

Community Forests as Intangible Cultural Heritage and the Community Forest Act of 2019

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ABSTRACT—A community forest is a form of intangible heritage, created by a particular process of interaction between humans and nature. In Thailand, there are over 12,000 areas that have been created as community forests, and in total they cover more than 7.6 million rai (approximately 1.2 million hectares).¹ The administration and governance of these areas has been the subject of conflict between the state and communities. A bill on the management of community forests was the first legislation under a new provision enabling the public to propose legislation to parliament. The bill went through repeated cycles of redrafting, and was finally passed in 2019. Communities have expressed dismay at the provisions of this legislation. At the root of this dispute are disagreements both over the rights to land and over the qualifications for managing such intangible heritage. In brief, the state claims rights of ownership and control over the land on grounds of historical precedent and its responsibility to protect areas designated as forest, while communities claim rights of ownership on management on grounds of their role in the creation of this intangible heritage.

This article examines community forests as intangible cultural heritage and the conflict over the issues of ownership and management. The article is divided into three parts. The first part explains the creation of this form of intangible heritage through a case study of Ban Thung-yao in Lamphun Province. The community forest here has a history stretching back over a century. The creation of this intangible heritage was the result of the community's efforts to create structures and rules for the management of natural resources over many decades. The community leaders were actively involved in the initial attempt to propose legislation and in the subsequent struggles, which resulted in the Community Forest Act of 2019. The second part briefly recaps the history of forest governance in Thailand, focusing on the period of commercialization in the 1970s and 1980s which formed the immediate backdrop to the movement for community forest legislation. This part displays the obstacles of using indigenous knowledge for natural resources protection. The third part summarizes the 28-year struggle over the legislation, examines the provisions of the 2019 Act, and sketches popular reaction. The conclusion reflects on the difference between community forests viewed as intangible heritage and forests viewed as a form of territory or nature, one of the resources of the state.

¹ “Khomun kan anumat khrongkan pa chumchon” [Database of community forests project approval], Department of Forestry, <https://www.forest.go.th/community-extension/2017/02/02/>, accessed 3 March 2020.

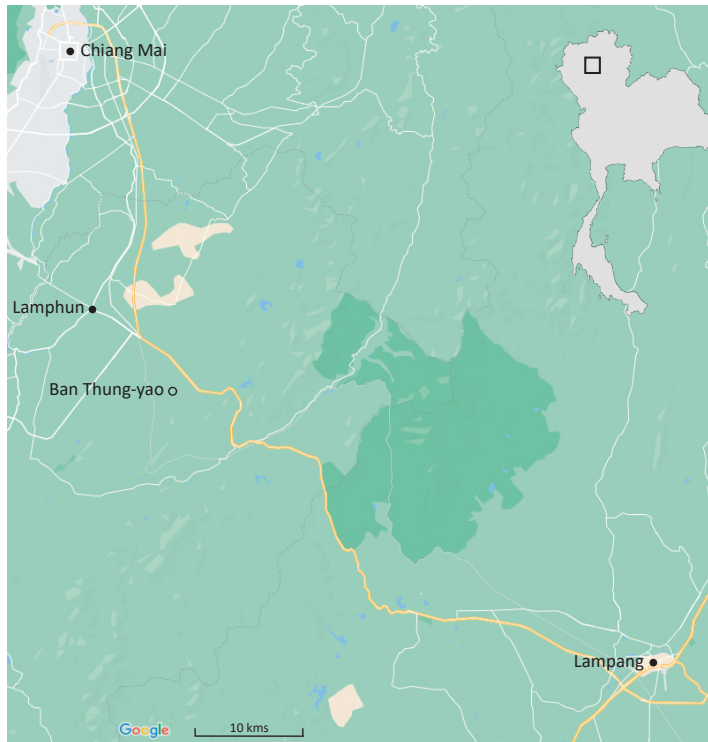


Figure 1. Location of Ban Thung-yao.

Ban Thung-yao community forest: creation of intangible cultural heritage

Forest management as intangible cultural heritage

Intangible cultural heritage as defined by the United Nations Educational, Scientific and Cultural Organization (UNESCO) includes oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts.² The residents of Ban Thung-yao village in Lamphun Province have used all of these practices to protect their community forest. Animistic beliefs, Buddhism, and traditions directly control people's behavior relating to the forest. The well-preserved forest provides various products which are the pride and joy of villagers in their daily life. The traditions have unified the community and led to collaboration on other useful matters.

History of the community and wisdom of forest management

Ban Thung-yao (บ้านทุ่งยาว) is a Yong community in Amphoe Muang, Tambon Sri Buaban, Lamphun Province and The Community Forest of Ban Thung-yao is located in the southwest border, outside of Mae Takhrui National Park which was officially announced in 2017. The Yong people in Thailand once lived in Yong Town

² UNESCO, Convention for the Safeguarding of Intangible Cultural Heritage, <https://ich.unesco.org/en/convention>, accessed 28 March 2022.

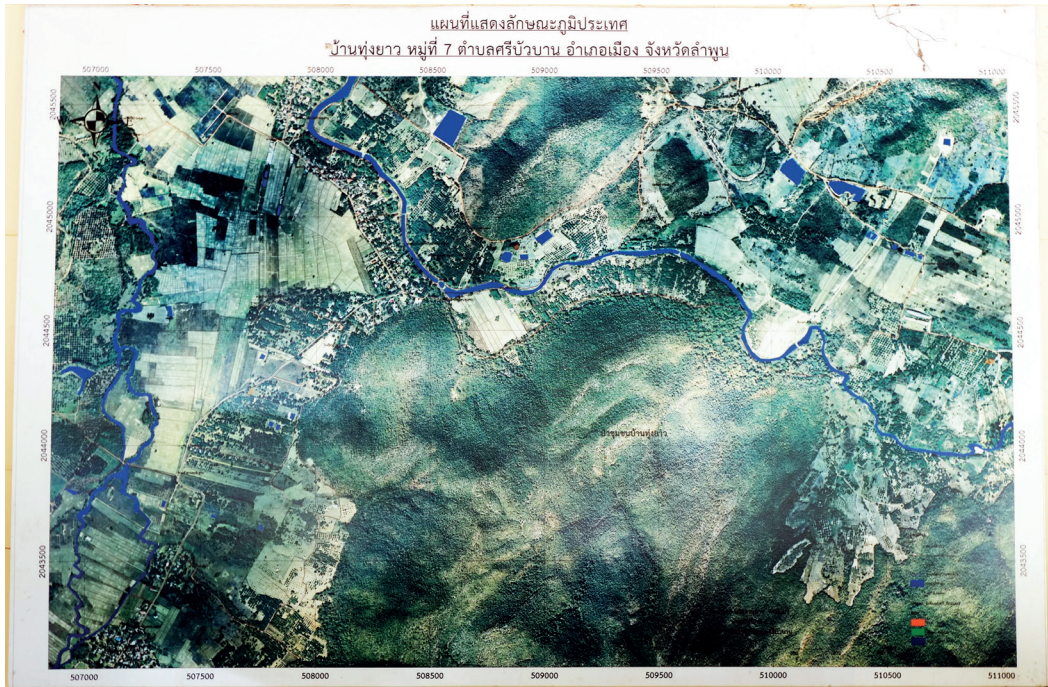


Figure 2. Topographical map of Ban Thung-yao Community Forest in 1997 from Google Earth (Courtesy © Ban Thung-yao community).

in the Shan State of Myanmar. The largest influx of Yong to northern Thailand occurred in 1805.³ In 1915, six Yong families left Sankayom village in Pasak Sub-District in Lamphun Province because of a drought, and moved three kilometers to found Ban Thung-yao in a location beside the Sarn River and surrounded by mountains with mixed forest including stands of teak. Later more people followed the pioneers. In 1923, the first headman led the villagers to develop a waterway and bamboo dike system to bring water from the river to the rice fields. At that time, they found a natural spring in the forest. The headman declared the area around the spring to be protected as a sacred forest (*pa nam cham*) covering 9.6 hectares (60 *rai*), and another 384 hectares (2,400 *rai*) as steep forest (*pa lai doi*) and creek forest (*pa rim huai*) where villagers could gather forest products and timber for household usage, subject to certain restrictions. Later the sacred forest was expanded to around 400 hectares (2,500 *rai*). A dike committee was established to maintain the bamboo dikes.⁴

Defining a sacred forest is a common culture of ethnic people in the north and northeast of Thailand. Yong people practice Buddhism, but also honor the spirits of the land, the ancestral spirits of their community, and many other spirits residing in their surroundings.⁵ They divide the forest into zones according to the local wisdom on forestry and geography with the aim of protecting the watershed and defining the

³ Paul Hattaway, *Peoples of the Buddhist World* (Carlisle: Piquant Editions, 2004), 350.

⁴ Lakkhana Phopromyen, "Sitthi chumchon nai kanchatkan sapphayakon thammachat: pa chumchon ban thung yao" [Community rights for natural resources management: Ban Thung-yao community forest], 2011, 3-19, http://k-rc.net/imageupload/23902/C_Tongyouw.pdf, accessed 30 July 2017.

⁵ Hattaway, *Peoples of the Buddhist World*, 350.

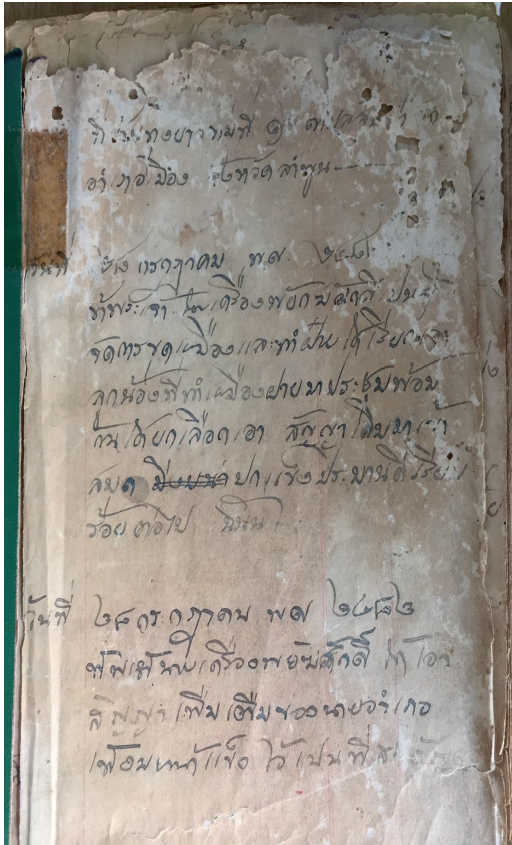


Figure 3. Community agreement on developing the irrigation system written in 1939 by the village headman (Courtesy © Ban Thung-yao community).

useable forest. In the past, community forests were called *pa na mu*.

Meaning “shared forest” or “communal forest”, *pa na mu* has been a traditional form of using and protecting forest in many communities in northern Thailand for over 100 years. Communities establish their own rules for forest use, share the responsibilities to protect and maintain the forest, and manage the forest according to their traditional way of life. This traditional management helped sustain the forest fertility and preserve the forest as a nutritional source for communities over generations.⁶ *Pa na mu* is a form of natural resources management that is based on the community’s shared ownership system, and on the principle of “users’ rights”, which are diverse and complex. Rights and rules are set up by the group of users and can be adjusted according to the area, resources, and seasonal calendar. For example, in the season for paddy farming, the rice in the fields is owned by the grower; small animals that live in the fields and

vegetables that grow along the edges are counted as shared resources; fruit from trees in the communal area belongs to whomever cultivates the trees, but honey from beehives under the trees or mushrooms found there are shared resources.⁷

At Ban Thung-yao in 1953, the headman’s rules and restrictions were written down and agreed among the villagers in order to prevent misuse. This initial agreement stated that: cutting down trees in the sacred forest is prohibited; cutting down trees outside the sacred forest will be allowed only for common village use, or for poor villagers, or for those establishing a new family, in which case a new family is allowed to cut only nine softwood trees in a non-sacred forest to build a temporary house, the size of the trees to be cut will be determined by the village committee, and teak trees are never allowed to be cut; if the couple divorce, the logs must be returned to the village committee for common village use; hunting animals and taking away herbs is prohibited; lastly, all forest area is the heritage of all Ban Thung-yao villagers. To protect against wildfires,

⁶ Chalardchai Ramitanon, Anan Ganjanapan, and Santhita Ganjanapan, “Pa chumchon nai prathet thai: naeothang kan phatthana lem song” [Community forest in Thailand: development trends, volume 2], (Bangkok: Local Community Development Foundation, 1993), 60-62.

⁷ Yos Santasombat, “Niwet withaya chattiphon sapphayakon chiwaphap lae sithi chumchon” [Ethnic ecology, biological resources and community rights], (Bangkok: Biodiversity Research and Training Program, 2004), 24.



Figure 4. “Rules and regulations for conserving the forest of Ban Thung-yao... Regulations for making use”, at the community learning center at the entrance of the sacred forest, 2017 (Photo: Jarunee Khongswadi).

one rule specifies that early seasonal burning is permitted only from 1 December to 15 March. The village headman explained that this rule reflects local understanding of the forest conditions in each season, and of the impact of fire on the trees. In Ban Thung-yao, the ashes from burning are steeped in stream water then scattered on the rice fields as fertilizer. This first agreement was revised frequently to conform with the ever-changing social situation of the village.⁸

In Ban Thung-yao village, no one is allowed to live inside the forest. The residences of villagers and the forest are therefore clearly separated.

Belief and tradition

Animism plays an important role in building a respectful approach to using local natural resources. Legends are passed down about the misfortune that befell those who did not respect forest guardian spirits. For example, a villager died in torment after he killed a snake that looks after valuable treasure in a cave in the forest; when a movie was being filmed in the forest, the camera did not work until the director paid respect to the forest guardian spirits and asked for permission to work there; a new headman suffered a headache but the doctor could not identify the cause, and the symptom remained until a senior lady told him to promise to the forest guardian spirit that he would take good care of the forest as their ancestors had done in the past. These stories were told to the author by a youth who took the author to pay respect to the guardian spirit at a shrine by the entrance to the community forest. These and other stories have been passed down from generation to generation, reinforcing respect and awe for forest guardian spirits.

The guardian spirits of the forest and dikes (*pi fai pi khun nam*) are worshipped on the ninth day of the waxing moon in the ninth month of the northern Thai calendar (at the beginning of the rainy season). This is the most important ceremony of the year. All villagers need to participate to express gratitude to the spirits who provide water to the rice fields and food in the forest. Although bamboo dikes have today been replaced by concrete

⁸ Lakkhana, “Sithi chumchon nai kanchatkan sapphayakon thammachat,” 3-19.



Figure 5. Worshipping the forest and dike guardian spirits in Ban Thung-yao Community Forest (Courtesy © Ban Thung-yao community).

dikes and there is no longer need to do annual maintenance, the villagers still perform the same ceremony. Monks, elderly people, housewives, and children all have roles in the ceremony. Village youth know the order and elements of the ceremony, and express their wish to carry on this tradition in the future.

In 2015, the villagers also celebrated the centenary of the founding of Ban Thung-yao village by reviving traditional Yong dances, researching traditional Yong costumes, composing new songs, and staging a dramatic enactment of the history of the village and the bravery of their previous headmen and ancestors who had protected their community forest many times in the past century. The village published 5,000 copies of a history of the village and distributed them at the event.

The community took the opportunity to announce a manifesto on their protection of the community forest: 1. Community Forest lands under the protection of all laws will be managed based on local tradition according to the ancestors' will. 2. Developing a community forest learning network will increase the number of community forests that are consistent with the local cultural landscape. 3. Villagers will cooperate with local networks, academics, governmental agencies, and civil society to develop knowledge on community forest management. 4. Villagers will integrate community forest with other issues that lead to sustainable community development and a sustainable agricultural system. 5. The Community Forest Network will cooperate with the private sector to reduce global warming in line with the government's commitment to the Paris Agreement. 6. "Community rights", the *sit na mu* of Lanna custom, should be protected in the new constitution.

Consuming forest products and local plants

The villagers take great pride in the traditional lifestyle of their village. They enjoy talking about seasonal mushrooms, indigenous plants, insects, and other small animals that can be found in the forest, in the rice fields, in the river and even in front of their



Figures 6, 7. The revival of traditional Yong dance on the occasion of celebrating the 100th Anniversary of the founding of Ban Thung-yao in 2015 (Courtesy © Ban Thung-yao community).

own or neighbors' houses. They enjoy explaining how to collect and cook them. Without local wisdom and skill, collecting forest products such as beehives and red ants' eggs is not easy. The knowledge is transmitted within the family when children accompany their parents to the forest. Parents train children to eat forest ingredients from the time they

are young. On some occasions, children learn about the natural resources in the forest from *pho luang* or the village headman who conducts a walking trip up the mountain, and they learn farming techniques from elders at the village school in rhythm with the seasonal working calendar.

Senior ladies in Ban Thung-yao insist that their traditional way of consumption is not only good for health but helps to conserve local vegetables and plants. They founded an unofficial working group to promote growing local plants, such as lemongrass, galangal, *gymnema inodorum* (Lour.) decne (*pak chiangda*), and *bauhinia purpurea* linn. (*pak siew*) on the fences. They enjoy sharing vegetables among neighbors.

Leadership and vision

Sustaining the community's culture and tradition depends highly on the village leader and senior people. Headmen in the north of Thailand have long been called *pho luang*, "great father," a very respectful term of address. Those who acquire this position are honored with this title even after their retirement. They are expected to behave well and be respectable persons for the rest of their life. There is also a female version of the title, *mae luang*.

Mae luang Pakee Wannasak, a strong and respected female leader who has fought to conserve a traditional way of living in harmony with the forest many times during her life time, said:

Although the lands of the community forests are under the care of the National Forest, the trees are villagers' heritage that our ancestors have protected. We respect the nature and guardian spirits dwelling in our sacred forest. We continue our traditional practices like our ancestors have done before.⁹

The vision of previous headmen, namely *Pho Luang* Jarun Khasak, *Mae Luang* Pakee Wannasak, and the current headman, *Pho Luang* Sub-Anan Wannasak presented to the public in the same way, although at different times. They see that being custodians of a community forest is their heritage from their ancestors, not for wages and at someone else's command. It is the reason why Ban Thung-yao did not register their community forest with the Office of Royal Forest Department after 1999, although they were eligible.

State policies

The village leaders of Ban Thung-yao pointed out that the main obstacle to 'community forest protection' in general was the uncertain political situation. Policies change as governments change. It prolongs the process of new law enactments. Some new policies threatened indigenous people directly and indirectly, such as in 2014, the military government announced the *forest reclamation order*, which caused hundreds

⁹ Anuwong Saetang, "Nang phakhi wannasak mae khong khon ban thung yao" [Mrs Pakee Wannasak, Mother of Ban Thung-yao], 10th Green Globe Awards, 2008, <http://pttinternet.pttplc.com/greenglobe/2551/personal-08.html>, accessed 28 March 2022.

of people in Chaiyaphum being charged and evicted. The recent policy in 2020, to get rid of illegal resorts in the forest reserves of Phu Tab Berk, has had consequences for indigenous people and minority groups who have lived in the forest for decades because the people who implement the policy can refer to this order with regard to indigenous people who have no evidence of their own land rights.



Figure 8. Pho-Luang Sub-Anan Wannasak giving a speech in the celebration of the 100th anniversary of the founding of Ban Thung-yao in 2015 (Courtesy © Ban Thung-yao community).

In the smaller picture, government agricultural policies are sometimes misguided, such as promoting and providing seeds for commercial cash crops, such as broccoli, cabbage, and cauliflower, which require the application of insecticide, unlike local plants. The senior lady who is head of the working group on promoting local plants wishes to see the state authorities understand the value of local resources, and promote a sustainable way of life, become more open-minded, and lastly listen to how local wisdom and experience can help in forest management, protection, as well as in the case of early burning which is local wisdom for fire management.

Recognition

The success of community forest management in Ban Thung-yao has brought academics, official agencies, NGOs, and private businesses to learn from the village. The village received support from the private sector in many ways that improve the quality of life, such as the donation of pipes to deliver biogas as fuel from pig manure to every house in the village.

In 1977, Ban Thung-yao was designated an outstanding wildlife conservation by the Ministry of Agriculture and Cooperatives. It became a learning center for those who have an interest in community forest management, both domestic and international, including state agencies. The headman is proud of the community's indigenous knowledge and the role of community leaders as the guardians of the forest.

However, Ban Thung-yao is a part of Thailand, and thus is subject to ideological and political conflict over forest management at the national level.

Obstacles to community forest protection and the continuity of traditional ways of life

Land rights

Thailand's emergence as a nation state from the late 19th century brought changes to state policy, which gradually removed local power over land and natural resources. Western concepts of law were introduced as a tool for legitimating central authority over areas designated as "forest." The Royal Forest Department was founded in 1896 to manage forests according to the German forestry model that promote stands of a single species of a similar age to secure a long-term supply of timber for the state.¹⁰ Under this type of management, the biological diversity of the tropical forest was destroyed. A string of legislation over the following century transferred ownership of forest resources to the central state, provided for private sector ownership of rural lands, limited local community access to the forest, and in many cases physically removed them from their land.¹¹

The Center for People and Forests (RECOFTC), an international NGO, reported that there are over 10,000 community forests throughout Thailand. Many thousands of these community forests were already in existence prior to the 1961 National Park Law, and the 1992 Wildlife Conservation and Protection Act.¹²

The concept of *pa na mu* was accepted by the state until the enactment of the 1941 Forest Act, the 1954 Land Code, and the 1964 National Reserved Forest Act. *Pa na mu* did not fit into the category of private property, the ownership of communal forests was claimed by the state. However the government allows communities that can prove they were already living in the forest before the enactment of the National Reserved Forest Act to remain there, although they will never have full rights on that land.

From the 1960s to the 1980s, the state heavily promoted the planting of commercial crops, especially corn and cassava, in upland areas by issuing title deeds for land in areas previously reserved as forest. Many people complied with the state policy, adapted their way of life, and cultivated commercial plants in the forest. But people in many communities resisted occupying the watershed forests. Examples are Ban Nam Khrai village of the Thai Lue people in Tha Wang Pha and Doi Phu Kha in Nan. However, the forest area dramatically decreased, possibly resulting in more droughts over the long term.¹³

¹⁰ Ann Danaiya Usher, *Thai Forestry: A Critical History* (Chiang Mai: Silkworm Books, 2009), 37-43.

¹¹ Sanae Chamarik and Yos Santasombat, *Pa chumchon nai prathet thai naeothang kan phatthana lem nueng* [Community forest in Thailand: Development direction, volume 1], (Bangkok: Local Community Development Foundation, 1993), 110-113.

¹² RECOFTC, "Community Forest in Thailand", <https://archive.recoftc.org/basic-page/community-forestry-thailand>, accessed 28 March 2022.

¹³ Chalardchai, Anan, and Santhita, "Pa chumchon nai prathet Thai," 42-45.

State policy in the years 1985 to 1994 supported the private sector developing degraded forests areas for commercial use while controlling and restricting the access to forests by local communities on grounds of conservation. Investors were permitted or encouraged to develop eucalyptus plantations and resorts on degraded forest land,¹⁴ while at the same time several marginal communities were threatened, arrested, and forced to abandon their agricultural land, including the Karen in Doi Suthep National Park, the Hmong in Doi Inthanon National Park, and the Mien in Doi Luang National Park. This aggression was legitimated by accusing hill tribe peoples of practicing shifting cultivation, causing forest fires, and growing opium.¹⁵

Parts of the Ban Thung-yao community forest came within the scope of the Forest Act of 1941 and the National Reserved Forest Act of 1964. There was no resistance by local people because at that time the boundary of the community forest was unclear. Moreover, under these two acts villagers could still access the forest and take out forest products because they could prove the village existed prior to the legislation. However in 1987, the Royal Forestry Department designated 800 hectares of the Ban Thung-yao community forest, including the watershed, as a forest park (*wanna uthayan*) which meant that any use of this area by the villagers was absolutely prohibited. The villagers protested against this order until it was rescinded, claiming back the rights of indigenous people to live in harmony with their forest environment.¹⁶

In the big picture, the commercial plantations, concessions, and other exploitation of forest resources degraded the ecosystem and the fertile forests. Local wisdom was ignored by the state authorities and high-ranking officials. There was a clash between state-enforced law and the customary rules of communities. Using law, the state succeeded in taking away rights and land from many ethnic groups.¹⁷ The failure of forest management was evident from the decline in the forest area from 53 percent of total area in 1961, to 28 percent in 1988,¹⁸ and possibly lower according to unofficial estimates. In the years 1985–1988, there were numerous protests against the government’s land policy and against the concessions for commercial exploitation in many provinces including Chiang Rai, Chiang Mai, Nan, Lamphun, Lampang, Uthai Thani, Rayong, Surat Thani, Songkhla, Nakhon Ratchasima, and Loei.

As a result of the pressure from civil society, a ministerial decree was enacted

¹⁴ Chalardchai, Anan, and Santhita, “Pa chumchon nai prathet Thai,” 45-48.

¹⁵ Pinkeaw Laungaramsri, “Niwetwiththaya phuenban: kan to su khong khon chai khop phuea sang phuenthi thang sangkhom khong khon kap pa” [Folk ecology: The struggle of marginalized people on developing a social space of people and forests], in *Khvamru kap kanmueang rueang sapphayakon* [Knowledge and politics of natural resources] (Bangkok: Princess Maha Chakri Sirindhorn Anthropology Centre, 2005), 9-42.

¹⁶ Lakkhana, “Sitthi chumchon nai kanchatkan sapphayakon thammacha.”

¹⁷ Achara Rakyuttitham, “Phonlawat khong khwam ru thongthin kap thang luek nai kan jatkan sapphayakon bon phuenthi sung: korani sueksa chumchon mong ban mae sa mai amphoe mae rim jangwat chiang mai” [Dynamics of local knowledge on choices in highland resource management: case study of the Hmong village Ban Mae Sa Mai in Amphoe Mae Rim, Chiang Mai], in *Khvamru kap kanmueang rueang sapphayakon* [Knowledge and politics of natural resources] (Bangkok: Princess Maha Chakri Sirindhorn Anthropology Centre, 2005), 48-56.

¹⁸ Chalardchai, Anan, and Santhita, “Pa chumchon nai prathet Thai,” 135.

in January 1989 to terminate all forest logging concessions.¹⁹ At the same time, scholars, social activists, and villagers promoted the concept of “community forest” as a means to resolve the conflict over land rights and forest protection.²⁰ Ban Thung-yao was one of the communities that took the lead in promoting a Community Forest Bill. It hosted a meeting for the Northern Community Forest Network in January 1999 with support from thirty NGOs, local groups, and governmental organizations. At that meeting, the lessons learned from over 400 community forests were shared and published as a summary.

Forest conservation in the Community Forest Act

A Community Forestry Act was drafted in 1993 and proposed to the parliament in 1999 with 50,000 names of voters—the first “people’s bill” under provisions introduced in the 1997 constitution.

RECOFTC summarized the essence of the 1993 Bill as follows: 1. the state shall accept and respect indigenous community forests no matter where they are located, since they existed before the enforcement of any environmental laws, and the state shall respect their wisdom and custom in forest management; 2. where traditional customs have declined, the state shall accept that the community has rights to create their own rules and regulations for forest management and utilization; 3. community rights must not be violated by the state; 4. the state shall accept and certify a legal status of the local community forest committees; 5. the state shall support community forests by facilitating them to achieve their mission in forest management and protection.²¹

Brief account of the struggle, 1991-2019

The bill was snared in controversy over the coexistence of people and forests. When the draft was proposed to the Cabinet in 1996, four environmentalist organizations objected to having community forests in the preservation zones and objected to allowing communities to make use of natural resources in certain zones. The same arguments were raised again in 2002, 2004, and 2007. In 2007, after the Community Forests Network of Four Regions protested that the government blocked people’s participation in the process of drafting the bill, the parliament again agreed to consider a people’s draft. However, the parliament subsequently amended the bill to state that community forests would be allowed in the conservation zone only if the community could prove that it had settled in the area before the declaration of the preservation zone by the National Park Act of 1961. The Community Forests

¹⁹ Council of State, The Termination of Forest Concession Decree, <https://www.krisdika.go.th/librarian/getfile?sysid=300842&ext=htm>, accessed 28 March 2022.

²⁰ Krissada Boonchai, *Kan murueang pa mai thai yuk lang sampathan* [Politics of Thai forestry after the concession period] (Bangkok: Life and Nature Rehabilitation Foundation, 2005), 237-280.

²¹ Krissada Boonchai and Ravi Thavorn, “Samsip pi khabuankan pa chumchon botrian læ thitthang kan khaphkluan” [30 years of the community forest movement: lessons and directions for moving forward], (Bangkok: RECOFTC, 2019), <https://www.recoftc.org/sites/default/files/public/publications/resources/recoftc-0000354-0001-th.pdf>, accessed 14 March 2020.

Network of Four Regions objected that the revised version deviated from the original draft.²²

In 2015, Sorasak Sanohpornprai, a representative of the Northern Community Forests Network, addressed the parliamentary committee on forest issues, explaining that civil society had put a lot of effort into empowering people to participate in natural resources management for over twenty years, and had kept on trying to present the people's version of the bill, but without success. Sorasak continued:

People living in the forest can be responsible. In eight provinces in the North, there are over 3,000 communities settled in the preservation zones and making a livelihood in their surroundings, and over 8,000 communities settled outside the conservation forest, but making a livelihood inside the conservation zones. All of them have systems for managing the forest sustainably. In some areas, they zone the forest into utilization areas, protected areas, and sacred areas, and impose temporary restrictions on sourcing forest products. All of this is agreed among the villagers. And there are community forest areas that the villages protect for the long term. In Chiang Mai in 1954 forest cover was 47 percent ... but now that people are cooperating in conserving the forest and agreeing on rules the forest has increased to 60 percent, showing that villagers have the potential to manage the forest well.²³

Main provisions of the 2019 Act

In 2019 the parliament appointed by the 2014 coup government finally passed the Community Forest Act after almost three decades of repeated revisions and fractious debate. The length of time between the original draft and the enactment is an indication of the intensity of conflict over the issue of people living in forests. The Act as passed in 2019 differed considerably from the original people's draft.

Section 4 of the 2019 Act defines "community forest" as

forest outside the conservation zone or other state areas outside the conservation zone, which is approved to be established as community forests, operated by communities together with the state to conserve, rehabilitate, manage, maintain, and utilize natural resources sustainably and equivalent according to this Act.

The Act allows community forests only outside preservation areas. It does not recognize or respect the indigenous community forests, where the communities

²² Chaipong Samnieng, "Kotmai thi yae mai mi sia di kwa: pho. ro. bo. pa chumchon 2562 amnat khong prachachon rue wathakam amphrang khong rat" [Better not having a bad law, community forest act 2019: people power or the concealed discourses of the state], *Prachathai*, <https://prachatai.com/journal/2019/12/85449>, accessed 28 March 2022.

²³ "Phak prachachon ruam thok praden kotmai pa chumchon won rattaban hai sit chaoban mi suan wangphaen rak pa yang yangyuen" [People discussed community forest law requesting the government to grant rights to villagers to participate in sustainable forest conservation plans], *Transbordernews*, <https://transbordernews.in.th/home/?p=8821>, accessed 28 March 2022.

have applied their knowledge of forest management passed down from generation to generation. The Act deploys concepts of location and boundary, rather than respecting indigenous wisdom in forest management.

However, section 103 allows community forests inside preservation zones as long as they can prove their early origin:

In the case that community forests under sections 99 and 100 have existed in forest areas or other state areas before the date of conservation zone declaration under the National Park Act or the Wildlife Preservation and Protection Act, those community forests shall be legitimated as a community forest under this Act and shall not be subjected to the National Park Act or the Wildlife Preservation and Protection Act, unless otherwise provided by this Act.²⁴

The community forests allowed under this provision must register with the Department of Forestry. The state has encouraged community forests outside the preservation zone and newly established community forests to officially register with the Department of Forestry since 1999. The registered community forests receive an annual budget from the state and have to be managed according to state policy.

Under the Act, the administration has three levels: 1. The Community Forest Policy Committee consisting of ministers, secretary-generals, directors-general, and senior experts appointed by the chair of the Committee; 2. The Community Forest Provincial Committee consisting of the provincial governor, provincial executive members, head of the Provincial Community Forests Network, and experts appointed by the governor; and 3. Community Forest Management Committee consisting of elected members of each community forest.

The Policy Committee at level 1 is responsible for issuing policy and regulations for community forest management plans but the Committee can assign the Management Committee at level 3 to draft the regulations to suit specific forests (section 17). The Policy Committee also defines the governing rules and appoints members of subcommittees. The Provincial Committee at level 2 approves the forest management plans and appoints forest community officers to monitor the plans and enforce the rules on-site (sections 26-27). The officers have the right to order offenders to leave the community forest (section 65). The Management Committee at level 3 drafts the forest management plans and regulations, supervises community members to behave according to the plans and regulations, and resolves conflicts on-site (section 44). Members of Community Forests must comply with the regulations and be cooperative with all involved parties (section 45).

The Pros of the 2019 Act would be: 1. the Act appears to be generous in allowing the Management Committee to draft plans and regulations to suit local conditions, and to revise the plan when needed (sections 26 and 47). Communities can incorporate old customs, rules, and regulations into the new state-approved legal framework. But in the end, the plans and regulations made at the community level are subject

²⁴ Department of Forestry Thailand, Community Forest Act 2019, <http://forestinfo.forest.go.th/Content/file/law136-290562-71.pdf>, accessed 28 March 2022.

to approval and possibly to revision at the provincial and national levels of the administrative structure (sections 26 and 46); 2. the Act allows community forests to be used as environmental learning resources and to host eco-friendly tourism. The Policy Committee defines the rates for fees or service charges that the communities can collect and keep (sections 51 and 56). This would help generate income to the communities; and 3. after enactment of this law, Thailand has 8,428 new forests²⁵ registered with the Department of Royal Forests.

As for the Cons: 1. the definition of community forests (in section 4) has blocked 4,192 villages²⁶ which are located inside the conservation zone. The essence of the 1993 Bill was omitted. The passage of this legislation has missed an opportunity to legitimize and support them to use their knowledge and expertise to preserve the ecosystem of the forests as a whole; 2. Community forests would have no right to welcome visitors and researchers without permission from the Provincial Committee (section 66); and 3. the duties as stated in sections 26 and 27 are the customs that the indigenous community forest people, like Ban Thung-yao, have been always undertaking wisely, namely by defining rules, establishing a working committee, supervising, controlling the utilization of forest products, and resolving conflicts. The difference is they undertake all of those duties under their own responsibility for the sake of being forest custodians, not by order or under the supervision of outsiders. Working the same way but under this law is only taking away the sense of ownership of people from their community forests. They are preferring not to be just a forest manager appointed by the state authority.

In sum, the 2019 Community Forest Act is completely different from the intent of 1993 Bill. It does not recognize and uphold the traditional mechanism for forest protection as an eligible way of life or as intangible cultural heritage which is to be safeguarded, especially in the conservation zone. It does not help relieve that tension. The objective of this Act seems to increase new forest areas only. Therefore, it does nothing to promote indigenous knowledge of forest management, which is key to forest protection over the long term. The structure and chain of command of committees under this Act is rooted in outdated thinking and a centralized, top-down approach to management. The rights over the land, the financial support, and the assigned duties given to community forest people are temporary and come with conditions. The Act asserts that land and forest are national resources in which the state may allow people to live and to utilize forest products as long as those people help the state to take care of this resource, otherwise the contract can be terminated. Whereas the original people's draft was designed to promote and facilitate the "mission of communities" to protect and manage the forests, the final legislation fulfills "the state's mission" to control and manage the forests with the participation of communities.

If this 2019 Act would classify community forests into two categories: 1. Traditional

²⁵ Pasuk Phongpaichit et al., "Kan kamkap dulae thidin phuea kan phatthana : thang luek kan chai thidin læ nayobai thidin nai yisip pi khang na" [Land Governance for Development: Land Use and Land Policy Alternatives for the Next 20 Years], (Bangkok: Thailand Science Research and Innovation and the National Research Council of Thailand, December 2021), 280.

²⁶ Pasuk et al., "Kan kamkap dulae thidin."

community forests in which their people have knowledge, experience, capacity, as well as social and cultural capital to effectively manage the forest; 2. Newly established community forests in which people need knowledge, practice guideline, and supervision, the Act would focus on the experience of the communities which has implications for sustainable forest preservation, instead of focusing on the boundaries of community forests whether outside or within the conservation area, it would help the government to come up with support measures that are suitable for each type of community forest.²⁷ It is also consistent with many conventions to which Thailand is a party, such as the Convention on Biological Diversity, the Indigenous and Tribal Populations Convention 1989, and the United Nations Declaration on the Rights of Indigenous Peoples. The same main ideas of those conventions are: the Parties shall preserve the practices of indigenous communities in relation to conservation of the traditional lifestyle and the sustainable use of biodiversity and the State shall respect and protect different ways of life, especially the customs of indigenous peoples and tribes and the economic relations between these peoples and the land they originally held.

It was very unfortunate that the concept of *pa na mu* was not integrated into this law because this concept was Thailand's indigenous way of natural resources management based on a community shared ownership system that differs from the legal system that allows only two forms of ownership: state property and personal property. The community rights movement, that originated the drafting of the Community Forest Act, called for the government to recognize the community as a "social unit" in order to create a third approach, namely shared ownership of resources. This approach is consistent with Elinor Ostrom's theory of institutional design for successful common pool resource (CPR) management which was developed from her examination of successful CPR management of communal tenure in high mountain meadows and forests in Switzerland and Japan, and irrigation systems in Spain and the Philippines. Ostrom identified eight design principles: 1. clearly defined boundaries; 2. congruence between appropriation and provision rules and local conditions; 3. collective-choices arrangement; 4. monitoring; 5. graduated sanctions; 6 conflict-resolution mechanism; 7. minimal recognition of rights to organize; and 8, nested enterprises.²⁸ These principles are comparable with the practices operated in Ban Thung-yao and many other community forests in Thailand. Ostrom's principles and the implementation in Thailand's legal context are described with examples in the recent published research on *Land Regulatory Systems for Development: Land Use Alternatives and Land Policy for the Next 20 Years*.

Community reaction to the 2019 Act

Some communities welcomed the 2019 legislation. Villagers from Ban Na Isan in Chachoengsao and Ban Mae Tha in Lamphun told the media that they welcomed the opportunity to utilize forest products on their certified land rather than taking risks of

²⁷ Pasuk, "Kan kamkap dulae thidin," 275-304

²⁸ Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, (Cambridge: Cambridge University Press, 1990).

intruding on the forest reserves as before. They believed they would have a better quality of life and gain income from selling fresh and processed forest products. Poor families could rely on forest ingredients. They also welcomed the right to organize tourism in community forests.

Pho Luang Sub-anan Wannasak, the current headman of Ban Thung-yao, could not agree with it. He had no interest in the Community Forest Act anymore. He will not register Ban Thung-yao Community Forest with the Royal Forest Department as previous headmen have done as they were afraid that state control may distort the community's traditions and in order to avoid past mismanagement by state agencies under the top-down bureaucratic system. The refusal to register demonstrated that their community forest is indigenous and was formed by their own local traditions not by mandate from above. The refusal to register resulted in the loss of about US\$ 2,400 per year which the village could have received from the state. The headman believes that he is preserving the community's dignity as indigenous people who preserve the forest in accordance with their traditional way of life. They might forfeit some financial support, but that was not the important issue.

Conclusion

The Community Forest Bill was the first law drafted as people's legislation and was promoted for three decades, but the result was not worth the effort and the wait. Community Forests are a way of life which relate to indigenous knowledge on natural resources management. These collections of intangible cultural heritage play a fundamental role in the protection of forests and people's well-being. The direct and indirect benefits from forest protection have created a sense of belonging and stewardship. People protect the forest not only because it is a village culture, but also because of the empirical benefits. This harmony circle of exchange will be maintained as long as the village leaders and villagers recognize themselves as the forest's cultural and natural custodian. The custodian can be supported by giving respect, giving enough power and entrustment. Ban Thung-yao Community Forest is just one of thousands of traditional community forests in Thailand showcasing that traditional wisdom is embedded in village culture. This kind of heritage should not be overlooked as part of the national project of natural resource management.

The state should learn from past failures in natural resource management. The forest ecosystem is an important factor of sustainable forest protection. The state should recognize, respect and uphold people's rights to protect, look after, manage, and use their resources according to their local customs and traditions, facilitate the sharing of local wisdom and experience on natural resource management, and enhance the public's understanding of how people in community forests live in harmony with nature.

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Figure 9. The water way in the sacred forest of Ban Thung-Yao in 2017 (Photo: Jarunee Khongswasdi).