

Environmental Laws and Institutions in Southeast Asia: A Review of Recent Developments

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Overview

Twelve years after the landmark Rio Summit on the Environment and Development, countries worldwide are continuing to grapple with the complex challenges of reconciling developmental goals with environmental protection imperatives. In Southeast Asia, as elsewhere, national governments have sought to meet such challenges by, *inter alia*, enacting new laws on natural resource management and environmental protection, ratifying relevant international conventions as well as establishing or strengthening the requisite institutions for ecological governance. In the last few years alone, various new national laws have been enacted in the Southeast Asian region to deal with issues of environmental and natural resource management. This article seeks to assess some of the new laws and institutional arrangements that have been put in place in selected Southeast Asian countries and to illustrate, by way of country examples, some of the systemic challenges to implementation and enforcement that have arisen. At the same time, the article will provide a broad snapshot of key legal and institutional trends relating to the environment that are evolving in these countries.¹

Indonesia

In Indonesia, natural resource management after the Suharto regime's demise in 1998 is heavily influenced by the ongoing process of decentralization of power to the regions.² In this regard, a serious conflict is emerging between the regional autonomy laws and the sectoral laws which govern natural resource exploitation. Hence, while instruments such as Law No. 22/1999 on Regional Autonomy accords the regional governments primary authority over natural resource matters,³ Forestry Law No. 41/1999 and its implementing

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¹ The treatment here is not exhaustive but seeks to identify major developments influencing the scope of environmental protection and natural resource management in the various countries. This article updates an earlier assessment in 2002, see Alan Khee-Jin Tan, "Recent Institutional Developments on the Environment in Southeast Asia", 6 *Sing. J Int'l & Comp. L.* 891 (2002).

² The regions (*daerah*) refer to units of government from the provinces downwards. For decentralization generally, see Gary F. Bell, "The New Indonesian Laws Relating to Regional Autonomy: Good Intentions, Confusing Laws," 2 *Asia Pac. L. & Pol'y J.* 1 (2001) and Ahmad Dermawan & Ida A. P. Resosudarmo, *Forests and Regional Autonomy: The Challenge of Sharing the Profits and Pains*, in *Which Way Forward? People, Forests and Policymaking in Indonesia* (Carol J. P. Colfer & Ida A. P. Resosudarmo eds., 2002).

³ The regional autonomy laws specifically repose the bulk of authority in the *kabupaten* (regencies or districts) and *kota* (towns), thereby short-circuiting the *propinsi* (provinces) of which they are part. Thus,

instrument, Government Regulation 34/2002 on the Management, Exploitation and Use of Forest Areas, continue to retain competence for the central government, particularly in the granting of lucrative timber concessions.

Such basic contradictions illustrate the government's failure to reconcile the objectives of two disparate sets of political forces, one purporting to accord greater power to local government units while the other seeking to retain centralized control over sectoral resources and revenue streams. The result is a massive dysfunction in the forest management effort, with emboldened local leaders ignoring central government edicts and proceeding to issue their own concessions pursuant to regional autonomy.⁴ This is precipitating a serious breakdown in policy communication and coordination between centre and periphery, with the outcome being a surge in the rate of deforestation, forest fires and illegal logging in the regions.⁵

Another serious problem is in the mining sector. In March 2004, the Indonesian government issued a Government Regulation In Lieu of Law (known by its Indonesian acronym as *Perpu*) No. 1/2004 on the Revision of Forestry Law No. 41/1999. The *Perpu* sought to exempt and thus legitimise mining concessions in forest areas which had been approved prior to the coming into force of the Forestry Law.⁶ The latter law had explicitly banned open-pit mining in forested areas, but had omitted to outlaw existing concessions specifically. Consequently, environmental NGOs had agitated for existing concessions to be withdrawn as well, citing the destructive effects of open-pit mining in forests. This resulted in many of the concession holders (comprising mining conglomerates from the developed countries, principally Australia) threatening to invoke arbitration claims against the government for compensation.

The resulting fear of huge compensation payouts as well as dampened investor confidence compelled the central government to issue the *Perpu*, which was swiftly followed on 12 March 2004 by Presidential Decision KP 41/2004 identifying 13 specific concessions for exemption. Before having permanent effect, *Perpu* No. 1/2004 needs to be explicitly ratified by the Parliament, given that *Perpu*'s only have the status of temporary emergency regulations within the hierarchy of legislation in Indonesia. In this regard, there are indications that Parliamentary ratification is forthcoming, given the support of the three biggest factions in Parliament for the pro-mining cause.⁷ The controversy over mining in protected forests illustrates the government's failure to coordinate the responses of the various agencies responsible for mining, forestry, environmental protection and investment promotion. More ominously, the episode bodes

the newly-empowered actors are primarily the *kabupaten* and *kota* governments, led by the *bupati* (regents) and *walikota* (mayors) respectively.

⁴ See, e.g., Krystof Obidzinski & Christopher Barr, Centre for International Forestry Research (CIFOR), *The Effects of Decentralization on Forests and Forest Industries in Berau District, East Kalimantan*, at 8, 12 (2003).

⁵ *Id.* and Dermawan & Resosudarmo, *supra* note 2.

⁶ The *Perpu* adds two extra paragraphs (83A and 83B) to the Forestry Law.

⁷ "Mining in Protected Forests", Jakarta Post (Indonesia), 19 Jul. 2004. Postscript: The *Perpu* was ratified in August 2004 in the form of Law UU No. 19/2004, though this is reportedly being challenged before the Constitutional Court, see "Law on Mining Challenged", Jakarta Post (Indonesia), 17 Feb. 2005.

ill for the future of protected forests in Indonesia, given the government's demonstrated willingness to overturn natural resource protection laws by questionable means such as temporary emergency regulations.⁸

Overall, the institutional governance of natural resources and the environment in Indonesia continues to be fractured, with problems of corruption and lack of coordination becoming even more pronounced than during the Suharto era.⁹ The Office of the State Minister for the Environment – the main agency for environmental protection – remains a junior ministry within the governmental structure, possessing only coordinating and supervisory functions without enforcement competence in the regions.¹⁰ The erstwhile central-level Environmental Management Agency (BAPEDAL) has become subsumed within the Office of the State Minister, and the local BAPEDAL branches (the so-called *Bapedalda's*) are now fully within the control of the provincial and regency governments.

On their part, the Ministries of Forestry and Mineral Resources and Energy are more powerful “line” agencies with greater manpower and budgetary resources, but even these actors have increasingly seen their authority being eroded by the ongoing decentralization process. The politically-relevant actors today are the provincial and regency leaders, whose status and prestige have been elevated by the decentralization movement and who are increasingly engaging in rent-seeking behaviour.¹¹ In particular, it has been documented that commercial interests which previously cultivated central government officials are now forging patron-client networks with local-level leaders, often with unfavourable consequences for the livelihoods of local communities and the natural resource management effort.¹²

Elsewhere, the government has amended the Anti-Money Laundering Law to make it difficult for money amassed from illegal logging and other environmental crimes to be laundered through the banking system.¹³ However, the extent to which this law will be implemented remains unclear, given that no sign of enforcement has appeared. Meanwhile, ambitious plans to establish a specialised environmental court¹⁴ to deal with flagrant breaches of environmental laws have yet to materialise, while a proposed high-level, “incorruptible” team to investigate illegal logging is still in the planning stage. There has also been a related proposal to establish an integrated agency to investigate and

⁸ From a constitutional perspective, the legality of using temporary instruments like *Perpu's* to amend higher Laws remains questionable, particularly because the Constitution anticipates *Perpu's* only in times of “national emergencies”, see Nadirsyah Hosen, “Legalitas Perpu Antiterorisme” (The Legality of the Anti-Terrorism *Perpu*), Media Indonesia, 23 Oct. 2002, at <http://media.isnet.org/isnet/Nadirsyah/perpuantiteror.html> (last accessed 26 Aug. 2004). In this regard, the mining question hardly constitutes a national emergency.

⁹ Obidzinski & Barr, *supra* note 4.

¹⁰ Tan, *supra* note 1, at 895-97.

¹¹ J. Smith et al., “Illegal Logging, Collusive Corruption and Fragmented Governments in Kalimantan, Indonesia”, 5 Int'l Forestry Rev. 293, at 298 (2003).

¹² See, e.g. John F McCarthy, “Power and Interest on Sumatra's Rainforest Frontier: Clientelist Coalitions, Illegal Logging and Conservation in the Alas Valley”, 33 J. Southeast Asian Stud. 77, at 90-96 (2002).

¹³ “Fighting illegal loggers”, Jakarta Post (Indonesia), 20 Jan. 2004.

¹⁴ “Government to establish environmental court”, Jakarta Post (Indonesia), 30 Sep. 2002.

prosecute serious environmental crimes in Indonesia,¹⁵ but this, too, has yet to be finalised.

In the meantime, a draft Natural Resources Management Law is reportedly being prepared,¹⁶ even though environmentalists have criticised the draft Law as being wholly deficient for its reliance on sectoral approaches to management. Thus, the draft Law fails, for instance, to accord sufficient attention to the needs of indigenous communities even as it advances the interests of sectoral concerns such as the mining, forestry and oil palm industries. The government has also announced plans to pass a *Perpu* on illegal logging which will, amongst other measures, provide for expedited trials following arrest and impose the death penalty on convicted illegal loggers.¹⁷ However, it remains doubtful if such a law, even if passed, will be effectively implemented since there will be many challenges to overcome such as finding sufficient evidence for prosecution, defining the ambit of “illegal”, persuading prosecutors to press for the maximum sentence and ensuring that judges are well-trained in environmental law and more importantly, not susceptible to corruption by vested interests. These are familiar problems which have long afflicted environmental governance in Indonesia and which require great political will to overcome, beyond simply the introduction of new laws and institutions.

Thailand

In Thailand, the environmental protection effort has now been bolstered by the creation of the new Ministry of Natural Resources and Environment (MNRE) in 2002. Previously, environmental functions were exercised by the Ministry of Science, Technology and the Environment. In October 2003, one of the main government agencies in charge of the environment - the Office of Environmental Policy and Planning - was formally reconstituted under the MNRE as the Office of Natural Resources and Environmental Policy and Planning (Onrepp). One of Onrepp’s most important tasks is to review environmental impact assessments (EIAs) required under the law.

Institutionally, the new MNRE is still seeking to establish its credentials and influence within the government, particularly vis-à-vis the powerful sectoral ministries which are more predisposed toward natural resource exploitation.¹⁸ This is perhaps the greatest challenge currently faced by the fledgling MNRE. Conflicts with more established agencies such as the Ministry of Agriculture and Cooperatives (MAC) have become common in recent years, particularly over the issue of logging and forest protection. The competing interests have arisen primarily because of the government’s decision to keep the Forestry Department within the MAC rather than transfer it to the MNRE.

¹⁵ “Integrated Approach to Destruction”, at http://www.laksamana.net/vnews.cfm?ncat=33&news_id=4380, 29 Nov. 2002 (last accessed 27 Aug. 2004).

¹⁶ A new Water Resources Law No. 7 of 2004 has also recently been passed.

¹⁷ The proposal came on the heels of a massive flooding disaster in North Sumatera at the end of 2003, in which hundreds of people died after a river overflowed its banks, see “Jakarta drafts law to put illegal loggers to death”, *Straits Times* (Singapore), 3 Jul. 2004.

¹⁸ Tan, *supra* note 1, at 891.

Thus, while some divisions overseeing the management of protected forests have been moved to the MNRE,¹⁹ logging and forest resource exploitation remain with the Forestry Department within the MAC. As a consequence, inter-agency conflicts occur regularly, as exemplified by the recent controversy over abandoned teak wood which had been illegally logged.²⁰ In this regard, the MAC's position is that these logs should be auctioned, while the MNRE claims that the logs were illegally felled in national parks such as the Salween park and wildlife sanctuary (which falls within MNRE's competence), and that auctioning will only encourage illegal loggers to carry on with felling activities and to legally claim these logs through public auctions later.²¹ This is but one illustration of the kind of challenges faced by the MNRE – indeed, it will take some time before greater coordination with other government agencies can be achieved. Until then, the environmental protection effort in Thailand will continue to face significant stresses in relation to balancing the interests of the different agencies.²²

Another area which amply illustrates the dynamics of competing interests in Thailand is the environmental impact assessment (EIA) process. The process is currently suffering from systemic problems such as lack of public participation and poor accountability of consultants hired to conduct assessments. There are frequent complaints of impractical criteria which require only state projects – and not privately-funded ones – to go through the assessment process. Another shortcoming relates to the lack of monitoring capabilities on MNRE's part to follow up on the implementation of environmental mitigation plans prescribed by EIAs. The process has also been criticised for being time-consuming, while Onrepp – the EIA assessment body – has been taken to task for failing to ensure the quality of EIA reports.

In fact, critics have long charged that EIA reports for high-profile projects such as the Thai-Malaysian gas pipeline, the coal-fired power plants in Prachuap Khiri Khan and the potash mining activity in Udon Thani have been poor in quality, biased in content and aimed simply at helping developers win permits rather than at giving solutions to environmental damage.²³ In the light of such complaints, a draft regulation has been prepared to provide for blacklisting of shoddy consultants.²⁴ At the same time, the MNRE is moving to overhaul the whole EIA process and to introduce changes such as greater accountability of consultants and more public participation. The approval process will

¹⁹ Specifically, the National Parks, Wildlife and Plants Department.

²⁰ "Protected forests 'placed at risk'", Bangkok Post (Thailand), 25 Sep. 2002.

²¹ *Id.*

²² See generally Douglas L. Tookey, "Southeast Asian Environmentalism at its Crossroads: Learning Lessons from Thailand's Eclectic Approach to Environmental Law and Policy", 11 *Georgetown Int'l Envtl L. Rev.* 307 (1999) and Vipon Kititansasorchai & Panat Tasneeyanond, "Thai Environmental Law", 4 *Sing. J. Int'l & Comp. L.* 1 (2000).

²³ "Shoddy EIAs may lead to blacklisting", Bangkok Post (Thailand), 3 May 2003 and "Udon Thani potash mines: Panel slams EIA assessment", Bangkok Post (Thailand), 4 June 2003. Some of the complaints relate to consultants lacking the necessary academic credentials and who violate professional ethics by copying data from other studies. In another well-publicised case, the study for the power plant project at Ban Krut in Prachuap Khiri Khan province failed altogether to identify a major coral reef in the vicinity.

²⁴ "Shoddy EIAs may lead to blacklisting", Bangkok Post (Thailand), 3 May 2003.

also be tightened to prevent companies from revising and re-submitting applications for projects which have already been turned down.²⁵

On the part of the judicial system, there have been proposals to establish a specialised environmental court to settle environmental and natural resource conflicts.²⁶ The traditional court system is viewed to be inadequate because of long-standing problems such as the lack of standing for litigants and court awards which merely grant compensation to affected persons without guaranteeing remedial measures to restore the environment.²⁷ Whatever the prospects for an environmental court, systemic challenges (similar to Indonesia's) relating to the willingness among prosecutors to bring cases, the availability of evidence and access to environmental justice for indigenous communities must be overcome.

One of the main priorities of the MNRE is in the field of biological diversity, where a host of new legislation has been passed or is in the process of preparation. In January 2004, Thailand ratified the 1992 U.N. Convention on Biological Diversity. For a long time, Thailand's ratification of this Convention had been delayed due to fears that sharing of plant varieties under the Convention may be disadvantageous as it would prevent the country from receiving benefits from its own genetic resources, namely cash crops such as rice, coconut, sweet potato and cassava.²⁸ With the Convention having been ratified, one of the MNRE's biggest challenges is to produce legislation that paves the way for Thai compliance with the requisite obligations while providing adequate protection for indigenous genetic resources so as to address fears of exploitation by multinational corporations.

To this end, a variety of new laws is currently being planned to complement existing legislation such as the 1999 Law on the Protection of Thai Intelligence and Traditional Medicines. There is also in existence a 1999 Thai Variety Plant Protection Act, which unfortunately does not set out a comprehensive list detailing the particular plant species which are to be protected.²⁹ The Act has also been criticised for being more protective of the interests of multinational seed firms rather than local farmers' rights.³⁰ In particular, the Act gives rights over the use of novel plant seeds to multinational seed companies and accords intellectual property rights protection to inventors of novel plant species by banning farmers from storing the seeds for sowing. This ban has met with severe

²⁵ "Major changes soon on impact studies - Credibility of experts also under question", Bangkok Post (Thailand), 15 Apr. 2003. See also the critique of Thailand's EIA policy by the U.N. Economic and Social Commission for Asia and the Pacific, highlighting unfavourable aspects such as lack of public participation, see

http://www.unescap.org/drpad/vc/conference/ex_th_47_eia.htm (last accessed 20 Aug. 2004).

²⁶ "Judge urges setting up 'Green' court", Bangkok Post (Thailand), 23 Feb. 2004.

²⁷ *Id.*

²⁸ "Govt agrees to ratify Convention on Biodiversity by year-end", Bangkok Post (Thailand), 4 Jul. 2003

²⁹ Update on Biodiversity Law, Thai Law Forum, at <http://www.thailawforum.com/news3.html>. (last accessed 20 Aug. 2004).

³⁰ "Plant law 'protecting big firms over farmers'", The Nation (Thailand), 25 Jul. 2003.

criticism from NGOs agitating for greater farmer protection, and there is currently a proposal to amend the Act to allow farmers to keep novel plant seeds for future sowing.³¹

Malaysia

In March 2004, a new Ministry of Natural Resources and the Environment (MNRE) was established in Malaysia by the incoming administration of Prime Minister Abdullah Badawi. As in Thailand, the new Ministry was created by hiving off the environmental functions hitherto exercised by the Department of Environment within the Ministry of Science, Technology and Environment. The creation of the MNRE went some way toward satisfying the environmental NGOs' calls for a separate ministry capable of promoting better coordination over environmental matters. Both the Department of Environment and the Department of Forestry (responsible for pollution control/EIAs and forest management respectively) now operate within the MNRE, and there appears to be greater coordination between the two agencies. At the same time, there is also the promise of more effective cooperation between these agencies and the Department of Wildlife Protection and National Parks, which also comes within the MNRE.

For all the benefits of a separate and empowered Ministry, there are worrying signs that the MNRE is perpetuating the traditional emphasis on exploitation and wealth creation, as evidenced by the new Minister's recent assertion that land and forests are national assets which must not be left dormant.³² There have also been doubts over the segregation of water resources into another ministry, the Ministry of Energy, Water and Communications (MEWC).³³ In this regard, the criticism relates to the MEWC's clear emphasis on a philosophy of supplying water to meet consumer needs rather than treating water as a limited and finite resource.

On the EIA front, Malaysia appears to be facing challenges similar to those arising in Thailand and other countries. In particular, there have traditionally been problems relating to demarcation of competence between the federal and state governments.³⁴ Under the Federal Constitution, land issues, for instance, come under the jurisdiction of the state governments. The East Malaysian states of Sabah and Sarawak, in particular, have special competence under the Federal Constitution for matters relating to land and natural resources.³⁵ Thus, there is often confusion as to whether a proposed project falls within the competence of the federal or state governments, with the latter typically embarking on divergent policies.

³¹ *Id.*

³² As referred to in the statement of the President of the environmental NGO, Sahabat Alam Malaysia, at <http://www.elaw.org/news/press/text.asp?id=2380> (last accessed 13 Aug. 2004).

³³ "A More Holistic Way Of Managing Our Natural Resources", Malayan Nature Society Press Release, at <http://www.mns.org.my/article.php?sid=412> (last accessed 20 Aug. 2004).

³⁴ See generally Tan, *supra* note 1, at 901-03 and Azmi Sharom, "Malaysian Environmental Law: Ten Years After Rio", 6 *Sing. J. Int'l & Comp. L.* 855 (2002).

³⁵ This was a political compromise reached during the admission of Sabah and Sarawak into the Malaysian Federation in September 1963.

In this regard, a welcome development occurred in 2003, when the federal government announced that all projects in the Cameron Highlands and other sensitive highland and island environments will be approved only by federal authorities.³⁶ At the same time, amendments have also been proposed to laws governing land development such as the Land Conservation Act of 1960 and the National Land Code of 1965. There are plans to curb the power of land administrators and any other state agencies in issuing approval for land activities and to make them legally accountable for approving development in such areas without proper environmental studies.³⁷

These developments – particularly the new procedure for highland and island development - mark the critical first steps toward a more coherent conservation and EIA policy at the federal/national level, given that the ecosystems of several important sites had already borne the consequence of poor EIA evaluation by the respective states. For instance, the Pulau Redang marine park, while federally-gazetted, remains within the control of the Terengganu state government in relation to the assessment of development plans and enforcement against violations. Often, the state governments do not possess the technical, financial and manpower capacity to undertake proper assessment and enforcement action.³⁸

At the same time, however, there remain serious doubts over whether the federal government itself is well-equipped to conduct conservation efforts. Realistically, even if the federal government may oversee the EIA process, follow-up implementation of remedial measures and enforcement against violators can only be undertaken effectively with the co-operation of state authorities. The political willingness and institutional capacity of state governments to enforce conservation rules must thus be significantly enhanced, even as the federal government moves in to assert greater competence over natural resource matters.

The Philippines

Environment protection and natural resource management in the Philippines have long come under the centralized control of a single agency, the Department of Environment and Natural Resources (DENR). However, the existence of a single agency for environmental and natural resource governance and a plethora of progressive laws³⁹ have not fully prevented conflicts between centre and periphery. In fact, the experience of the

³⁶ “No excuse for breaking environmental laws”, *The Star* (Malaysia), 8 Feb. 2003.

³⁷ “Tough steps to save the land”, *The Star* (Malaysia), 26 Feb. 2003 and “Land Act to get more bite”, *The Star* (Malaysia), 3 Feb. 2003.

³⁸ There have been recent concerns over a controversial proposal to build a marina in Tioman Island in Pahang state, considered a haven for coral reefs. The project is championed by the Marine Department of the Ministry of Transport and the Pahang state government, even though it has been criticised by the Ministry of Natural Resources and Environment. The Ministry, however, considered itself as having “no authority to stop it as it was a state project”, see “Tioman dive site set to be destroyed”, *The Star* (Malaysia), 6 Sep. 2004. It is unclear why the new federal policy on highland and island development did not take precedence in the matter. Ostensibly, there are problems with its acceptance by state authorities.

³⁹ See Tan, *supra* note 1, at 904-5, setting out the extensive array of Philippine laws relating to ancestral domains, environmental impact studies, integrated protected areas, biological safety etc.

Philippines shows that while an empowered super-agency goes some way toward reconciling sectoral conflicts at the “horizontal”/central government level, the divergent policies of provincial governments and vested interests cannot be so easily wished away. Thus, greater “vertical” alignment of policies must be sought, particularly in implementing the Environmental Impact Statement (EIS) system that is currently in place in the Philippines.

At any rate, the wisdom of having environmental and natural resource functions coalesced within a single agency has often been questioned – the Philippine government is reportedly supporting a separation of these functions to overcome unwieldy decision-making and to promote greater effectiveness in environmental governance.⁴⁰ A separation, however, would be counter-productive – there is little indication that separate agencies would resolve the challenges in the Philippines, which have more to do with insufficient power and resources being given to the DENR and a lack of cooperation by provincial authorities. In any case, a separation of functions will only introduce overlapping competences and problems of coordination among the new agencies. What is more effective is to streamline and strengthen the governance system among the different bureaus that make up the DENR and to bring the provincial governments more in line with national environmental policies.

One of the most serious environmental issues relates to mining and its impact on the environment and indigenous communities. Vociferous environmental groups in the Philippines have long resisted the government’s efforts to promote and develop the mining industry. In this regard, the DENR’s Mines and Geo-Sciences Bureau (MGB) – the agency in charge of mining activities – had in 2003 submitted a National Minerals Policy (NMP) Framework to the Philippine Council on Sustainable Development, which is a high-level body that vets policies and legislation to ensure consistency with sustainable development objectives. The NMP subsequently came under heavy NGO criticism as it was meant to facilitate the implementation of the Philippine Mining Act of 1995, which itself remains controversial for its overtly pro-mining stance.

For instance, the Act has been criticised for failing to regulate the unauthorised disposal of mine tailings into the sea.⁴¹ Instead, the Act merely imposes a certain amount of levy on the mining companies for damages incurred. In addition, the Act allows companies to carry out mining activities in areas of known seismicity as well as in developed areas.⁴² Very significantly, the Act also allows the endorsement of mining projects by any two of the local government units (LGUs) instead of all levels of LGUs, making access easier for mining companies, particularly into indigenous people’s lands and ancestral domains.⁴³ At the same time, the Mining Act and the NMP have been heavily criticised

⁴⁰ Executive Summary, Minerals Action Plan (MAP) – A Roadmap for the Revitalization of the Minerals Industry, at p.4, website of the Mines and Geosciences Bureau, DENR, at http://www.mgb.gov.ph/map/map_executivesummary.pdf (last accessed 27 Aug. 2004).

⁴¹ See website of the NGO, Legal Rights and Natural Resources Center - Kasama sa Kalikasan, at http://www.lrcksk.org/campaigns/nmp/draft_nmp.htm (last accessed 20 Aug. 2004).

⁴² *Id.*

⁴³ *Id.*

for emphasising the attraction of foreign investment by multinational corporations in the mining industry.

In January 2004, President Gloria Macapagal-Arroyo issued Executive Orders (E.O.) Nos. 270 and 270A outlining a new National Policy Agenda on Revitalizing Mining in the Philippines. Pursuant to the Order, a Minerals Action Plan (MAP) is currently being prepared.⁴⁴ These instruments are in line with the Arroyo Administration's determined shift away from a policy of tolerance toward one of active promotion of mining operations. In essence, promoting mining is seen to be critical in helping to boost the ailing Philippine economy. From the government's perspective, the new policy is necessary to overcome numerous constraints such as overlapping laws and local government policies as well as perceived policy instabilities arising from a recent Supreme Court decision nullifying certain provisions of the Mining Act.⁴⁵ The government claims that the MAP is wholly consistent with sustainable development imperatives and will respect the rights of indigenous communities.⁴⁶ However, there is huge suspicion and resistance from the NGO community over the risks of massive environmental and social repercussions arising from the government's pro-mining policy. In this regard, the last word on the matter has not been heard, and a major debate has now been ignited over the MAP and the government's advocacy of the mining cause.⁴⁷

One of the more significant developments in recent months has been the establishment of an Environmental Ombudsman (EO) within the Office of the Ombudsman. The EO shall be tasked with receiving and investigating reports and prosecuting complaints against public officials who fail or refuse to properly implement the relevant environment and

⁴⁴ See Draft Mineral Action Plan at website of the Mines and Geo-sciences Bureau, at http://www.mgb.gov.ph/map/map_final.pdf (last accessed 27 Aug. 2004) and the Executive Summary of the MAP at http://www.mgb.gov.ph/map/map_executivesummary.pdf (last accessed 27 Aug. 2004).

⁴⁵ *La Bugal-B'laan Tribal Association v. Victor O. Ramos & Others*, 27 Jan. 2004, available at <http://www.supremecourt.gov.ph/2004/jan2004/127882.htm> (last accessed 27 Aug. 2004). The decision nullified provisions in the Mining Act allowing the direct participation of foreign-owned corporations in mining. The Arroyo Administration viewed this decision to be a massive blow to investor confidence. Postscript of June 2005: In December 2004, the Philippine Supreme Court spectacularly reversed itself on the La Bugal case, and upheld the constitutionality of the Mining Act. Another case - *Cruz v. the National Commission of Indigenous Peoples*, 6 Dec. 2000, available at <http://www.elaw.org/resources/text.asp?id=236> (last accessed 27 Aug. 2004) – has thrown light on the plight of indigenous communities in the Philippines. An evenly-divided Supreme Court appeared to uphold the constitutionality of several questionable provisions in the Indigenous Peoples Rights Act (IPRA) of 1997, and was divided as to whether IPRA allowed non-state ownership of natural resources and whether ancestral domains formed part of the public domain. In this regard, the Supreme Court appears to have perpetuated the legal uncertainties surrounding the status of ancestral lands and domains, in particular the lack of reconciliation between the IPRA and other laws such as the Mining Act. On the IPRA, see Patricia Thompson, "The Philippines Indigenous Peoples Rights Act", *Colo. J. Int'l Env'tl. L. & Pol'y* 179 (1998). For a critique on another (earlier) significant Philippine case which recognised the right of future generations to a sound environment, see Dante B. Gatmaytan, "The Illusion of Inter-generational Equity: *Oposa v. Factoran* as Pyrrhic Victory", 15 *Geo. Int'l Env'tl. L. Rev.* 457 (2003).

⁴⁶ Executive Summary of the MAP, *supra* note 40, at p. 4.

⁴⁷ Elsewhere, new environmental legislation adopted in recent times include Republic Act 9275 (the Philippines Clean Water Act of 2004) and Executive Order No. 318 on Promoting Sustainable Forest Management in the Philippines. A new Sustainable Forest Management Act is also being prepared, and is expected to be enacted by 2007.

natural resources laws. Pursuant to a Memorandum of Agreement signed with the Integrated Bar of the Philippines (a body of the legal profession), the Bar's National Environmental Action Team (NEAT) shall act as a conduit to receive and process any complaints for possible reference to the EO. In August 2004, an Environmental Team of Investigators and Prosecutors, comprising 17 lawyers from across the country, was duly established to assist the EO in investigating breaches of environment and natural resources laws.⁴⁸

While it is too early to assess the Team's impact, its establishment appears to be a positive development which promises greater prospects for government officials to be held accountable for failing to adhere to environment and natural resources laws. However, without a genuine commitment on the part of local governments and vested commercial interests to pursue sounder policies on natural resource management, there is a risk that the EO initiative will become yet another well-intentioned but ineffectual means of addressing environmental injustice in the Philippines. Indeed, if the Office of the Environmental Ombudsman were to face the same kinds of political pressures and compromises confronting existing institutions such as the courts, prosecutors and DENR administrators, there is the risk that it will end up as another layer of government bureaucracy.

In addition, the reliance on prosecution and conviction before the courts may be unrealistic, given the amount of time and expenses needed for such recourse. The Office of the EO would do better to work with local governments, regional DENR offices and NGOs to monitor the proper implementation of development or environmental impact assessment (EIA) plans to prevent any ecological problems from actually arising. Unfortunately, this "watchdog" function is not spelled out under the terms of the EO's establishment, which is principally founded upon "after-the-fact" complaints. The EO would conceivably be more effective if it could combine both pre-complaint monitoring and post-complaint investigative functions. Overall, public expectation for the Office of the EO is very high,⁴⁹ and it is hoped that it will possess real powers to begin enforcing the myriad environmental laws which currently exist but remain largely unimplemented in the Philippines.

Cambodia

Cambodia has in recent years enacted a variety of natural resource protection legislation with the assistance of international donors such as the World Bank. Many of the laws were enacted pursuant to conditions relating to land use and forest reform laid down by the World Bank for the release of Structural Adjustment Credit (SAC) loans.⁵⁰ Amongst the new laws is the Land Law, enacted in 2001 to promote certainty in issues of land

⁴⁸ Order No. 55-04, Office of the Deputy Ombudsman for Luzon, 16 Aug. 2004. By virtue of Order No. 16-04 of 10 Feb. 2004, Director Wilbert L. Candelaria of the Office of the Deputy Ombudsman for Luzon was designated as the Environmental Ombudsman

⁴⁹ See "There's now an ombudsman for green complaints", *The Philippine Daily Inquirer*, 29 Aug. 2004.

⁵⁰ See "World Bank caves in on forestry reform", 2 Jan. 2004, at <http://www.phnompenhpost.com/TXT/comments/c1301-1.htm> (last accessed 20 Aug. 2004).

ownership. Adopting a system of land titles by official registration, the Law recognises communal rights to immovable property as well as rights to land ownership by indigenous communities. Land ownership by foreign investors is restricted, pursuant to provisions under the Land Law as well as the 1994 Investment Law on the Use of Land. The administration of the Land Law is being undertaken by the Ministry of Land Management, Urban Planning and Construction, which is currently seeking to survey parcels of land in the country for purposes of issuing titles.

One major challenge in implementing the Land Law in Cambodia is to reconcile its provisions with the Civil Code, itself currently being drafted. Provisions in the draft Civil Code appear to recognise that land ownership can be transferred by contract, which runs counter to the registration system laid down by the Land Law.⁵¹ The lack of coordination between the two instruments is symptomatic of a greater problem within the government, wherein different agencies supported by various donors appear to be promoting conflicting objectives. In the case of the Land Law, land reform had been instituted under pressure by international donors, long before the civil code reforms were undertaken.⁵²

With regard to forestry, a new Forestry Law was enacted in 2002, followed by the issuance of a Community Forestry Sub-Decree in 2003. The Forestry Law came on the heels of the Statement of the Royal Government on National Forest Policy, an important policy document issued in 2002 which outlines the government's commitment to conservation and sustainable management goals. The Policy designated Cambodia's remaining forest resources as Permanent Forest Estates to be maintained in perpetuity. In reality, however, the implementation of this policy is fraught with problems, given the massive illegal logging that is occurring in protected forest areas. Other new requirements laid down by the Forestry Law include environmental impact assessment (EIA) requirements and provisions for private sector and community participation in forestry. With regard to the latter, the 2003 Sub-Decree is meant to pave the way for community management of forest resources, granting local communities the legal right to manage traditional forests.

The agency responsible for overseeing the implementation of the Forestry Law and the Sub-Decree is the Ministry of Agriculture, Forestry and Fisheries (particularly its Department of Forestry and Wildlife). In this respect, there are concerns that the Ministry's overt pro-exploitation policies do not sit well with its responsibility to implement the community management goals of the 2003 Sub-Decree. Despite the passage of the new Forestry Law and a moratorium against logging announced in January 2002, the acute problem of forest mismanagement persists.⁵³ For one thing, the government continues to grant timber concessions outside the revised legal framework and has also failed to terminate many non-performing concessionaire contracts.⁵⁴ The few

⁵¹ "Pressures over property – Draft Civil Code sets up conflict with Land Law", *The Cambodian Daily* (Cambodia), 10-11 Jan. 2004.

⁵² *Id.*

⁵³ See "Just chopping it down", *The Economist*, 7 Aug. 2003.

⁵⁴ These are conditions imposed by the World Bank for development aid to Cambodia. Yet, despite the breaches of these conditions, the World Bank continued to release funds under its Structural Adjustment Credit scheme, see "World Bank rewards Cambodian government despite forest mismanagement", 16 Jan.

contracts which were in fact terminated in recent times appeared to involve companies which were either bankrupt or not aligned with the ‘right’ political groupings.⁵⁵

Overall, illegal logging by companies backed by political clout persists, and provisions of the Forestry Law are flagrantly breached. While the Forestry Law requires concessionaires to produce Strategic Forest Management Plans and Environmental and Social Impact Assessments, the government has reportedly been willing to accept assessments of extremely low quality.⁵⁶ In some instances, assessments had simply been copied from previous reports.⁵⁷ In this regard, the World Bank itself has been severely criticised for releasing loans to the government in breach of its own forest-reform conditions.⁵⁸ The Forestry Law itself contains inherent weaknesses – one unsatisfactory feature is the failure to distinguish between “natural” and “planted” forests. Thus, logging companies can simply claim to be engaging in reforestation and disguise the reality, that is, the destruction of villagers’ community forests, grazing land, commons and fallows, to be replaced by even-aged stands of species of fast-growing (but often alien) trees.⁵⁹

The influence of vested interests over the forestry sector is also illustrated by the government’s decision in April 2003 to terminate the representation of an independent NGO monitor in the Forest Crimes Monitoring Office. This Office had been established to monitor illegal logging activities and comprised officials from the Department of Forestry and Wildlife and the Ministry of Environment, together with the NGO - Global Witness - as an independent observer. Subsequently, Global Witness was fired following conflicts with the government over the documentation of several cases of connivance by government officials in illegal logging.⁶⁰

2004, at [http://www.brettonwoodsproject.org/article.shtml?cmdf\[126\]=x-126-32915](http://www.brettonwoodsproject.org/article.shtml?cmdf[126]=x-126-32915) (last accessed 20 Aug. 2004).

⁵⁵ *Id.*

⁵⁶ “World Bank caves in on forestry reform”, *supra* note 50.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Mekong Land and Forests - Cambodia Information, at website of the Oxfam Mekong Initiative, http://www.oxfammekong.org/graphics_pages/land_and_forest/Countries/Cambodia.htm (last accessed 20 Aug. 2004). At the same time, however, there are sporadic reports of success, such as in Monduliri and Ratanakiri Provinces, where subsistence-based indigenous communities form the majority of the local population. In these provinces, community-based management has successfully protected forests and endangered species and prevented the use of destructive modern equipment for hunting and fishing, see “Sustainable Utilization of Forest and Natural Resources Through Community-Based Management”, at http://www.ntfp.org/voices/voices5/article5_8.html (last accessed 20 Aug. 2004) and <http://www.oxfammekong.org/documents/Community%20Fisheries%20deve.cam.doc> (last accessed 20 Aug. 2004). Also, in June 2002, the Prime Minister signed a Sub-Decree cancelling the concessions of a Malaysian company which had been engaging in illegal logging, see Global Witness Press Release, “Malaysian logging company kicked out of Cambodia”, 26 June 2002, at <http://www.forestsmonitor.org/countries/malaysia/my020627.htm> (last accessed 20 Aug. 2004).

⁶⁰ Global Witness Press Release, “Cambodian government terminates independent forest monitoring”, 22 Apr. 2004, at http://www.globalwitness.org/press_releases/display2.php?id=190 (last accessed 20 Aug. 2004). Another instance of criticised governmental action is the approval in May 2004 of a concession involving the clearance of land in Botum Sakor National Park and the setting up of wood processing facilities. The project proceeded without the benefit of an environmental and social impact study and clearly violates the 1993 royal decree on protected areas. For details, see “Cambodian government illegally

Overall, coordination among the different government agencies is still severely lacking. In particular, the role of the Ministry of Environment (in charge of EIA appraisals under the 1996 Law on the Environment and Natural Resources Management) appears to be minimal in the forestry sector. The continued treatment of the Ministry of Environment as a relatively junior and powerless agency in natural resource matters can only hamper the government's stated goal of achieving development in an environmentally sustainable manner. For the short term, the prognosis for natural resource management in Cambodia is bleak, and will continue to remain so unless the government steps up political will to dismantle the syndicates involved in illegal logging, mining and other destructive activities throughout the country.

Vietnam

Vietnam is another country which typically faces challenges in reconciling the policies of its central and provincial governments. Since the establishment of the Ministry of Natural Resources and Environment (MNRE) in 2002, the Vietnamese government has actively been seeking to set up provincial-level offices of the MNRE to promote consistency of policy implementation on the ground. In April 2003, for instance, Government Decision NO. 45/2003/QĐ-TTg was enacted to provide the formal legal framework for the establishment of Departments of Natural Resources and Environment (DONREs) at the provincial level. In communes, districts, towns and cities under provincial authority, the relevant authority is the Office of Natural Resources and the Environment (ONREs). In July 2003, Circular No. 01/TTLT-BTNMT-BNV was jointly issued by the MNRE and the Ministry of Home Affairs, providing guidelines for the setting up of functions, tasks, powers and organisational structure of agencies designated to assist the People's Committees (i.e. the provincial governments) in addressing issues of natural resource management.

As in Cambodia, land reform is an important item on the regulatory agenda, given the continuing problems in reconciling land use claims and natural resource management. To this end, a new Land Law was enacted in 2003 to provide a comprehensive framework for land use reform. A new Draft Decree Guiding the Implementation of the Land Law is being prepared, providing for a central registration system and conferring authority on the MNRE and the various DNREs to manage land use in Vietnam.⁶¹ This is a significant development and a potentially huge responsibility for the MNRE, given that agrarian matters had traditionally been exercised by other government agencies, particularly those responsible for agriculture and rural development.

approves plantation in national park, say activists", 6 May 2004, at http://www.enn.com/news/2004-05-06/s_23524.asp (last accessed 20 Aug. 2004).

⁶¹ Johnston Stokes and Masters, "Vietnam: New Draft Decree Guiding The Implementation Of The Law On Land (08 Apr 2004)", at http://www.jsm.com.hk/live/Portal?xml=legal_update/article&content_id=1954 (last accessed 23 Aug. 2004).

One of the main tasks of the MNRE is the preparation (for approval by the National Assembly) of the 10-year zoning plan and the 5-year land use plan for the entire country, in consultation with other relevant agencies. This will have a significant impact on how planning and zoning policies will be enacted and implemented, especially in relation to EIA rules for the siting of projects and the overall gazetting of protected areas. In this regard, huge challenges can be expected, particularly the resistance from sectoral agencies such as the Ministry of Planning and Investment (MPI) and the Ministry of Agriculture and Rural Development (MARD).

In the meantime, the new Land Law and the Draft Decree anticipate further implementing rules to be promulgated by the MNRE. Until then, many land use aspects such as the registration formalities under the proposed Land Use Registration (LUR) Certificate system, the leasing and mortgaging of land to foreign investors and the resolution of land disputes will continue to lack clarification. These are the areas where powerful agencies such as the MPI and MARD as well as the provincial People's Committees have traditionally held exclusive competence.

Other new legislation relating to the environment and natural resources include a Decree on the Conservation and Development of Wetlands. Adopted in 2003, the Decree provides legal basis for the management of wetlands and is to be overseen by the MNRE. The Decree restricts exploitation of wetlands and provides for a ban on construction or development in buffer zones unless explicitly approved by the Prime Minister. The Decree is meant to fulfill Vietnam's commitments under the Ramsar Convention on Wetlands, but a primary drawback is its lack of clarification on the requirement for environmental impact assessments and the lack of reconciliation with existing EIA laws.⁶²

On the pollution control front, new legislation include Decrees on charges for waste water,⁶³ controls on establishments causing environmental damage⁶⁴ and a national development strategy for the environment.⁶⁵ The latter strategy prescribes goals relating to the application of clean technology, the percentage of households and businesses required to have garbage disposal and waste water treatment systems, the regulation of imports of dangerous solid wastes and the provision of clean water. Notably, the Strategy prescribes that forests must cover 43 per cent of the land, and that the amount of natural reserves should be 1.5 per cent higher than at the current level, particularly in coastal reserves and submerged areas.⁶⁶ Whether and how these goals will be met remain wholly uncertain, particularly because a comprehensive and reliable inventory of existing forest resources has yet to be concluded.

⁶² These include Decrees 175/CP on the Implementation of the Law on Environmental Protection and Decree 52/CP on Guidance on Managing Investments.

⁶³ Decree No. 67/2003/ND-CP on Environmental Protection Charges for Waste Water.

⁶⁴ Decision No. 64/2003/QD- TTg Approving the Plan for Thoroughly Handling Establishments which Cause Serious Environmental Pollution.

⁶⁵ Decision 256/2003/QD-TTg on the New National Development Strategy with regard to the Environment.

⁶⁶ "Government targets 2010 environmental clean-up", Vietnam News (Vietnam), 10 Dec. 2003, at http://www.ecologyasia.com/NewsArchives/dec2003/vietnam-news_0301210_1.htm (last accessed 20 Aug. 2004).

In general, although Vietnam has made great strides in strengthening environmental laws and institutions, serious challenges remain, particularly in relation to the protection of forests and other natural areas. For one thing, the legal framework for conservation remains patchy and under-developed. Poor land use and planning policies continue to hinder effective forest management, as does a serious lack of trained forestry personnel at the ground level despite the setting up of various provincial DNREs. Ethnic minority groups continue to face uncertainty in relation to land use rights and claims, and community-centred forest management has not taken root extensively. In this regard, it is still too early to assess if the new Land Law will improve indigenous communities' access to land. The Land Use Rights (LUR) Certification system may secure access to such communities, but the government will have to ensure that these communities are adequately informed of their rights to apply for such certificates. More importantly, a system needs to be set up to ensure continued protection and respect for these rights once they are allocated.

The environmental impact assessment (EIA) process, first laid down by the Law on Environmental Protection in 1993 and supplemented by various Decrees, is also facing implementation problems. The experience of the past few years has shown that government officials and project proponents alike are generally active in the initial approval phase, but that interest in implementation and remedial measures wanes after the project gains approval. In particular, the MNRE and its provincial offices do not have the capacity to ensure continuing compliance with recommended remedial measures. At the same time, the procedures for enforcing compliance are too vague, economic incentives for compliance are not provided for, and no clear penalty provisions exist to deter violations.⁶⁷ On its part, the Criminal Law – which includes environmental provisions – makes no reference at all to enforcement of EIAs.

There also exists a constant struggle among government agencies on the subject of EIAs, particularly between the authority appraising the project (MNRE) and the authority approving the project's budget (typically the Ministry of Planning and Investment).⁶⁸ To complicate matters, the EIA requirement was amended in 1997 to move it from the feasibility study stage to the later technical design stage. This means that projects could actually be approved *even before* an EIA had been conducted. This anomaly can be linked to the prevailing inconsistencies in two overlapping decrees governing the EIA process – Decree 175/CP on the Implementation of the Law on Environmental Protection and Decree 52/CP on Guidance on Managing Investments. In essence, Decree 52/CP allows project approvals before the conducting of an EIA, while Decree 175/CP appears to require a pre-approval EIA (which is the optimal requirement in any responsive EIA system). The two instruments had been championed by the MPI and the MNRE respectively, and clearly reflect the competing interests of the two agencies. As it turns

⁶⁷ There is, however, Decree 26/CP of 1996 providing for administrative punishments, but this decree is rarely resorted to. In any event, there are reports of the decree being replaced by a new instrument in 2004, see Andreas Severinsson, "The EIA System in Vietnam", Master's Thesis, University of Gothenburg, p. 43, at http://www-mkb.slu.se/mkb/MFS_Gbg_univ/MFS_Vietnam_AS.pdf (last accessed 24 Aug. 2004). There are also reports of an overhaul of the whole 1993 Law on Environmental Protection, see Severinsson, *id.*, at 46.

⁶⁸ *Id.*

out, the resulting confusion plays into the hands of pro-development interests which are keen to circumvent the EIA process.

In the meantime, the MNRE departments in charge of EIA approvals – specifically the Department of EIA Appraisal - has poor coordination with the various provincial DNREs.⁶⁹ Very often, projects (particularly smaller ones) which require only the approval of the provincial authorities are dealt with in a manner inconsistent with regulations laid down by the central government's laws. At the same time, the MNRE lacks the resources and capacity to ensure that all projects are scrutinized in a uniform fashion. In addition, the limited opportunities available for public participation and consultation make it extremely difficult to identify local values and problems, leading to poor assessment of impacts and weak mitigation measures.⁷⁰

Timor-Leste

Timor-Leste (or East Timor) became the region's and world's newest independent nation in May 2002. As one of the poorest countries in the world, Timor-Leste is looking to develop its considerable economic potential, particularly in exploiting its oil and gas reserves in the Timor Sea. In this regard, there are ongoing negotiations with Australia on the disputed rights over oil and gas reserves in the so-called Timor Gap separating the two nations. The dispute – which has become very heated in recent months - relates primarily to oil and gas fields which lie within areas claimed by both countries and which boundaries remain to be delimited.⁷¹ Several of the fields have already been explored by Australia and are already providing revenue streams.

The international aid agencies which have set up offices in Timor-Leste have been urging the government to consider environmental consequences in its development plans. To this end, the agencies with functions relevant to the environment and natural resources include the Ministry of Development and Environment,⁷² the Ministry of Agriculture,

⁶⁹ There is often confusion over the competence of the different agencies within the MNRE. While the Department of EIA Appraisal is specifically tasked with evaluating EIAs, there is an agency known as the Vietnam Environmental Protection Agency (VEPA) which appears to be the body in charge of environmental inspections and monitoring. VEPA's website (<http://www.nea.gov.vn/English/about/VEPA-functions.htm>, last accessed 25 Aug. 2004) lists its functions as “supporting the MNRE's leadership to implement the state environmental management activities in terms of environmental inspectorate and supervision, pollution prevention, environmental quality improvement, natural conservation, environmental technology promotion and public awareness enhancement”. Thus, it would appear that VEPA is in charge of following up on measures to be instituted by a project or development after the associated EIA has been assessed by the Department of EIA Appraisal. There is also a Department of Environment within the MNRE which task is to “assist the Minister in exercising the state management of environmental protection activities in terms of policy-making and the development of related legislation, strategies, planning and plans”, see (<http://www.nea.gov.vn/English/organization/Department/Dep-Environment-Eng.htm>, last accessed 25 Aug. 2004). It would thus appear that this Department's role is limited to formulating laws and policies.

⁷⁰ Severinsson, *supra* note 67, at 38.

⁷¹ “Timor-Leste protests unlawful exploitation of its resources”, 31 Mar. 2004, at website of the Timor-Leste Prime Minister and Cabinet, at <http://www.primeministerandcabinet.gov.tp/exploitation.htm> (last accessed 25 Aug. 2004).

⁷² The Prime Minister, Dr Mari Alkatiri, is concurrently the Minister for Development and Environment.

Forestry and Fisheries and the Ministry of Planning and Finance. At the same time, the government has established the position of Secretaries of State for various functions, including for water and sanitation, public works, mineral resources and power policy as well as tourism, environment and investment. In the next few years, it appears that environmental issues relevant to oil and gas exploration will be paramount, given that these are the sectors which are being actively pursued for exploitation.

The Timorese population of some 0.8 million are primarily agricultural, with 76 per cent living in rural areas.⁷³ Poverty reduction is the government's main objective, with reconstruction of public and social infrastructure being an immediate goal. A National Development Plan (NDP) for East Timor is now in existence, embodying key strategies for poverty reduction and economic growth that is equitable and sustainable. Part of the development strategy under the NDP is to address the need to improve government capabilities, particularly in enacting enabling legislation and institutions required to pursue development priorities. Among the new legislation being promulgated with relevance to natural resources and the environment are a draft Foreign Investments Law, a Decree Law on Fisheries Licensing (to be promulgated by the executive) and draft Laws on the Exploitation of Petroleum and the Use of Oil and Gas Revenues.⁷⁴

While it is still too early to assess the effectiveness of Timor-Leste's environmental institutions and laws, it is absolutely imperative that any developmental plans and framework undertaken by the government – including those funded by external agencies – take into account environmental and social consequences. In pursuing its developmental goals, Timor-Leste would do well to take note of the harsh lessons experienced by some of its neighbours which have failed to reconcile developmental and environmental goals effectively, particularly Indonesia and Papua New Guinea.

Conclusion

A common institutional problem arising in the countries of Southeast Asia is the failure to coordinate developmental and environmental policies between the central and provincial governments, as well as between different sectoral interests at all levels. Thus, tools used for environmental planning such as the EIA process often become compromised by political interests as well as by corruption and mismanagement. An associated problem is the fact that many of the legal instruments and strategies adopted by governments are entirely sectoral in approach, without adequate consideration for the deep inter-linkages that exist, for instance, among issues of land use, community rights and natural resource exploitation.

⁷³ Opening Address of José Augusto Teixeira, Secretary of State for Tourism, Environment and Investment, Ministry of Development and Environment, at the Deutsche Stiftung für internationale Entwicklung (DSE) International Policy Dialogue on Post-Conflict Assistance, July 2002, available at <http://www.dse.de/ef/conflict/teixeira.htm> (last accessed 25 Aug. 2004). See also *East Timor: Development Challenges for the World's Newest Nation* (Hal Hill & João M. Saldanha, eds., 2001).

⁷⁴ World Bank, *Background Paper for the Timor-Leste and Development Partners Meeting*, May 2004, at <http://siteresources.worldbank.org/INTTIMORLESTE/Resources/Background+FullReport+English.pdf> (last accessed 25 Aug. 2004).

Thus, as exemplified by Indonesia and Vietnam, many of the laws enacted are typically initiated by sectoral ministries interested only in the specific range of activities that fall within their mandate. At other times, more than one government agency may claim competence over a particular matter, resulting in overlapping jurisdiction and institutional rivalries. The lack of coordination among government agencies and the frequent contradictions that arise in sectoral laws championed by different agencies (including external aid organisations) give rise to familiar problems of inefficient and sub-optimal implementation. Overall, the constant emphasis on the sectoral approach has become a bane to effective natural resource management in the region, and is a problem that must be met squarely by the respective governments.

While a responsive EIA system laid down by law and demanding a consideration of cross-sectoral implications has often been thought of as a suitable panacea, the experiences of Thailand, Vietnam, Indonesia and Malaysia have typically shown that weak political will among governments, a lack of consideration for affected communities' interests and an indulgence for sectoral influences can significantly weaken an EIA process. By the same token, a single supra-agency combining pollution control and natural resource functions may not necessarily be the ideal solution, as exemplified by the Philippines. Time will only tell if the countries which have recently decided to merge both environmental and natural resource functions – Malaysia, Thailand and Vietnam – will ultimately reverse their tack. Obviously, these are challenges which each individual country will have to resolve for itself, given its unique political and socio-economic characteristics. In essence, these are but some of the contemporary challenges which will have to be overcome by any government keen on going beyond the mere rhetoric of “sustainable development”.⁷⁵

⁷⁵ The other Southeast Asian countries – namely Singapore, Brunei, Laos and Myanmar – were covered in the earlier study in 2002, see Tan, *supra* note 1. Few institutional developments have occurred in these countries since then, save for the enhancement of the Ministry of Environment in Singapore to cover water resources.