

UNDP Thailand and the Thai Government have initiated an Integrated ONE Annual Work Plan (AWP) Program for 2009 and Policy Support for the Country Program Action Plan with important clusters. Under the Governance and Human Security Cluster, Legal Empowerment will be promoted as an approach to achieve the goal in poverty reduction. The project aims at empowering the poor, including vulnerable groups to participate in the economic share and social benefits through increasing their opportunities in accessing legal means.

To allow the implementation in local area, a model for public management in the context of decentralization and local governance is needed. In the context of semi-rural area land and properties are susceptible to local controversy, and generate difficulty in local partnership of between local people, particularly the poor, and other stakeholders. In order to create the viability for further development for the poor in local context, a model for legal empowerment applicable to local governance is needed. The purpose of the project activity is to develop a model to mainstream legal empowerment in the local context through participatory approach in local governance.

Then on 23 September 2009, Miss Gewi-Yeop Son, Resident Representative of the United Nation Development Program (UNDP) in Thailand, and Dr. Bowornsak Uwanno, Secretary-General of the King Prajadhipok Institute (KPI), signed a letter of agreement for the latter to undertake a study project on "The Implementation of Legal Empowerment for the Poor. Resolving Local Issues through Participatory Approach (1) under Output 1.2, for the Project titled "Integrated ONE Annual Work Plan - Governance and Human Security", Project ID 00069448.

OBJECTIVES

- 1. To develop a model for legal empowerment of the poor in the local context through participatory approach;
- 2. To enhance right-based development in the context of decentralization.

SCOPE OF WORK

- To review and compare experiences of different countries taking the same initiation in the context of decentralization and local governance;
- 2. To develop model on empowerment of the poor and local people to increase the rights to property, with particular attention to land issue:
- 3. To engage in and coordinate with local government units in developing the model;
- 4. To examine local context for pilot sites;
- 5. To organize consultative workshops with community and local government units;
- 6. To draft action plan and procedures for participatory model on the issues of rights and legal empowerment.

OUTPUTS

- 1. An Inception report identifying framework, experiences relating to legal empowerment issues (best practices) and methodologies;
- 2. A model for developing participation in resolving issues related to legal rights and development;
- 3. Action plans in the selected sites.

TIMEFRAME

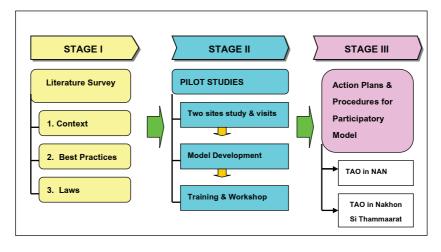
September – December 2009

METHODOLOGY

This project study is undertaken into three stages, which are:

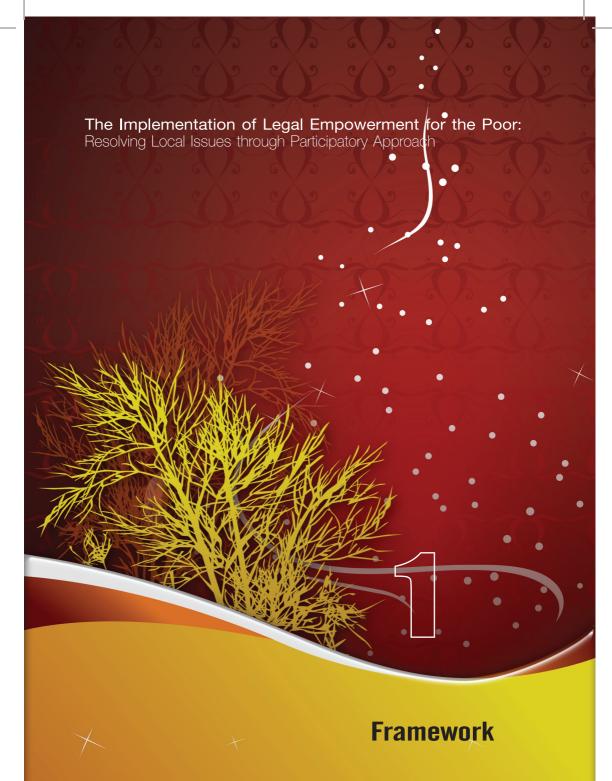
- STAGE 1: Review and explore comparative experiences of different countries in legal empowerment of the poor in rural areas in the context of decentralization and local governance;
- STAGE 2: Based on best practices from other countries together with analyzed data from two national pilot sites, design and develop a model for legal empowerment of the poor in the local context through participatory approach;
- STAGE 3: Draft plans of action and procedures for participatory model of conflict resolution on property rights issues leading to legal empowerment.

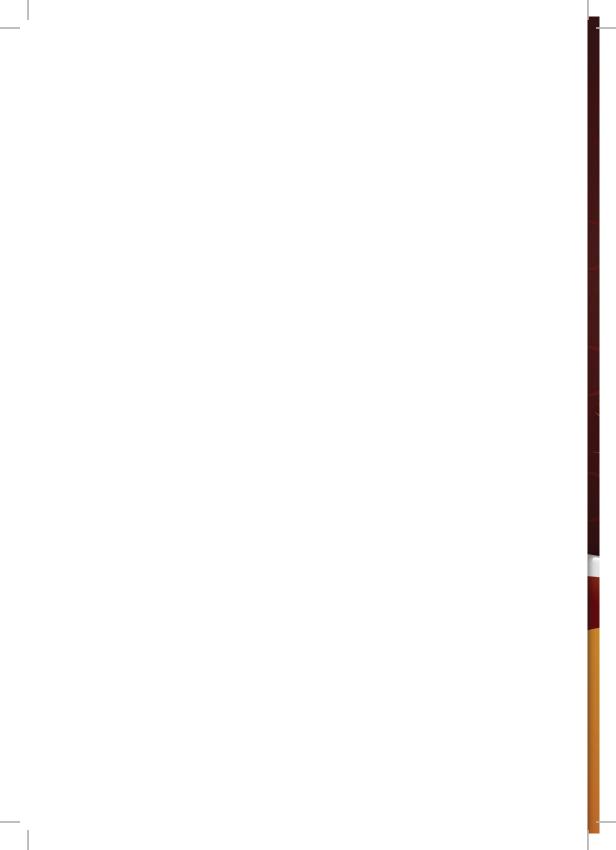
Box 1: shows methodology of this study



DETAILED WORK PLAN

Phase & Activities	Oct.				Nov.				Dec.			
		2	3	4	1	2	3	4	1	2	3	4
Phase I: Literature Survey	_				=							Г
1.1 Study & Develop conceptual framework &												
Methodology on LEP & Participatory												Ī
Approach												Ī
1.2 Explore national & international Best Practices	•											
of LEP through Participatory approach												T
and models relating to Legal empowerment												T
issues, deliberative democracy and												T
technology of participation from												T
both national and international sources												r
1.3 Study laws and legal instruments		•										T
pertinent to local decentralization, natural												Ī
resources & environment issues, forestry,												İ
property rights & so on												Ī
Phase II: Pilot Studies (Two sites)						=						T
2.1 Visit selected pilot areas for data collection												T
& sites observations												İ
* In Nan Province (Tambon Silalang)							х					Ī
* In Nakhon Sithammarat (Tambon Taa Sala)				х								T
2.2 Design and develop LEP model in local							••••		••			Ī
context												-
2.3 Organize training and workshops in each									х			T
site												1
Phase III: Action Plans & Procedures for Participatory												İ
Model												Ī
3.1 Draft action plans and procedures for												L
participatory model on property rights issues												Ē
and legal empowerment												
Reports Submission												Ĺ
- Inception Report					х							Γ
- Final Report												





1. Core Concepts

The project is aimed at developing a model of community-based natural resource management suitable to Thailand. Community-Based Natural Resource Management (CBNRM) relies on two innovative concepts, namely Legal Empowerment of the Poor (LEP) and Deliberative Democracy (DD).

Based on a review of best practices and lessons learnt from several development projects, the first part of this report will focus on (1) the core concepts of LEP and DD and the model of CBNRM (2) a review of best practices of Community-based Natural Resource Management which fully integrate LEP and DD in their scope, (3) a proposed methodology to develop the CBNRM model suitable to two target provinces of Thailand, namely Nan (National Park – forest resources) and Nakhon Si Thammarat (National Reserve – coastal resources) .

1.1. What is Legal Empowerment of the Poor?

Inspired by the theory of the Peruvian economist Hernando De Soto, LEP was born from the idea that the vast majority of the world's poor live their daily lives in what is often referred to as the informal or extralegal sector, excluded from the benefits of a legal order. Poor women and men generally lack effective legal protection and recognition of their economic assets and transactions. This often means insecurity and constrained opportunities for participating in and benefiting from economic development.

Protection of property rights lies at the core of legal empowerment theory. The objective is to secure the poor's assets by means of legal and institutional codification so that they can benefit from economic development (through access to

credit, possibility of recovering debts, security of contracts, etc). With regards to property rights over natural resources, LEP recommends that local communities be directly targeted.

"The majority of the rural poor depends to a large extent on nonarable resources such as forests, pastures, swamplands, and fishing grounds. These resources require careful management to avoid rent-seeking and corrupt practices that result in environmental degradation and economic inefficiencies. The state should enhance the asset base of the poor by enabling community based ownership and management of private commons, but it will have to play the role of conflict manager among the communities and among individuals.' (Commission on Legal Empowerment of the Poor)

Legal Empowerment of the Poor has been progressively acknowledged as one of the most innovative Poverty reduction Strategy (PRS) and endorsed as such by the United Nations through the creation of the UNDP-hosted Commission on legal Empowerment of the Poor.

1. 2. What is Deliberative Democracy?

The essence and the innovative character of deliberative democracy is that it seeks to create permanent mechanisms of decision-making by deliberation at the grassroots level, providing people with institutionalized channels to deliberate together about development projects directly affecting them, and allowing them to monitor their implementation. Thus, it is a means to build consensus among communities on particular public issues, and to endorse public decisions with increased legitimacy. It does not assume that people have a fixed ordering of preferences but rather that their opinions can be defined, formed, reformed and revised through a kind of 'discourse that takes multiple perspectives into account and orients itself towards 'mutual understanding and common action'. Applications of DD in the field encompass public hearings, public consultations, and creation of multisectoral forums where community-based groups and representatives of the State can deliberate together.

¹ Definition by the American think tank Civic Practices Network. More information available at http://www.cpn.org/

1.3. Legal Empowerment of the Poor through Deliberative Democracy

In developing countries, the majority of the rural poor depend on natural resources, whose management is often regulated by community rules outside or even conflicting with the national legislative framework. Communities often show mistrust in the central/local government. In order to initiate a legal/policy reform securing the assets of the rural poor, two key elements should be taken into account:

- Reformed laws/policies should comply to customary rule and traditional customs
- Reformed laws/regulations should be accepted by the affected community

Legitimacy through Adequate Participation and Deliberation.

In general, future reform will require a legitimate state. For implementation at all levels, reforms must be based on deliberation and inputs from those that they are intended to affect. This will bring focus on relevant issues, engender acceptance by local communities, and reduce the cost of reform. In Peru between 1996 and 2000, for example, 3,500 meetings were held on land titling processes in different settlements around the country, helping to improve community satisfaction with property reform efforts. In particular, marginalized groups - women, indigenous people, urban slum dwellers and other excluded groups, must be given special attention as part of this process. Support for initiatives such as the establishment of coalitions between urban and rural poor around common concerns including the effects of the rural exodus on rural economies and urban poverty are a productive starting point.

Source UNDP Legal Empowerment of the Poor

1.4. What is Community-Based Natural Resource Management?

Integrating the objectives and the methods of both LEP and DD, CBNRM pursues a three-fold objective: reduce poverty, conserve natural resources and promote good governance and decentralization in a single process.

Poverty reduction

CBNRM

Good governance

Natural resource conservation

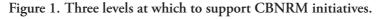
Figure 1. CBNRM and its linkages to ovreall development objectives.

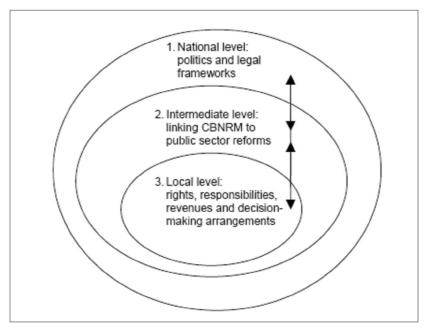
Source: Danish Ministry of Foreign Affairs

Good governance refers to the decision-making process. Such decision making process should integrate elements of deliberative democracy bringing various levels to deliberate in common: the community, local and national levels.

Poverty reduction refers to legal empowerment of the poor.

Natural resource conservation refers to the capacity of the community to utilize the resources of the forest in a sustainable and environment-friendly manner.



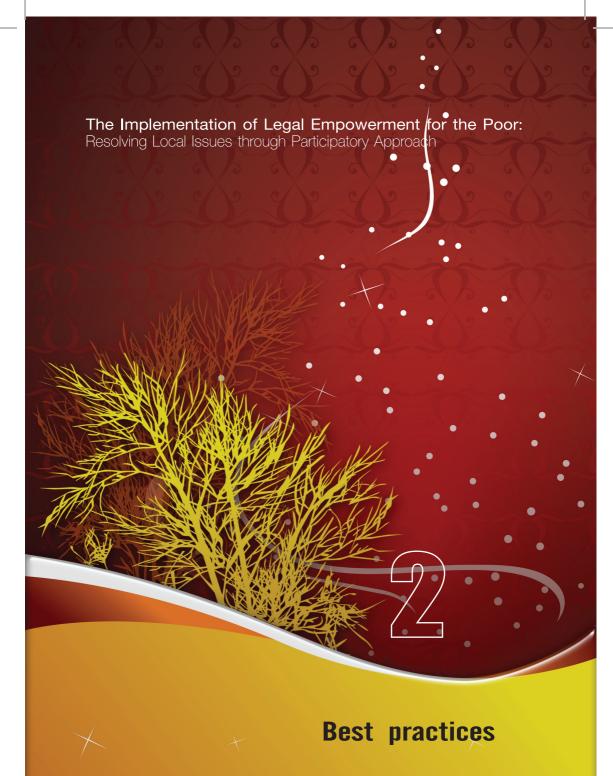


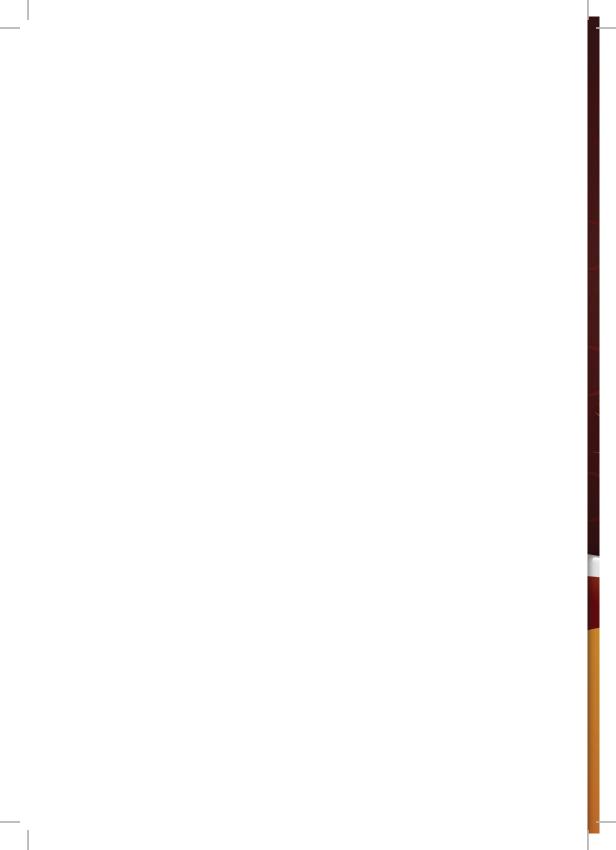
The implementation of a CBNRM project requires three levels of intervention: the national, the intermediate and the local level. At the national level, the main issue is how to support policy processes and legal frameworks for CBNRM. At the intermediate level the key concern is how to institutionnalise CBNRM either through local governments under a devolution process or through deconcentration of line agencies, which delegate authority to local communities. At the local level, the principal question is how to organize the collaboration between social actors and their relationship to the natural resource.

Source Danish Ministry of Foreign Affairs

The Implementation of Legal Empowerment for the Poor: Resolving Local Issues through Participatory Approach

Decentralized natural resource management has many advantages (i) Local people are likely identify and prioritize their environmental problems more accurately than centralized organizations, (ii)Resource allocation is more efficient and transaction costs lower when decisions are taken locally so that state expenditure on management can be reduced while resource conservation is improve, (iii)Local groups are more likely to respect decisions that they have participated in taking, (iv)Monitoring of resource use is improve, (v) Marginalized groups gain greater influence on local policy. (Source E.g Chambers 1994, Grindle 1982, Hobley 1996, Larson 2003, Ribot 2004, Rondinelli 1983m Sundar 2001 quoted by the Danish Ministry of Foreign Affairs)





2.1 FORESTS

Case Study, The Gambia (Bojang & Reeb).

The project aimed to address the large-scale deforestation and destruction of forest resources, and the realization of the need for community involvement in their protection and maintenance. With external support, the Forest Department introduced community forestry. The institutional changes included creation of Forest Committees at the village level that are responsible, along with the Forest Department, for developing and implementing Community Forest Management **Agreements,** and for taking revenue management and conflict management decisions. The latter activity involves the traditional chiefs. While technical assistance is provided by the Forest Department, communities use traditional culture and social organization as a basis for organizing members into various task forces. A key lesson is that communities should be granted permanent ownership rights over the demarcated forest resources that they protect, on the condition that resources are managed sustainably. Absence of financial incentives for undertaking these tasks instilled a sense of ownership and responsibility in the communities. Government approval of the new Gambian Forest Policy, and its consequent legislative approval, provided a much needed legal standing to this innovative approach, now being implemented countrywide.

Case Study. The Philippines (Oliva)

Confronted to problems of ineffective forest laws, policies and programs, ineffective enforcement of forestry law, low priority given to forest conservation and environmental protection and lack of support for forestry programs by the local government units and the various sectors in the community resulting in deforestation, the government of Philippines, sole owner of natural resources of the country, adopted a new regulation allowing the Department of Environment and natural Resources to provide qualified communities access to and responsibility in the utilization, management protection and rehabilitation of the forest resources. 16 Multisectoral Forest Protection Committees (MFPCs) were formed, each MFPC member representing a group in the community (e.g military, church, media, youth, farmers, women's and business groups, environmental NGOs, Department of Justice, Philippine National police, Coast guar, Lawyer group, etc.). Due to their success, new MFPCs were created and they are now 299 in the country at four levels, namely national, regional, provincial and municipal. The major lesson learned is that policy making, information and education campaign, forest protection and community-based forestry will be enhanced if there is an institutional mechanism where the various sectors of the society will meet and address these problems.

2.2 COASTS

Case Study, Philippines (Talaue-McManus, Yambao, Salmo III & Aliño).

The project, Community-Based Coastal Resources Management, plays a catalytic role in community mobilization and formation of local Peoples Organizations (POs), and in the formulation of the country's first participatory Coastal Development Plan (CDP). One of the objectives of the project was the creation of a CDP through the coordinated efforts of local POs, civil society and the local government. The project began with the creation of four Pos that were later federated, and the transfer of appropriate knowledge and skills to them. This was followed by a multi-sectoral consultation on the CDP with the support of an Executive Order issued by the Municipality. A series of public consultations resulted in the final approval of a PO-initiated CDP. This is an example of active involvement of the local government's Executive and Legislative branches in institutionalizing the planning process. The CDP exercise provided the most effective venue for consensus building in articulating a development vision as well as formulating action plans to achieve it. The Plan has guided several other coastal municipalities in developing their own Plans. It is also being referred to by other government and non-government organizations working in coastal areas around the country and by countries in South East Asia.

Case Study, Barbados (McConney).(...)

A 1995 study recommended an incremental approach to introduction of fisheries management, particularly because Barbados has no history of community-based fisheries management, unlike the other island states in the region where the emphasis is on building upon existing foundations. It also suggested that community-based rather than occupational fisherfolk organizations were more appropriate for organizing collective action. The Fisheries Act of 1993 provided for the formulation and review of fisheries management plans for Barbados through consultative mechanisms like the Fisheries Advisory Committee. In addition, Fishery Working Groups with a broad participation were created. Efforts were also made to establish linkages between fisherfolk organizations in the neighboring countries that share stocks of pelagic species. Social and economic considerations should be granted foremost consideration in developing a fisheries management concept, so as to be in line with the political reality of conservation programs in developing countries. Another important factor for success was the exchange of information between the managers/scientists and the fishing industry in order to bring about a sustainable community-based fisheries management effort.

Source: All cases studies rely heavily on reports from the World Bank Conference on Community Based Natural Resource Management, Washington D.C, May 1998 and online resources from the Community-Based Natural Resource Management Network.

2.3 Comparative summary

The implementation of CNBRM has three subcomponents: transfer of knowledge about environment and natural resources, clarification of the regulations that determine access to them and set up of institutional mechanisms through which the communities can meaningfully participate. In other words, three main tools are available for achievement of a successful CNBRM, namely (1) Deliberative Democracy (2) Policy and Legal reform, and (3) Capacity-building. All activities put the emphasis on one of our core concepts but also integrate elements of other concepts in an interrelated manner.

(1) Deliberative Democracy process (DD) implies the creation of an institutional mechanism where the various sectors of society will meet and address resource management problems. Communities must be institutionalized through legal recognition so that the State can share the management of its own national resources with the communities in question.

- (2) Policy and Legal Reform (PLR) focuses on securing collective property rights. It includes the establishment or codification of well-defined property rights and responsibilities whether state, individual, or collective with respect to natural resources. Possible outcomes can take the form of a legal agreement between the State and relevant stakeholders from the affected communities or of a reform/law/policy to be initiated.
- (3) Capacity-Building (CB) must target all three levels of governance. It is aimed at transferring knowledge and skills in three different areas: first, raise mutual awareness of mechanisms regulating relations within the community, the State, the private sector including laws, regulations and traditions. Second, deliver technical training on methods of utilization and exploitation of resources and third, empower all stakeholders in the field of management planning and budgeting.

The four successful projects afore-described integrated the three afore-identified subcomponents in various ways:

GAMBIA – FORESTS (Collective Ownership Rights over Forest Resource)						
Elements of DD	Elements of CB	Elements of PLR				
(1) Creation of a Forest Committee at the village level whose role is management planning of the forest	(2) Workshops on managerial and technical forestry skills aimed at self-management	(3) Signature of a Community Forest Management Agreement between the local community and the department on behalf of the Government granting permanent ownership rights over the forest resource of a clearly demarcated forest to the communities and specifying details on the extent of cooperation with the Forestry Department such as technical assistance and on the specific responsibility of both parties				
(4) The Forest Community opens a bank account into which all revenue from the forest management activities are paid. According to the agreement, about 40 percent must be reserved for reinvestment in the forest. (5) Creation of a "Peace Committee" whose role is to settle land conflicts between villages		(6) The Forestry Department initiated a policy and legislative review process in order to secure the community-based ownership of the forest. This resulted in the creation of new policies and laws taking fixing the role of the communities in forest management				

BARBADOS - COASTS (Open Access Resource) Elements of DD Elements of CB Elements of PLR (1) Introduction of a new Fisheries Act providing for the creation of a Fisheries Advisory Committee (FAC) (2) Creation of a Fisheries Advisory Committee (FAC) comprising members of the fishing industry (inshore and offshore fishers, fish vendors and fish processors), representatives of the government and private sector fisheries consultant (3) Organization of public consultations at fish landing sites to help members of FAC identify issues relevant to management planning (4) Three Fishery working (5) International adviser on groups composed of State and fisherfolk organization fishermen representatives as development was assigned to well as NGOs and private build capacity in formulation of management and operational sectors agents were created to

THE PHILIPPINES - FORESTS (Right to use)

plans at the community and

local government level (6) Organization of workshops to share knowledge in management of specific coastal

resources

act as advisory sub-committees

to the FAC

Elements of DD	Elements of CB	Elements of PLR
		(1) Issuance of the Executive Order 263 which provided qualified communities security of tenure and giving them access to and responsibility in the utilization, management, protection and rehabilitation of the forest resource.

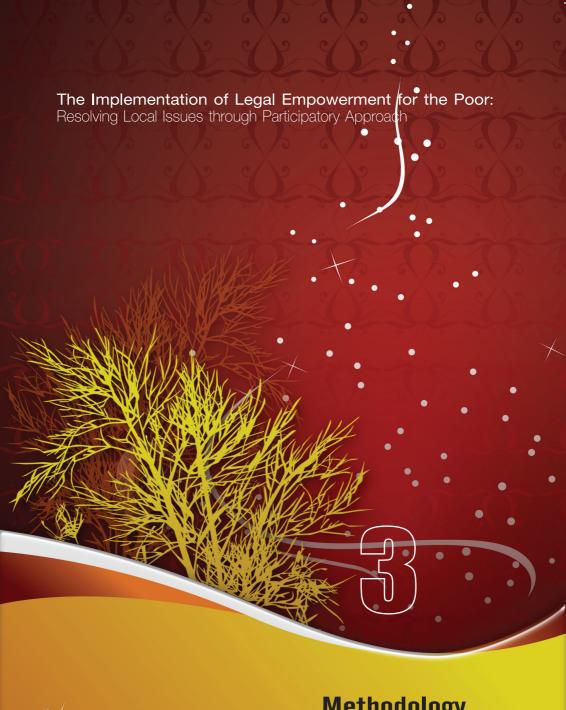
The Implementation of Legal Empowerment for the Poor: Resolving Local Issues through Participatory Approach

(2) Creation of Multisectoral	(3) Preparation and diffusion of	
Forest protection Committees	MFPC manual of procedures	
(MFPCs) composed of	and operations	
representatives of the		
government and of various		
sectors including the ;ilitary,		
church, media, youth, farmers,		
women's and business groups,		
environmental NGOs,		
Department of Justice,		
Philippine National Police,		
Coast Guard, Lawyers Group,		
etc.		
(4) The functions of the MFPC	Cs are not only to work with the	

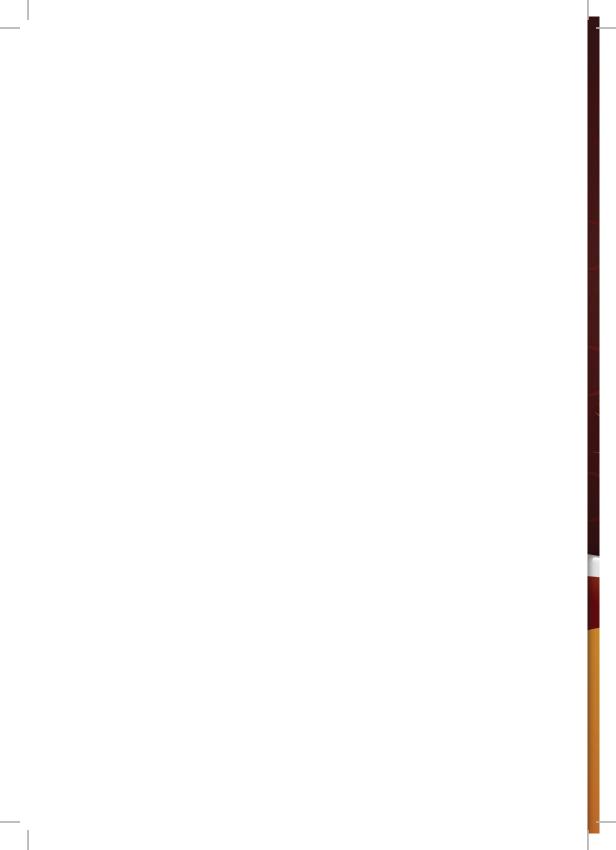
State on management planning but also to build capacity by – publicizing its own work and discussions, directly overseeing the public awareness and alternative livelihood programs and mobilize members networks in support of forest protection activities

THE PHILIPPINES - COASTS (Right to use)

THE THE HIT (High to use)					
Elements of DD	Elements of DD Elements of CB				
	(1) Organisation of an environmental education and information campaign in coastal villages				
(3) Set up of People's Organization (PO) in various villages	1				
(4) Organisation of orientation for the leaders and members of and coastal and management is options					
	(5) Community workshops on resource management, and legal issues	(6) Executive Order creating Multi-Sectoral Committees on Coastal Development Planning (MCDB) composed of 21 members representing 11 community sectors, including the POs and representatives of local government			



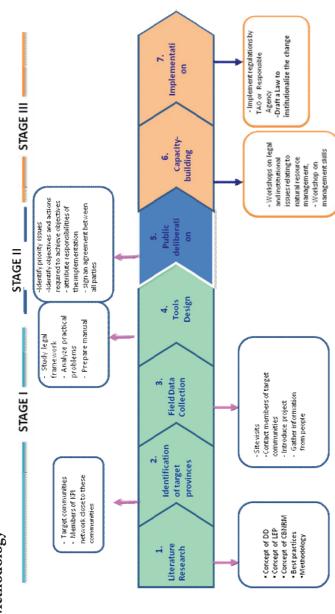
Methodology





KING PRAJADHIPOK'S INSTITUTE





COLOUR CODES

Status: Completed by the end of November 09 Status: Completed by mid-December 09 Green: Stage 1 = Identification Phase

Orange: Stage 3 = Implementation Phase Stage 2 = Deliberation PhaseBlue:

Status: Under process

STAGE 1 IDENTIFICATION OF CHALLENGES AND STAKEHOLDERS

- Identify communities likely to assume community-based natural resource management (CBNRM) Initial efforts need to be made to describe and clarify project goals, process to be followed and potential benefits to the community.

A set of criteria are used to predict rapid and easier attainment of sustainable use practices as well as building of the capacity of the community to assume responsibility for management.

These criteria are

- Degree of vulnerability of the resources from unsustainable use practices ex over-exploitation
- Social and political cohesion of the community
- Community dependence on forest resources for livelihoods
- Community predisposition to resource conservation
- Community interest in project goals and activities
- Level of trust of the target communities in the legal system and their representatives at the local and national level
- Level of organization of the community (rules of the community, existence of binding contracts, of sanctions in case of violation, etc.)

As well, communities are characterized by (1) multiple and somewhat conflicting interests (2) different actors attempting to influence decision-making, and (3) internal as well as external institutions shaping decision-making process (Agrawal and Gibson 1999). These characteristics should also be identified and understood prior to the launch of the implementation phase of the project.

- Travel to the target province to describe and clarify the goal of the project and build trust with all stakeholders separately (State officials, representatives of the community, political leaders, and entrepreneurs) through separate small-scale and informal meetings. These meetings enable the researcher team to collect gross information on the encountered problems and the conflict of interests between the parties. - Design manual from a compilation of relevant information (study of the legal framework, analysis of the problems encountered by the community, etc.) to be handed over to the communities in the next phase.

Outcomes of the Phase 1 included:

- An identification of key stakeholders (i) in Nan Province, the Commission of the Community Forest, the local government representatives and local community (ii) in Nakhon Si Thammarat, the Fisherfolks network, NGOs, local government representatives and relevant central government officials.
- An identification of skilled and trusted local people from the KPIs network (former students, Members of Parliament) willing to help introduce the KPI in the target provinces
- A handbook on conflicting laws, principles, policies and community interests on each of the two target provinces².

STAGE 2 PUBLIC DELIBERATION

- <u>Identify issues</u> Issue identification is based on local perceptions expressed by the people in a free and equitable manner in informal meetings.
- Adopt natural resources management options Developed options are community generated ideas and recommendations. The technical team can add ideas and recommendations, but final decisions are the community's prerogative. The process should strive for consensus and majority support. The decision-making process must be transparent and fair so while some individuals or groups may not fully agree or be fully satisfied, they at least understand how decisions were reached and can live with the majority viewpoint. There must be widespread community commitment and approval before any action is implemented.

Regarding Nan, the handbook was compiled by one researcher while in Nakhon Si Thammarat, the handbook was prepared by the local administration.

The community must decide on

- priorities among the issues,
- objectives for management of natural resources
- actions to achieve objectives
- management structure
- implementation arrangements (action plan).

Outcomes of the Phase II included:

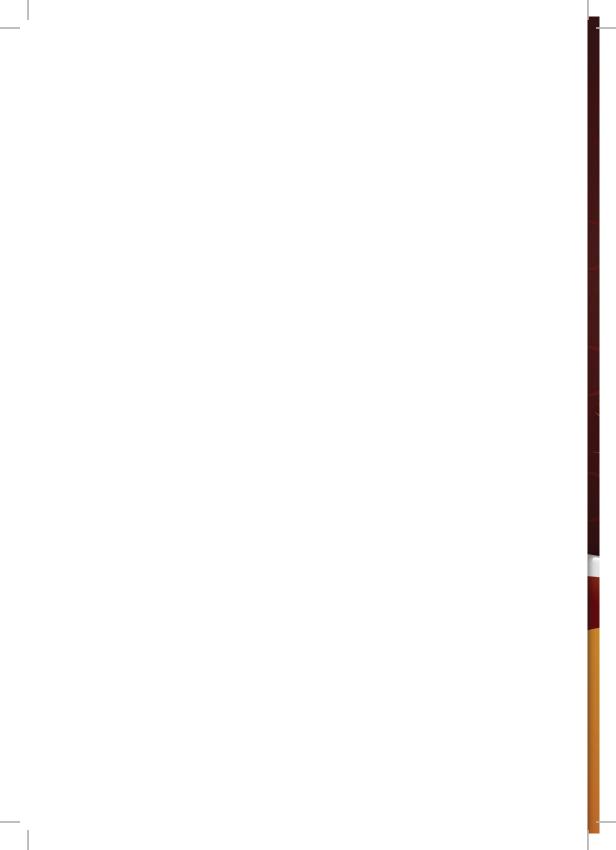
- A two-day consultation³ with all previously identified stakeholders (between 30 and 60 people joined the meetings) succeeding in building consensus and solving issues about conflicting property rights resulting in:
- A charter expressing the common needs of the community (14 to 17 articles), actions needed to answer these needs and actors responsible for developing this action. Charters are agreed upon and signed by representatives of various sides.
- A workshop on legal issues related to forest resources and land rights⁴.

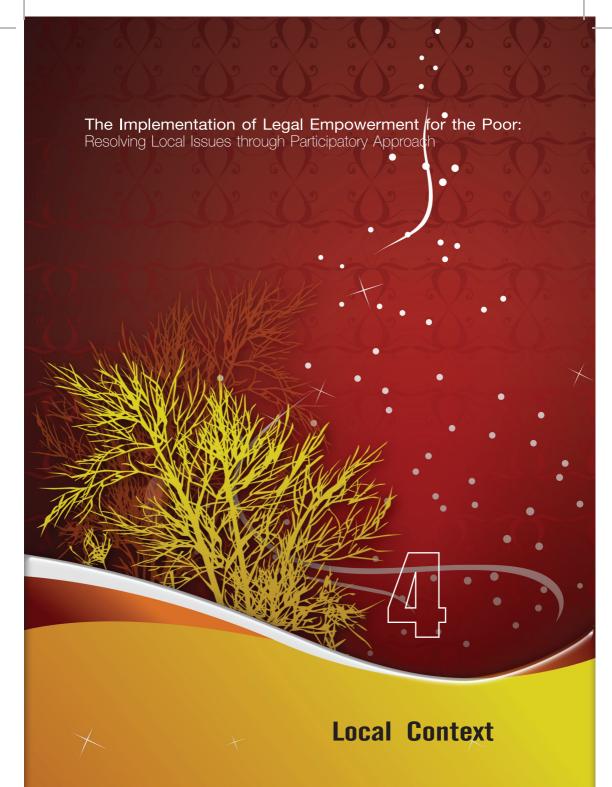
STAGE 3 IMPLEMENTATION OF CBNRM MODEL

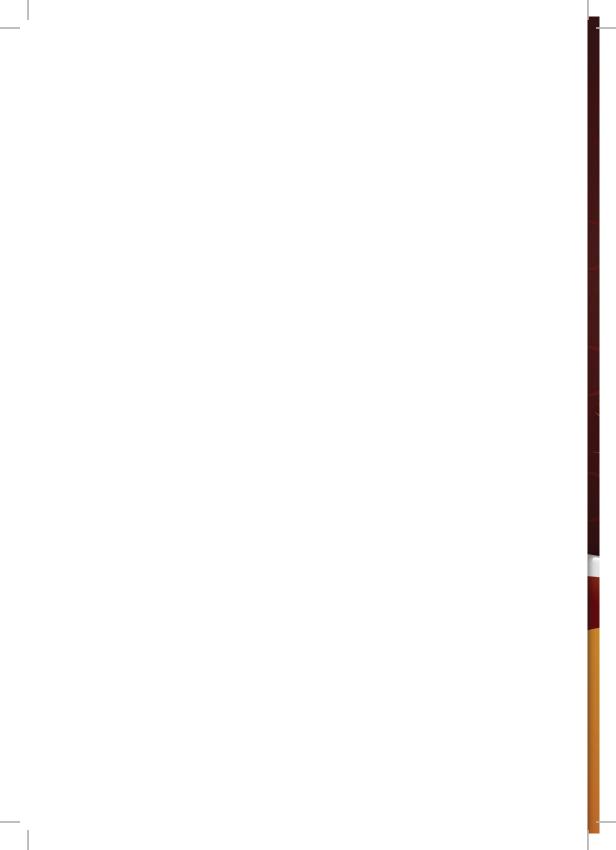
- <u>Initiate implementation</u> To the greatest extent possible, measures to be implemented are to be carried out by the community.
- Review, evaluate and monitor the implementation Monitoring must be carried out by the community.

³ Consultations were held in Nan Province on the 3rd and 4th of December and in Nakhon Si Thammarat Province on the 15th and 16th of December 2009.

The consultation was held in Nan on 29th December 2009.



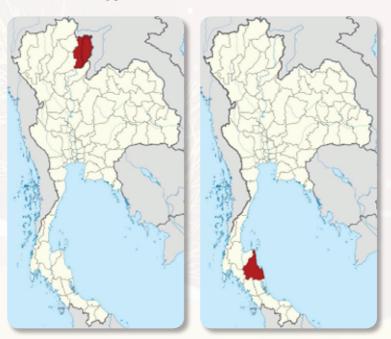




The team chose two pilot sites to develop, test and implement a participatory model on legal empowerment of the poor.

The first one is located in the North of Thailand in the province of Nan, Silaleng District. It is an area covered with mountains and forests. Livelihoods of the majority of the villagers depend on wood, water, and agricultural products from the forest.

The second one is located in the South of Thailand, in the province of Nakhon Si Thammarat, Tha Sala District. It is a coastal area. Livelihoods of the majority of the villagers depend on fishing products.



These two communities depend on the management of natural resources for their livelihoods and development. Having experienced the rarefaction and deterioration of their resources, both communities have assembled to create their own organizations of preservation of the environment. These organizations, both in Nan and Nakhon Si Thammarat, promote traditional and sustainable ways of utilizing natural resources. They both adopted a set of regulations and rules pertaining to the protection and preservation of natural resources.

However, in Nan as in Nakhon Si Thammarat, community organizations are largely excluded from the benefits of the law and their regulations not considered a part of the national legislative framework.

While in Nan, there is still no 'Community Forest Law' in spite of many efforts expended by representatives of the community, in Nakhon Si Thammarat, the local regulations on the protection of certain fishing zones has finally been adopted by local government Council but lack appropriate enforcement.

4.1 Common problems

Thus, both sites selected as pilot sites are characterized by a strong and organized local community which is already *de facto* successfully achieving Community-Based Natural Resource Management (CBNRM).

Both communities are excluded from the protection of the law.

Most urgently, they lack:

- legal recognition of communities
- exclusive community-based property rights to use natural resources,
- law enforcement
- access to justice

Granting an exclusive community-based property right to use natural resources to the selected communities will legally empower them to prevent outsiders from using the community resources without respecting eco-friendly community rules by calling them illegal trespassers.

By enabling these rural communities to benefit from the formal legal infrastructure, legal empowerment will bring about sustainable solutions to natural resources management, strengthen local governance and decentralization and reduce rural poverty, in accordance with the principles of community-based natural resource management enshrined in the 2007 Constitution.

Indeed, according to the 2007 Constitution, section 66:

'Persons so assembling as to be a community, a local community or a traditional community shall have the right to conserve or restore their customs, local knowledge, good arts and culture of their community and of the nation and participate in the management, maintenance, preservation and exploitation of natural resources, the environment and the biological diversity in a balanced and sustainable manner.'

According to the 2007 Constitution, section 67:

'The right of a person to give to the State and communities participation in the conservation, preservation and exploitation of natural resources and biological diversities and in the protection, promotion and preservation of the quality of the environment for regular and continued livelihood in the environment which is not hazardous to his or her health and sanitary condition, welfare or quality of life, shall be protected as appropriate.

Any project or activity which may seriously affect the community with respect to the quality of the environment, natural resources and health shall not be permitted unless, prior to the operation thereof, its impacts on the quality of the environment and on public health have been studied and assessed and a public hearing process has been conducted for consulting the public as well as interested persons and there have been obtained opinions of an independent organization, consisting of representatives from private organizations in the field of environment and health and from higher education institutions providing studies in the field of the environment, natural resources or health.

The right of a community to bring a lawsuit against a Government agency, a State agency, a State enterprise, a local government organization or other State authority which is a juristic person for the performance of duties under this provision shall be protected.'

Thus, common problems of both communities are as follows:

 Existing laws are not supportive of the work of each community in utilizing and protecting natural resources according to the articles 66 and 67 of the Constitution. Nor do they formally recognize the existence of organized communities.

- Members of the communities lack knowledge on law, regulations and the justice system.
- Relevant laws are unevenly and unequally applied to various areas and people.
- Relevant laws are weak and unclear about: demarcation lines of protected areas, allocation of responsibilities among various agencies
- Weak access to justice, restricted access to information, and limited participation in natural resource management.
- No official map of boundaries between different areas characterized by different status.

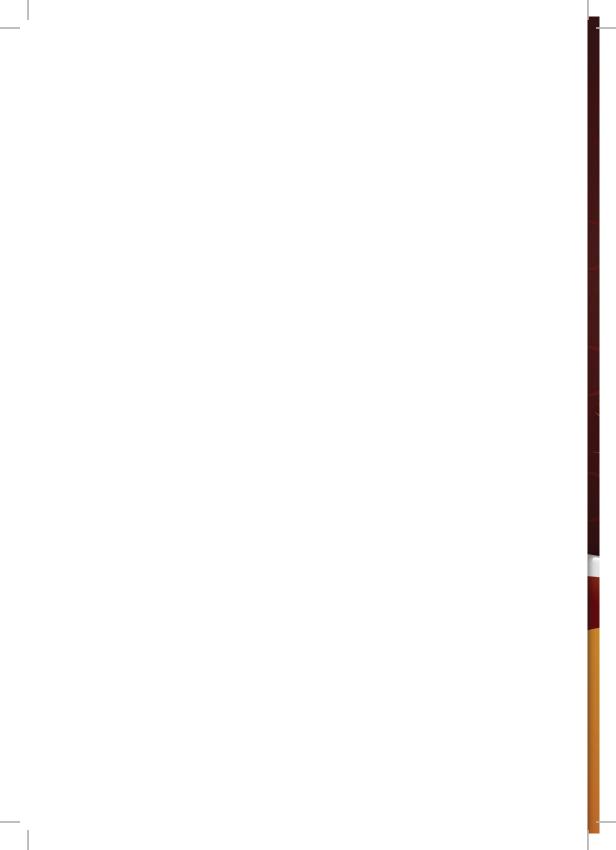
4. 2 Nan Province

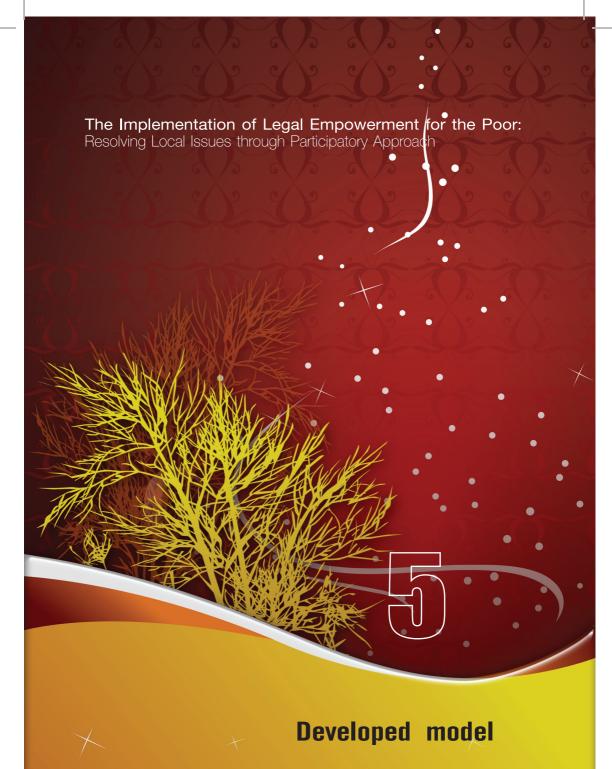
- Relevant laws are the laws pertaining to National parks B.E 2504(1961), Forest Act B.E 2484(1941), Land Code B.E 2497(1954), and Natural Reserve forests Act B.E 2507(1964).
- Villagers became increasingly confronted with outsiders coming to use the resources of the forests in an unsustainable and intensive way (especially mobile plantations) and faced the destruction and rarefaction of their natural resources (shortage of water, timber) and environment, what greatly affected their livelihoods.
- Village headmen organized regular meetings and brainstorming sessions on the question, from the years 2510 (1967) onwards.
- The villagers funded the 'Commission of the Protection of the Forest of Silaleng' in B.E 2517(1974). The Commission sets its own regulations, shapes policies and tries to monitor their implementation.
- However, a legal reform transformed the forest of Doi Pu Kha within which their forest is enclosed into a national park restricting their right to use the resources of the forest.
- A network federating all forest commissions at a national level drafted and presented a law on community forest following the procedure of popular legislative initiative laid in the 1997 Constitution in B.E. 2542 (1999) but this proposal is still under process (currently being examined by the Constitution Court)

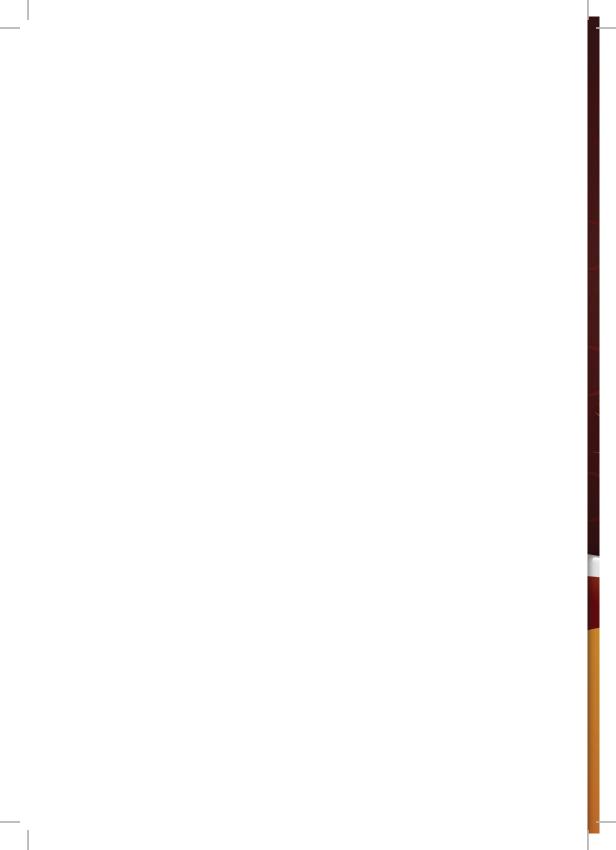
- Law enforcement agents apply the law on National Parks, cannot help the community protect the forests and have not the necessary knowledge and capacity to protect the forest themselves.

IV.3 Nakhon Si Thammarat Province

- Relevant laws are the Fishery Act of B.E 2490 (1947), revised in 2496 (1953) and 2528 (1985).
- Villagers became increasingly confronted with the problem of illegal fishing boats and intensive culture of marine resources leading to the destruction and rarefaction of natural resources (fish, shells) and greatly affecting their livelihoods.
- Fishermen invited specialists of marine resource conservation to build capacity in their community and to help find solutions to the destruction of natural resources.
- Fishermen assembled into a 'Fisherfolks Network' in 2009 to be able to set collective regulations, enforce them and collectively bargain vis a vis the local government.
- The Fisherfolks Network organizes regular meetings where it sets regulations (i.e. prohibited fishing equipment), shapes public policies (i.e. grow mangrove trees, develop artificial coral) and tries to monitor their implementation (community roster of surveillance of trespassing acts).
- However, the lack of support by the State representatives prevented the community from achieving successful CBNRM.
- The 'Fisherfolks Network' organized 5 deliberative forums and one public forum to brainstorm on solutions of preservation of the environment and draft local regulations to be submitted to the local government for approval.
- The local regulations were approved on 30 September 2009. They were the first regulations on the preservation of local natural resources in Thailand.
- Local regulations cannot be fully enforced for many reasons and notably due to a lack of resources including equipment, and staff as well as







The Model for Legal Empowerment through participatory approach suitable to Thailand can thus be modelized as follows:

THE PI	HILIPPINES – FOREST (Righ	t to use)
Elements of DD	Elements of CB	Elements of PLR
*(1) Creation of a Committee of the Forest Community/ Fisherfolks network characterized by - an internal set of rules - regular meetings - collective planning		
**(2) Public deliberative for desired management of resour held in Nan Province in Decen held in Nakon Si Thammarat in	ces nber 3-4	(2 bis) Signature of an agreement between representatives of the State and of the community on actions to be taken by various people and institutions in order to solve conflicting property rights issues
**(3) Workshop ⁵ : sharing stakeholders on legal issues re resources - State representatives - Community representatives held in Nan Province in Dece	lated to management of forest	
	***(4) Organisation of workshops on - technical issues related to management of forest/ marine resources - natural resource preservation	***(5) Signature of an agreement between the State and the community providing for the delimitation of responsibilities in the management of resources between the different levels of governance ***(6) Issuance of a law institutionalizing the change

Remark

- * Already existing structures and activities
- ** Activities led by the KPI in the framework of the project
- *** Activities to be further implemented in order to achieve CBNRM

⁵ In Nakhon Si Thammarat, legal knowledge is already high so KPI is not planning to organize any workshop on legal issues related to marine resources.

Within this Legal Empowerment model leading to CBNRM, a **Participatory model of conflict resolution with regards to property rights issues** was developed and tested in Nan and in Nakhon Si Thammarat:

1st DAY

- (1) Preliminary trust- and confidence-building among participants (approx 1 hour)
- (2) Separation in working groups composed of all categories of stakeholders. Working groups brainstorm about their objectives, needed actions to reach objectives and responsible actors for the implementation.
 - (Facilitators are KPI's staff and students, and representatives from NGOs. All of them have been trained to be facilitators before. Some of them are KPI's students in Conflict Management and Mediation.)
- (3) Group presentations by their rapporteurs (a volunteer who is neither a facilitator nor from the KPI)
- (4) Identification of preferences making consensus and brainstorming about actors to be responsible for implementation of these preferences
- (5) Materialization of these preferences by means of a charter organized in different articles (between 14 and 17 articles)

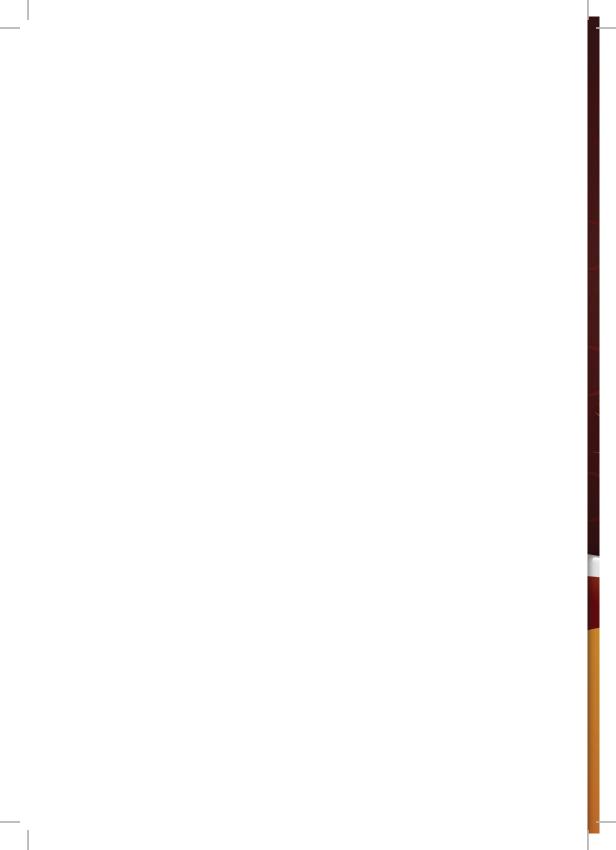
2nd DAY

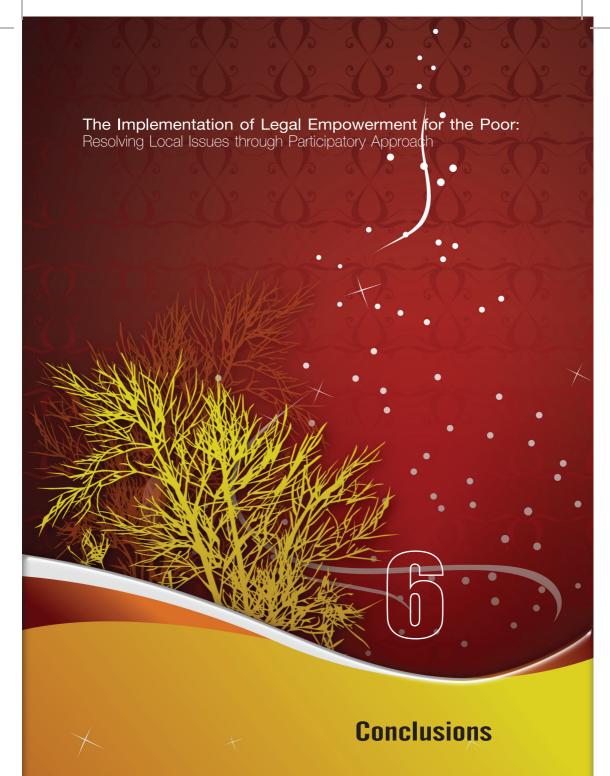
- (1) Organization of a vote of prioritization: each individual is assigned to select from the charter the three most important and urgent articles. The vote is secret and anonymous.
- (2) Public counting of votes, adoption of three main priorities
- (3) Signature of an agreement among representatives of the different parties to commit to making efforts towards the implementation of selected priorities

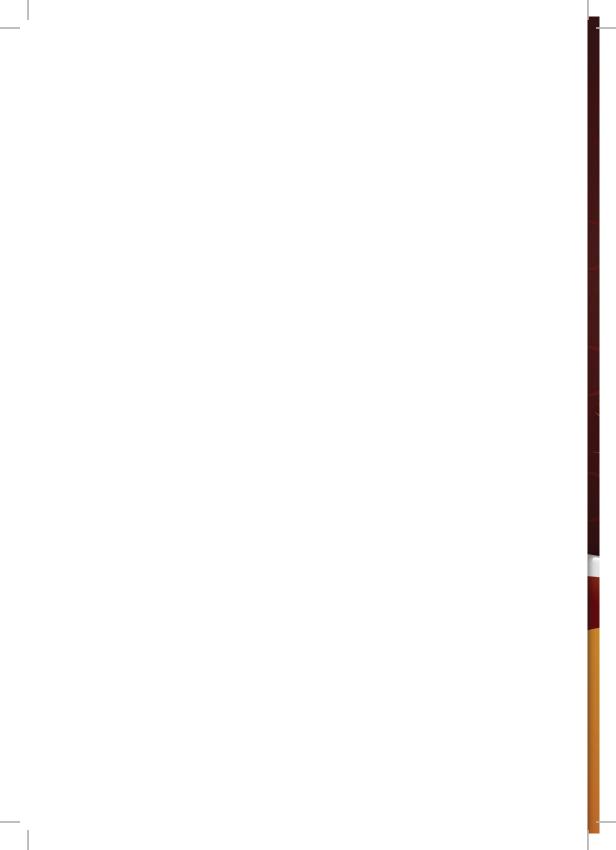
The participatory model must be assessed in terms of its representativeness: In Nan, the 1st day (brainstorming) was attended by 69 people while 25 people participated in the 2nd day (vote of prioritization). In Nakhon Si Thammarat, the 1st day (brainstorming) was attended by 69 people while 33 people participated in the 2nd day (vote of prioritization).

Participants and voters were members of:

	Nan province	Nakhon Si Thammarat
1. Local Government	- Former mayor - Kamnan - Members of local government	- Mayor - Administrators - Members of local government
2. Community Organization	- Commission of the Protection of the Forest (Members and Chair)	- Fisherfolks Network
3. Civil servants	Ministry of National Resources and Environment - Royal Forest Department - National Park Department - Department of Environmental Quality Promotion Ministry of Interior - Land Department AND ALSO representatives of the Military	Ministry of Agriculture - Department of Fisheries Ministry of Transport - Marine Department
4. Academics		Lecturers from - the University of Ratchapat Nakhon Si Thammarat - the University of Ratchamongkol
5. NGOs and civil society members	- Rak Meuang Foundation - Political Development Council	- Dap Ban Dap Meuang - Association for the Marine Resource Conservation - Political Development Council Member - Center of People's politics
6. Villagers	- Headmen - Villagers	- Headmen - Fishermen - Villagers
7. KPI network	- Former students (locals) - KPI researchers	- Former students (locals) - KPI researchers







Referring to the model of Legal empowerment developed by the KPI and based on best practices of Community-Based Resource Management (CBNRM) set by the World Bank, the KPI has so far successfully carried out the subcomponents (2) and (3) using deliberative democracy principles.

While the subcomponent (1) has already been developed by previous CBNRM projects in the years 1997-1998, the results (creation of community organizations) was not recognized by the law and the community rights over natural resources were applied but not within the framework of the law.

Legal Empowerment theory shows how the inclusion of these extralegal arrangements into the legal sector will benefit all stakeholders, the communities and the State.

The surveys was undertaken from the Silaleng villagers (84), participating in the Workshop on December 30, 2009. It has shown that the villagers knowledge on related land property right has increased. The results of the said survey appear in the Appendix II. Some recommended that such training workshops on legal matters should be organized periodically.

Now, it is fundamental not to abandon this project half-way and to initiate the Policy and Legal Reforms (PLR) subcomponents (5) and (6) which constitute the stepping stone to the implementation of legal empowerment of the poor, following Mr. Hernando de Soto's guidelines.

Nan Province – Forest resou	rces // Nakhon Si Thammarat	Province – Coastal resources
Elements of DD	Elements of CB	Elements of PLR
(1) Creation of a Committee of the Forest Community/ Fisherfolks network characterized by - an internal set of rules - regular meetings - collective planning		
(2) Public deliberative forum: management of resources held in Nan Province in Decenheld in Nakon Si Thammarat in		(2 bis) Signature of an agreement between representatives of the State and of the community on actions to be taken by various people and institutions in order to solve conflicting property rights issues
	nowledge among various s related to management of mber 29-30	
	(4) Organisation of workshops on - technical issues related to management of forest/marine resources - natural resource preservation	(5) Signature of an agreement between the State and the community providing for the delimitation of responsibilities in the management of resources between the different levels of governance (6) Issuance of a law institutionalizing the change

In Nakhon Si Thammarat, legal knowledge is already high so KPI is not planning to organize any workshop on legal issues related to marine resources.

General Recommendations with regards to the formulation of public policies

- 1. The government should initiate a policy to support legal empowerment of the poor (inclusion of the poor in the legal sector) and deliberative democracy so that everyone can access to registration of property and justice.
- 2. The access to justice and the rule of law should be seriously strengthened to guarantee the equitability for all in the access to property especially the poor people. The state and public institutions and organizations should ensure that communities have the fundamental right to manage natural resources in common and access to justice according to the 2007 Constitution. The law and regulations that represent obstacles to this right should be revised/amended.
- 3. Policies dedicated to the development of civic education at every level should be formulated with particular attention given to the poor and marginalized. Suitable budget for these activities should be provided.

Recommendations for the Administration

- 1 Support mechanisms to help promote the concept and techniques of Deliberative democracy so that it can be applied in all conflicts related to access to property rights. For instance, (i) encourage and develop workshops to train public agents or local leaders on the job of facilitating public deliberations and (ii) disseminate the concept of deliberative democracy and best practices in this matter in various public agencies.
- 2. Further study best practices of legal empowerment from various countries to enrich the Thai model.
- Implement a civic education system so that all people understand their rights and duties, with particular attention on the poor and marginalized people.
- 4. Promote the concept of good governance is necessary to support legal empowerment through access to property rights in Thailand. The genuine understanding of this concept is core to legal empowerment process.

- 5. The equal enforcement of Rule of Law is important in every government agencies so that the poor can have equal access to law and regulations.
- 6. Set-up of a Fund for Legal Aids and Deliberation to support the access to justice and notably to property rights for all.

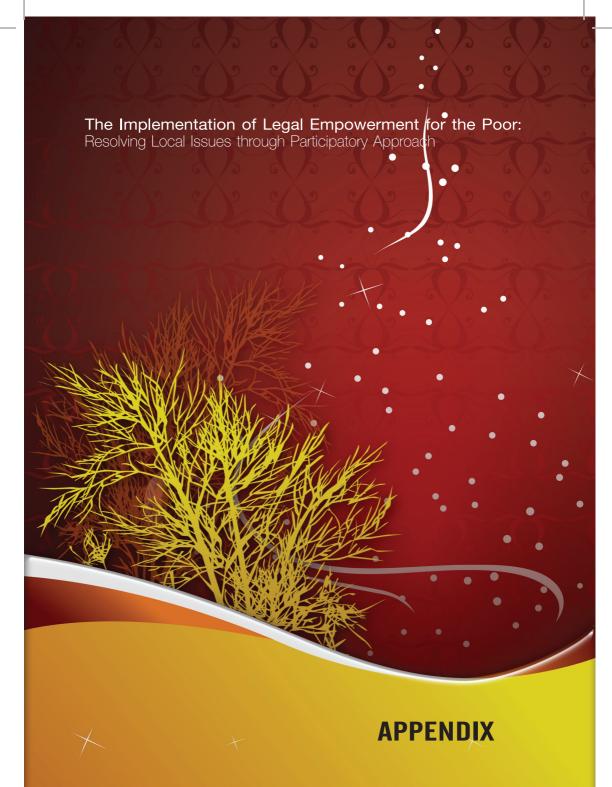
Recommendations for UNDP

While UNDP has supported the implementation of legal empowerment in various developing countries over the last years, the concept of legal empowerment is very new in Thailand. The concepts that we propose to put into practice have just been introduced to government officials, NGOs, various members of the civil society, local government representatives and villagers. As far as now, the project has not been fully implemented, as shown in part V. entitled 'Developed model'.

Moreover, in order to effectively strengthen the concept of legal empowerment in Thailand, UNDP should maintain its support for the implementation of legal empowerment through participatory approach in the previous pilot areas .

This local implementation encompasses various actions, as enumerated in the 'community pacts', but the major contribution to its success will be a Policy and/or Legal Reform (PLR).

The KPI will then disseminate its findings and methods to government agencies such as the Ministry of Justice, the courts and independent organizations as well as NGOs and the civil society so that they can become familiar with these concepts, truly understand the model to be applied in Thailand and to further adhere to and implement new local or national legal regulations that will be issued thanks to our work on this project.





Resolving Local Issues through Participatory Approach 53

APPENDIX 1

Community Pact (Approximate translation)

On the preservation, management and utilization of the community forest Tambon Silalang, Amphoe Pua, Nan

From the discussion held on December 3, 2009 at the Silalang Tambon Administrative Organization meeting room, Amphoe Pua, Nan, the participants concluded the main points as following:

Needs and Desires	How to reach goals?	Relevant change agent?
Need of property titles votes	- Revise the application of the land reform - Accelerate the process of issuance of title deeds	- State officials from Depart- ments of Land/ Forest/ Agriculture Reform/ National Park and local government representatives
2. Need of a clarification of the frontiers separating the national park, from the community forest and the forest. -7 votes	- Design a map of the area through aerial and satellite photographs to be publicly approved	- Relevant government agencies
3. Need for a community forest law clearly specifying responsibilities of the various agents in the preservation of the forest - 8 votes	Review the community forest to adapt it to people's views Get Members of the House of Representatives/Council of Ministers to pass the law Support and carry forward the community forest law	
4. Desire to see Silalang become a tourist attraction - 4 votes	- Develop eco-friendly tourist attractions (Ban Nam Poon)	- Municipality/ Park/ Forest
5. Desire of a community forest whose natural resources are plentiful and sustainable – 4 votes	- Development of writing materials to disseminate knowledge, especially to younger generations - design a relevant curriculum to be taught in schools	- People

6. Desire to use their right to participate in natural resources management (according to the Constitution, articles 66 and 67) – 3 votes	- The articles 66 and 67 of the Constitution enshrines the principle of community-based resource management	- House of Representatives/ Senate
7. Desire to see State representatives support community development projects as much as royal-initiated projects - 3 votes	- Build social standards on "Good behavior of officials" by - Give rewards to deserving officials	- People
8. Desire to see this research project (and other research project) actually help the community -1 vote	- Continuity and coherence of the articulation of the different phases of the project	- KPI and the community/people
9. Desire to have a system to store water - 6 votes	- Build a big container to store water throughout the year	- Department of Water Resources/Changwat Thahanbok Nan/Park/Forest
10. Desire to enhance water resources management system – 4 votes	- Special dedicated budget/fund - better enforcement of the law on water resources	Beneficiaries (in river mouth) House of Representatives and Senate Related institutions
11. Desire to see all households in Silalang reach self-sufficiency – 1 vote	- All families can foster and apply principles of sufficiency economy in their own households	- Leaders and all families
12. Desire to lawfully use products from the forest of the village (Protected Forests) - 3 votes	- Legislate	- House of Representatives and Senate
13. Desire to see love and harmony in Tambon Silalang – 0 vote	- Join community activities and meetings at least 2 times per year	- Municipality and community leaders
14. Desire to have a public forum to allow all sides to discuss the budget – 10 votes	- Committees of the community forest, government officer and the villagers must engage a dialogue	- Municipality and other institute such as Changwat Thahanbok Nan

By signing this document, all the sides who joined the discussion, express their approval on the above statement and commit to taking part in a forthcoming discussion to find solutions to other problems affecting the community. Moreover, the participants sign a joint agreement to ensure success in forthcoming activities of the community.

14 signatures (Village headmen, Kamnan of the Province, State official from the Department of the Forestry, Chief Municipal officer from Tambon Silaleng, Researcher on the National park of Doi Pu kha, Member of the House of Development of Politics, King Prajadhipok's Institute's Director of Department of Research and Development).

The three main priorities selected by the community are described in article 14 (10 votes), 3 (8 votes) and 2 (7 votes).

The Implementation of Legal Empowerment for the Poor:

Resolving Local Issues through Participatory Approach

Community Pact (Approximate translation)

On the conservation, management and utilization of natural resources Tambon Thasala, Amphoe Thasala, Nakorn Si Thammarat,

From the discussion held on December 15, 2009 at Thasala Tambon Administration Organization Room, Tambon Thasala, Amphoe Thasala, Nakorn Si Thammarat, the participants concluded the main points as following:

1. Success factors in the issuance of local regulations	Change agent
1. The cooperation between government, people, and social movement emerged from the recurrence of common problems.	
These problems led to discussions and exchanges of views between local government representatives (Tambon Administration Organization), central government (fishery, transport etc.) and people. Regular meetings were set up: (1) Tea sessions every Monday "Tea Party and Discussion" (2) Meetings of the local fishery network (3) Meetings every Friday to present the "Tea Party and Discussion"	The problems experienced by the community cannot be solved by representatives of the State only but must involve the civil society actors; for example, local fishery network and association for the preservation of the environment.
3. The Tambon Administration Organization recognized the importance of solving the problem of illegal fishing boats	
4. The community became increasingly aware of and interested in the problems of the environment notably through the use of media.	
5. Need to preserve and increase available natural resources	
2. Ensure that local regulations can be put into practice	
1. Exert surveillance on the ban of illegal tools in the specified area and notify any breach of the ban	
2. Provide knowledge and skills concerning the use of fishery tools	
3. Prepare a natural resource management plan	
4. Build relevant organizations, especially concerned with the application of the item 1 about illegal fishery tools	
5. Adapt or adopt new regulations to resolve the conflict about natural resources	
6. Set up an efficient communication system	
7. Provide knowledge about local regulations to the people	
8. Control the use of fishery tools, try to reduce their quantity of tools and assure a follow up on the issue	

9. Set a management plan for the Tambon and dispose of a special funds to support fishing boats	
10. Create a symbol to be used as a demarcation sign – this symbol must be understood by all	
11. Raise awareness of all people (various generations)	
12. The law must be applied to all in an equal manner	
13. Provide knowledge about the law so that everyone can correctly respect it	
14. Appoint "The working group on the application of local regulations"	
3. Problems with the law	
1. Government officers are corrupted, do not work correctly and are not serious. They apply the law in an unequal manner.	
2. Influential persons break the law with impunity.	
3. People who break the law make use of the unclear character of the law to avoid punishment.	
4. Practices of the community conflict with the Fishery Act.	
5. Government has not enough means to enforce the law	
6 Fishery boats committing an offence within the protected area, cannot be caught for their for their offence as soon as they have re-passed the boundary of the protected area	
7. The measure of closing the bay in the period when fish lay eggs (in some specific areas) dose not cover the whole area of Nakorn Si Thammarat.	
4. How to support the enforcement of the law?	Relevant change agent
1. Initiate research work on the need for the bay to be closed in the period when fish lay eggs 18 votes	Nearby universities such as Walailuk University
2. Enforce public participation, which principle is set forth by the constitution and various policies – 4 votes	People and networks
3. Thasala Sub-district Administration Organization should provide patrol vessels to the people so that they can carry out a permanent surveillance system - 3 votes	People, Thasala Sub-district Administration Organization, Amphoe Thasala and relevant organizations
4. Expand the scope of areas covered by the relevant law – 17 votes	People make proposals to the Department of Fisheries.
5. Distinctly specify boundaries and tariffs (using buoys of floats or light signals) – 9 votes	People make proposals to the Department of Fisheries and Department of Natural Resources and Environment.

6. Provide knowledge of relevant laws to the community, Tambon Administration Organization and other relevant actors – 10 votes	King Prajadhipok's Institute (KPI)
7. Ensure that the process will be carried out by the same institute from the beginning to the end - 2 votes	Tambon Administration Organization notifies the relevant institute.
8. Hold public forums to find solutions. Participants must include representatives of three categories: government, people and academics – 1 vote	KPI in association with the Tambon Administration Organization, people's network and other organizations.
10. Keep "stolen property" to prevent recidivism	People network and Sub-district Administration Organization propose to policemen.
11.Relevant institutions must organize capacity-building on management planning to be easily translatable into practical terms – 1 vote	People network and Tambon Administration Organization
12. Build an efficient communicative system such as a community radio	Tambon District Administration Organization
14. Add the expression "local fishery" in the law for more protection and acceptance of /by the community – 7 votes	KPI
15. Work towards the adoption of a legislative Act based on the local regulations – 5 votes	People network and Tambon Administration Organization
16. Better enforce the local regulations and other relevant laws – 6 votes	People network and Tambon Administration Organization
17. Create local groups, build and connect networks from Khanom to Hua Sai to firmly secure the community views of preservation of natural resources – 2 votes	Tambon Administration Organization and Provincial Administration Organization

Remarks: articles 9 and 13 were cancelled after discussion.

The three main priorities selected by the community are described in articles 1 (18 votes), 4 (17 votes) and 6 (10 votes).

The Results of the Survey undertaken on December 30, 2009 On the Knowledge Increase on Related Land property Laws

1,40,000	ıc	4	3	2	1	0	
Item	highest	high	moderate	low	lowest	none	total
1. Workshop topic usefulness	15	41	25	2	1	0	84
percent	17.85	48.80	29.76	2.38	1.19	0	100
2. Increased knowledge on related laws	10	28	35	6	2	0	84
percent	11.90	33.33	41.66	10.71	2.38	0	100
3. capability of the speakers	19	45	17	1	0	2	84
percent	22.61	53.57	20.23	1.19	0	2.38	100
4. Duration appropriateness	6	25	36	14	0	0	84
percent	10.71	29.76	42.85	16.66	0	0	100
5. Venue appropriateness	9	30	47	1	0	0	84
percent	7.14	35.71	55.95	1.19	0	0	100
6. Lunch	6	22	27	0	0	26	84
percent	10.71	26.19	32.14	0	0	30.95	100
7. coffee break	6	35	34	3	0	3	84
percent	10.71	41.66	40.47	3.57	0	3.57	100

Pictures of the process of public deliberation – 15 December 2009

1st DAY



Registration – each participant is provided a manual explaining the origin of the problems related to natural resource management as well as a kit describing the project.



(1) Preliminary trust- and confidence-building among participants (approx 1 hour)



Each member of the team and each participant are invited to introduce themselves to the audience. Then, participants play trust-building and conflict-resolution games.

(2) Separation in working groups composed of all categories of stakeholders. Working groups brainstorm about their objectives, needed actions to reach objectives and responsible actors for the implementation.





A Working Group

What to be done? By whom?'

(Facilitators are KPI's staff and students, and representatives from NGOs. All of them have been trained to be facilitators before. Some of them are KPI's students in Conflict Management and Mediation.)



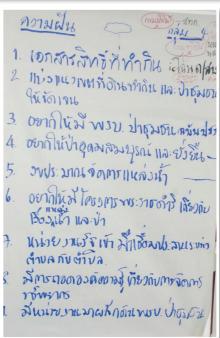


(3) Group presentations by their rapporteurs (a volunteer who is neither a facilitator nor from the KPI)



'Dreams.

- 1. Land property title.
- 2. Etc



(4) Identification of preferences making consensus



KPI staff enunciates the results of the brainstorming

– as soon as one idea makes consensus, all participants clap in their hands to formally adopt it

(5) Materialization of these preferences by means of a charter organized in different articles (between 14 and 17 articles)

2nd DAY

(1) Organization of a vote of prioritization: each individual is assigned to select from the charter the three most important and urgent articles. The vote is anonymous.

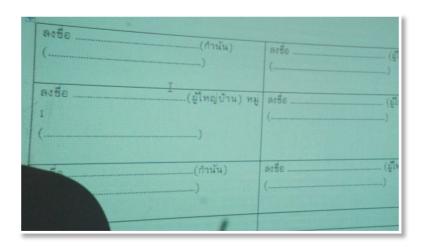


(2) Public counting of votes, adoption of three main priorities





(3) Signature of an agreement among representatives of the different parties to commit to making efforts towards the implementation of selected priorities



A video projector shows in real-time the advancement of the elaboration of the Agreement. The document is now ready to be signed by various representatives of conflicting parties.

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