation and the enforcement of that legislation.

The fact is that too often legislation remains a “dead letter”. Because it is either impossible to implement or it is not enforceable. Only forestry legislation that is both theoretically valid and practically viable can contribute significantly to a country’s forestry sector development.

c. FAO Study on Trends in Forestry Law, 19900

 c.1. Scope of the Study

FAO carried out studies which highlighted trends and innovations in forestry legislation, focusing primarily on legislation and legislative proposals. Initially, Latin America, North America, and Asia and the Pacific were covered and the results of the study were published in 1998. The publication for Africa and Europe will be ready in the near future. Forestry legislation in the following sixteen countries in Asia and the Pacific were analyzed: Bhutan, China, Cambodia, Fiji, India, Indonesia, Lao PDR, Malaysia, Mongolia, Myanmar, Nepal, Papua New Guinea, the Philippines, Tonga, Vanuatu, and Vietnam.

The study was carried out by Ellen Kern and Tomme Young. The study analyzed existing laws and law reform processes underway pertaining to the forestry sector, with the main focus on written legislation. Other laws dealing with issues of relevance to forests such as environmental protection, land use and agriculture, and trade and taxation are not included.

The study discussed law in relation to three major aspects as follows:

a. Decentralization, devolution, and privatization, including decentralization of forest administration, broadening private and community rights and opportunities (ownership and other long-term rights in forests, community forest rights, recognizing customary rights), and public participation:

b. New developments in forest management and administration, including forest management in countries undergoing economic transition, innovation in forestry management planning, licensing and enforcement, forestry funds and other incentives, and coordination with non-forestry legislation; and

c. Emphasizing environmental and social values in forestry, including community forestry, resource management and rule-making powers, secure rights of long-term use, security against arbitrary interference, protection against outsiders and non-participants, special exception from some permit requirements, royalty adjustments and reductions, police power, financial/technical assistance and incentives, regulatory flexibility, increasing ecological focus and mandate.

c.2. Trends

Forest law recognizes the multiple interests involved in or affected by forest management, with greater attention given to the environmental and social roles of forest resources and to their sustainable end use. In addition, law also recognizes an increased emphasis on the involvement of a wider range of public and private actors.

After UNCED, the environmental importance of forests is more and more explicitly reflected in forest laws, including requirements to take account of biodiversity concerns in forest inventories and to integrate environmental criteria into forest management plans. There is also a trend towards more explicit attention to planning in, forest legislation, and a broadening of the objectives of the planning process.

In addition, older laws are generally silent on the procedures and criteria governing the granting of forest concessions. Recent legislation tends to spell out the steps leading to a awarding them. Forest laws try to promote greater transparency and accountability in decision-making, including auction and bidding.
c.3. Conclusion of the study

The results of the analysis indicated that a significant acceleration in the revision of forest laws has taken place moving away from a regulatory approach now focusing primarily on government management and policing of forests as economic resources.

Overall, the trends in the Asia-Pacific forestry law can be considered in three categories as follows:

- 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 changes; and
- Emphasizing non-timber forest values (ecological, social) as a component to timber production uses.

For future forest legislation reform, the study concluded the following:

- Further improving the legal framework for community forest (with attention on dispute resolution, criteria for suitability of lands, balancing potential competing interests, funding 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 marketing and trade, 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.

In addition, the study also concluded that forest legislation by itself has limited effect and is often not implemented effectively on the ground. No well-drafted and 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.

Further, the study concluded that the legislation is not always sufficient to benefit communities and to attain long-term forest sustainability. Better training and financial resources can improve forest resource management and assist to implement forest laws and policies. 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 is toward more flexible national forest legislation, which demonstrates that significant progress has been made toward sustainable, equitable and participatory forest resource management in the Asia-Pacific Region.

c.4. Enforcement

Concerning enforcement, it was noted that the study discussed enforcement in relation to licensing. The study came up with the following conclusions:

- Traditional enforcement efforts are increasingly focused on those problems most likely to contribute to serious deforestation;
- The trend is to increase the severity of crimes from misdemeanors to felonies and to attempt to set the fines high enough that they constitute on real deterrent;
- Legal reforms enacted have also focused on matching punishments with the severity of the offenses;
- On suspending or revoking licenses as sanctions instead of, or in addition to, fines and imprisonment;
- On requiring compensation by the offender for the damage to public goods; and
- On requiring confiscation of illegal produce and equipment.

IV. OTHER MATTERS

a. Code of Practice for Forest Harvesting

Concern about the world’s forests and their capacity to maintain their environment values while producing timber and non-timber products in perpetuity has been manifested and enhanced by all partners and also highlighted by consumer concerns.

In the Asia-Pacific region, concern for the natural forest is increasing with much vigorous on their role, purpose, sustainable benefits and beneficiaries. There are many external factors impacting on these forests including demographic changes and changing in land use requirements. As consequences, concern has been raised over whether the demand for forest products from these forests can be met in a sustainable manner, given the increase in demand and the reduction of the forest resources.

Through their forestry and or environmental legislation and forest policies, most countries in the Asia-Pacific region have provided strong support for sustainable forest management. Efforts toward sustainable forest management were widely discussed and done. Some reviews revealed that failures in tropical forest management are mainly due to the lack of proper enterprise management.

The ability of the countries to implement sustainable forest management will be enhanced by the adoption of the Code of Forest Harvesting and complementary measures in applying the Code in the forest. The Code in the Asia-Pacific region was developed by the FAO-Asia Pacific Forestry Commission (APFC) in 1997 to provide a basis for national codes and to guide forest harvesting practices. Several countries have used the Code, to establish their national code. In some countries their code has been legally binding.

The code provides guidelines, which will allow production forests to be harvested with minimum adverse impact on the forest environment. It is designed to balance commercial considerations with protection of environment and social values. By implementing the guidelines, the benefits of harvesting to communities, industries, and to the nations are maximized.

The national code itself does not ensure ecologically sustainable forest management. However, the evidence from experienced operators who carry out effective harvest planning as specified in the plans indicates that operational control is improved and environmental impacts reduced. This often leads to reduced costs and increased profits. Therefore, the key in success of using the national code is skills and training of the operators in the field. Thus, strategy to adopt a national code of practice for forest harvesting to be legally binding within the forest resource management programme could pave the way to achieve the sustainable forest management.

b. CITES

Concern about over exploitation of flora and fauna for trade and for the survival, of species threatened with extinction was aroused several years ago. In 1973, an international treaty was drawn up known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which entered into force on July 1975. A number of countries became signatories to CITES. These countries act by banning commercial trade in an agreed list and monitoring trade in others that might become endangered.

CITES’ aims are major components of the World Conservation Strategy launched in 1980 by the United Nations Environment Programme (UNEP), the International Union for Conservation of Nature and Natural Resources (IUCN) and the World Wide Fund for Nature (WWF).

Many species are declining in numbers because of loss of habitat and increased exploitation as human populations grow. Trade has now also become a major factor in the decline as improvement in transport facilities has made it possible to ship live animals and plants and their products anywhere in the world.

CITES has established a worldwide system of controls on international trade in threatened species. Protection is provided for species in two main categories:
• The most endangered species, which are listed in Appendix I of the Convention; and

• Other species at serious risk, which are listed in Appendix II, include species which might become endangered if trade in them is not controlled and monitored.

In addition, countries may enforce even stricter control than required by CITES if they wish to give special protection to a listed species, or they may even ban trade in all their species.

Enforcement of CITES is the responsibility of member states, who are required to establish management and scientific authorities for the purpose. In most countries, customs officers are given the task of enforcing CITES regulations. Governments are also required to submit reports, including trade records, to the CITES Secretariat in Switzerland. To ensure effective enforcement, the Secretariat acts as a clearing-house for the exchange of information and liaison between the member states and with other authorities and organizations.

Many countries are strengthening their ability to control exploitation of their natural resources and are developing better legislation to enforce CITES. Trade in Appendix I species is illegal and the public should be cautious in the purchase of the species products and ensure that what they buy is accompanied by the necessary export permits.

C. Bilateral agreement/Trade

A number of countries have carried out bilateral agreements on the management of nature reserves, including trade in forest products. It was reported that Indonesia and Malaysia signed a bilateral agreement on the management of about one million ha of protection forest located in a border area of Indonesia and Sabah. By the signing of the agreement, countries can impose laws and regulations accordingly and enforcement of the agreement is the responsibility of the respective government.

Although there is no such bilateral agreement between Thailand and Myanmar, except within the umbrella of ASEAN, the Director General of the Royal Forestry Department sacked five forestry officers, due to abusing their power to help the illegal import of Myanmar timber (as quoted from the newspaper "The Nation" of Friday, 4 June 1999). This is an example of law enforcement on trade of forest products.

In addition, due to the insufficient capability of the customs institution to regulate export and import, several countries have used the service of an international institution, such as SGS, to enforce some of export and import regulations, including forest product trade.

CONCLUSIONS

1. Many countries in the Asia-Pacific Region have reoriented their forest management approaches toward a wider involvement of local communities. Home garden and trees outside forest areas have included in the formulation of their plans and programmes in some countries.

2. Legislation influences forest policy formulation and implementation; thus, legislation influences the whole process of forest resource management programmes.

3. Too often legislation remains a "dead letter". Only valid and viable forestry legislation can contribute significantly to a country's forestry sector development. Similarly, policy is what is implemented on the ground. It is not what is preserved and decorated on the shelf.

4. Some countries have obtained assistance from several international institutions in developing and revision of national forest legislation, including from FAO, UNEP, WB, ADB, IUCN, and bilateral donor. The impact is difficult to assess.

5. The important results of the FAO studies (1998) among others the following:

• Better training and financial resources can improve management and assist to implement laws and regulations;

• The trends in enforcing of licensing are to impose high fine and on suspending or revoking licenses, and on confiscation of illegal produce and equipment.
6. CITES, bilateral agreement on trade, and border area cooperation have had significant role to law enforcement toward sustainable forest management.

7. Some countries in the Asia-Pacific Region have adopted their code of practice for forest harvesting toward sustainable forest management. The evidence shows that by implementing the code, the environmental impacts of forest harvesting were reduced.

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