FOREST GOVERNANCE PROJECT

Strengthening Voices for Better Choices

SRI LANKA COUNTRY ASSESSMENT

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2009
<table>
<thead>
<tr>
<th>ABBREVIATIONS</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>FLEG</td>
<td>Forest Law Enforcement and Governance</td>
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<td>FLEGT</td>
<td>Forest Law Enforcement, Governance and Trade Action Plan.</td>
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<tr>
<td>NGOs</td>
<td>Non-governmental Organisations</td>
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<td>CBOs</td>
<td>Community-based Organisations</td>
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<td>PSC</td>
<td>Project Steering Committee</td>
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<td>NPC</td>
<td>National Project Coordinator</td>
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<td>FSMP</td>
<td>Sri Lanka Forestry Sector Master Plan</td>
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<tr>
<td>FD</td>
<td>Forest Department</td>
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<tr>
<td>CEA</td>
<td>Central Environmental Authority</td>
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<tr>
<td>STC</td>
<td>State Timber Corporation</td>
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<tr>
<td>UNCED</td>
<td>United Nations Conference on Environment and Development</td>
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<td>FFPO</td>
<td>Fauna and Flora Protection Ordinance</td>
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<td>NEA</td>
<td>National Environmental Act</td>
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<td>FO</td>
<td>Forest Ordinance</td>
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<td>NIRP</td>
<td>National Involuntary Resettlement Policy</td>
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<tr>
<td>KCF</td>
<td>Knuckles Conservation Forest</td>
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<tr>
<td>NTFP</td>
<td>non-timber forest produce</td>
</tr>
<tr>
<td>CLEO</td>
<td>Crown Lands Encroachments Ordinance</td>
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<tr>
<td>WLO</td>
<td>Waste Lands Ordinance</td>
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<tr>
<td>SLO</td>
<td>State Lands Ordinance</td>
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<tr>
<td>LDO</td>
<td>Land Development Ordinance</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>KCF</td>
<td>Knuckles Conservation Forest</td>
</tr>
<tr>
<td>PIL</td>
<td>Public Interest Litigation</td>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

Background.............................................................................................................................................................................. 1  
   The Project ............................................................................................................................................................................ 1  
   Forest Governance ................................................................................................................................................................. 1  
   Level Playing Field ............................................................................................................................................................... 3  
   Tri-partite Approach ............................................................................................................................................................ 4  
   Study approach and methodology ........................................................................................................................................ 4  

Introduction ......................................................................................................................................................................................... 7  
   Forest area statistics ................................................................................................................................................................. 7  
   Forest stakeholders and their interests .................................................................................................................................. 9  
   Forest policy ............................................................................................................................................................................... 10  
   Forestry institutions .............................................................................................................................................................. 13  
   Overview .................................................................................................................................................................................... 14  

The project pilot site(s) ................................................................................................................................................................. 15  
   Local stakeholders ................................................................................................................................................................. 17  
   Local livelihoods ....................................................................................................................................................................... 18  
   Income from NTFPs before KCZ declaration .......................................................................................................................... 19  
   Income from NTFPs after KCZ declaration .............................................................................................................................. 20  

Customary and Statutory law and forest governance .................................................................................................................. 25  
   Land tenure and ownership rights in forest resources ........................................................................................................... 29  
   Existing categories of land tenure in forest resources in the country ...................................................................................... 29  
   Use rights .................................................................................................................................................................................... 30  
   Access rights ............................................................................................................................................................................. 31  


Power relationships and corruption .......................................................... 44
Poverty, inequity and gender ........................................................................ 46

Stakeholders, economics, law and forest governance .................................... 47

How legal mandates create incentives and/or disincentives for illegal activity. 47
How customary and/or statutory tenure, access and use rights to forest land and resources operate as incentives and/or disincentives for illegal activity. ....... 49
Functioning of customary and statutory mechanisms for participation in decision-making and benefit-sharing ................................................................. 50
How customary and statutory compliance and enforcement mechanisms operate as incentives and/or disincentives for illegal activity ..................................... 50

Recommendations ....................................................................................... 51
Revise the Legal Framework pertaining to the management of forests .......... 51
Revise the Forest Ordinance to bring in important aspects pertaining to better governance approaches ................................................................. 52
Introduce requirement for the planned management of forests ................. 52
Develop tools to facilitate public access to forestry decision making ......... 52
Develop mechanisms for the recognition of customary, collective rights regimes ...................................................................................................... 53
Establish a Communication System between among stakeholders ........... 53
Define forest boundaries ............................................................................. 53

Annex I – Summary of past studies ............................................................... 55

References ...................................................................................................... 61
Background

The Project

“Strengthening Voices For Better Choices - Enhance Forest Governance in Six Tropical Forest Countries in Africa, Asia and South America” is a project implemented in parallel in six countries namely Tanzania, Brazil, Democratic Republic of Congo, Ghana, Sri Lanka and Vietnam.

The project’s specific objective (or purpose) is the identification and promotion in the six key tropical forest countries, of policy, legal, institutional and economic arrangements that contribute to improved forest governance. The overall objective is the setting in place of forest governance arrangements that facilitate and promote sustainable and equitable forest conservation and management and their active implementation in priority regions of Africa, Asia and Latin America.

The project will also support the regional Forest Law Enforcement and Governance (FLEG) official processes being organised by the World Bank and contribute to the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan.

Forest Governance

Over the last ten years, a growing body of studies and assessments have identified weak forest governance as one of the central factors driving deforestation, degradation and illegal logging. Governance in this context refers to the means and rules by which communities, societies and nations determine, influence, implement and control activities to achieve agreed goals and priorities. These rules are articulated in legal and policy instruments, and in the organisational arrangements to implement them. A broad definition of governance also encompasses tribal customs and other community decision-making processes, which often remain unwritten (and unrecognised by the state).

Weak forest governance contributes to deforestation and degradation in a variety of ways. For example, although many countries have broad national policies dealing with governance in forest conservation and management, the associated legal frameworks and implementation arrangements often fail to provide sufficient support for their successful implementation (i.e., there is a “disconnect” between policy and legislation, and between legislation and enforcement). In many countries, over-extensive or confusing regulatory frameworks exacerbate the cost of compliance and provide opportunities for administrative corruption. Unclear or conflicting land tenure arrangements also open the way to
unregulated and unsustainable exploitation, as does the exclusion of rural communities and other stakeholders from the decision-making process regarding forest resources.¹

The problems of weak forest governance are made even more complex by the issue of decentralisation. Although decentralisation offers tremendous opportunities for the empowerment of local bodies and communities, it can also exacerbate the problems of deforestation and illegal logging if it occurs without the clarification of responsibilities, the creation of supportive institutions or the initiation of dedicated capacity building initiatives. In the absence of effective democratic structures, marginalised and less powerful groups – such as women and the poor – can also become even more excluded from decision-making processes.

Improved forest governance will thus be fundamental to achieving forest conservation and sustainable forest management. This, in turn, will call for: policy, legal and economic reform; changes in government structures; capacity building of both government and civil society; and the clarification of tenure and access rights. It will also call for greater participation of civil society in decision-making and resource management and the active involvement of the private sector.

FLEG examines the way in which decisions about forests are made and implemented. Its initiatives aim to prevent and reduce illegal logging because of its many negative impacts, from loss of livelihoods to degradation of landscapes.

The question of legality is not always the defining factor. Whilst in some instance, ascertaining the legality may become problematic;² in others a strictly legal practice may be unsustainable. On the other hand, some illegal activities may be perfectly sustainable. In short, legal does not always mean sustainable and sustainable does not always mean legal.

Globally, a wide range of responses to these problems have emerged, including national government procurement policies, community involvement in monitoring, development of private sector voluntary codes of conduct, consumer campaigns and regional political FLEG processes. No single solution can tackle such a complex problem alone.

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¹ Barrow, E. et. al. (In press). Civil society, law enforcement and forest governance in Africa.
² In the event of unclear boundaries on the ground or unclear definitions in the law for example.
The challenge is finding the right balance between:

- What should be deemed legal and illegal
- Who decides what is legal or not - Consumers, producers, government, civil society?
- How to address poverty-driven illegal logging versus illegal commercial logging and trade
- Measures to reform and better implement forest laws versus other land-use and land tenure laws that may be part of the problem
- Voluntary measures versus legally binding arrangements
- Mechanisms to address illegal international trade versus illegal domestic consumption (and illegal trade with non-discerning markets)

Sri Lanka is not officially included into the global FLEG initiatives, as her involvement in global timber market, both legal and illegal is insignificant. However, findings indicate that the forest governance issues in Sri Lanka are quite similar to those in the other five countries which are party to the study at the global level.

**Level Playing Field**

In forest management, as in many other areas of resource management, the wielding of power and influence is not uniform across the landscape. Some stakeholders or stakeholder groups have greater power and influence in decision making and resource management due to greater access to information, and better access to decision-makers themselves. Thus resource management decisions tend to favour the advantaged to the detriment of the powerless and the voiceless even where the latter may live in greater proximity to the resource itself.

In Sri Lanka, the Forest Department by virtue of its monopolistic control over the resource has traditionally made decisions with little consultation with other stakeholders. Since the late 1980s, a more participatory approach has been adopted particularly in the preparation of the Master Plans and management plans and in implementing social forestry programs. However, unless all sectors of stakeholders are provided with an equal opportunity to participate in decision making and in the management, it is unlikely that particularly the disadvantaged groups would be in a position to capitalise on this opportunity.
**Tri-partite Approach**

The tripartite approach is based on the understanding that the involvement of all relevant stakeholders in forest management and decision making and minimisation of the marginalisation of any stakeholders or stakeholder groups greatly increases the chances of success in the sustainable management of the resource. Informed and constructive engagement on FLEG issues from the local to the international level, through quality information, capacity building and consultative processes, involving all relevant stakeholders, improves the understanding of the relevant needs and issues and leads to more effective implementation.

Thus the tripartite approach, requires the project to work with government (line departments, parliamentarians, local authorities and the judiciary); civil society (NGOs, CBOs and forest-dependent communities); and the private sector (particularly timber companies) in identifying policy, legal, institutional and economic obstacles to improved forest governance (including the control of illegal logging); pilot testing innovative approaches to overcoming these obstacles; enhancing the capacity of key stakeholders to implement forest governance reforms; and disseminating lessons learned.

**Study approach and methodology**

The complexity and the diversity of the assessments necessitated multiple approaches and methodologies.

The review of statutory law was undertaken by a national legal expert. The documentation and analysis of customary law was carried out by a social anthropologist, working in cooperation with the legal expert and local communities at selected sites. Parallel to the legal assessments a similar assessment of economic policies and instruments was also carried out in Sri Lanka.

A distinguishing feature is the fact that the review was undertaken in a participatory manner involving multiple stakeholders and sectors, and sought to forge a consensus on the principal obstacles and the opportunities for change. The review also worked at multiple scales, ranging from the national level to the landscape/field level; and as such, they are envisioned as much more than desk-top studies carried out in the capital city.

The reviews were carried out in close collaboration with the members of a potential multi-stakeholder National Forest Working Group.

The findings of the assessments were presented to the Project Steering Committee (PSC) by the consultants and was received with mixed reactions. While the PSC agreed to the conclusions of the national assessment, they found that some of the recommendations,
especially those relating to the customary laws, difficult to implement under the current context.

At the national level the following methodologies were adopted:

1. Referencing secondary documents that include
   Published books
   Sessional Papers,
   Gazetteers
   Unpublished Notes,
   Documents,
   Reports,
   Traditional documents indicating title and interest in land (Sannas/ Lekam miti)
   Past experience/accumulated knowledge
   Laws
   Case Law and case records
   Regulations
   Forest Manuals
   Land Commission Reports

2. Interviews
   Key informants and experts – This included experts from within the Government, former Government employees, Consultants and Non-government sector representatives.
   Informal interviews with villagers in their homes and other common meeting places
   Discussions with the members of the Project Steering Committee
3. At the Pilot site the following methodologies were adopted:

Household questionnaire covering all the households living in the three pilot site villages

In-depth interviews with selected individuals

Informal discussions with groups of villagers

Key informants

Focused group discussions

Discussions with the private land owners

Discussions with the members of Dumbara Surakinno (Preserve Knuckles) organization.

The Steps in Preparing the National Assessment were:

Scoping Discussion on the Assessment with the National Project Coordinator (NPC)

Field Scoping at the Pilot site

National and field level data collection

Presentation of preliminary finding to the PSC for initial feedback on two occasions

Two day intense discussion session with the consultants

Further collection of data

Presentation of findings to the Project Coordination Meeting and obtaining feedback

Consultants compiling the report

Consolidating the report.

iii Whilst initially it was the village elders and the respected members of the village who were to some extent sheltered from any kind of reprisal who were willing to talk, thereafter, once the presence in the village was established by the project members it was possible to discuss informally as well as formally at the regular gatherings of the villagers. The informality represents the way of life in the village rather than a necessity.
Introduction

Forest area statistics

Sri Lanka, with an area of about 6.5 million ha., is a small tropical island recognized as host to one of the world biodiversity hotspots. Much of the country’s biodiversity is found in its wet zone forests situated in the South West and the hill country.

Sri Lanka has a long record of human habitation extending over two millennia with large extents of agricultural lands (highlands crops and irrigated paddy) mostly located in the vast plains surrounding the central highlands. At the turn of the 19th century, over 80% of the Sri Lankan territory was covered by forests. However during the latter part of 19th and early 20th century the colonial rulers cleared vast tracts of pristine forests in the central highlands for plantations. Since the beginning of the 20th century, the rapid increase of the population and even greater demand for natural resources, primarily land for agriculture, settlements and infrastructure has exerted heavy pressure on the forest lands reducing the forest cover to a very low level of 24% by 1992. At present dense natural forest covers 23.9% of the land area and the total forest cover including the sparse forests represent about 30.9% of the land. In addition an area of about 131,000 ha is under forest plantations. Permanent crops, including rubber, coconut, tea and other spices covers an area of about 888,324 ha or 13.52% of the land area of country.

As may be seen from the forest area statistics given above, most of them are prepared in and around the time when the Forestry Sector Master Plan of 1995 (FSMP) was formulated and is hence outdated. One pressing need that has indirect ramifications on forest governance is that of updating the forest statistics.

The forestry sector accounted for 1.7 per cent of GDP in year 2005.iv

However the actual contribution of the forestry sector to the National and local economy is greater than the official figures indicate which fails to capture the subsistence uses that forest goods and services are put to. For example, 44% of the country’s energy supply comes from fuel wood. Forests also provide an array of environmental services that are also rarely valued and not accounted in estimating the contribution of forests to the national economy. For instance, the Knuckles range plays a huge role in providing water to the main rivers of the country, on which a major part of Sri Lankan agriculture is based on. In addition, such rivers account for a considerable portion of national hydroelectricity generation. But such environmental services are excluded from accounting.

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iv Central Bank Statistics (2005)
Table 1

Population increase and depletion of natural forest cover in Sri Lanka

<table>
<thead>
<tr>
<th>Year</th>
<th>Population density (persons/km²)</th>
<th>Forest cover (million ha)</th>
<th>Forest cover (percent of land area)</th>
<th>Per capita forest area (ha/person)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900</td>
<td>54</td>
<td>4.5</td>
<td>70</td>
<td>1.3</td>
</tr>
<tr>
<td>1956</td>
<td>131</td>
<td>2.9</td>
<td>44</td>
<td>0.3</td>
</tr>
<tr>
<td>1983</td>
<td>230</td>
<td>1.8</td>
<td>27</td>
<td>0.1</td>
</tr>
<tr>
<td>1992</td>
<td>269</td>
<td>1.6</td>
<td>24</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Source: Forest Department

The Forestry Sector Master Plan predicts that if current trends continue, the closed canopy cover would decline to 17% by 2020.

About 16.2% of the Sri Lankan land area comes under the direct jurisdiction of the areas coming under the Forest Department (i.e. Reserved Forests, Conservation Forests declared in terms of the Forest Ordinance and areas declared in terms of the National Heritage Wilderness Areas Act) whilst the Forest Department (FD) also exercises jurisdiction over other State forests not coming under any other Government agency. This jurisdiction makes the Forest Department a powerful agency in view of the fact that the Land Commission Report (1987) indicates that over 80% of the land in the Country is under State control in some form. Although no recent statistics are available, there have not been any significant factors to alter this position. Almost all natural forests in Sri Lanka are under the jurisdiction of the State, and the forest under private land ownership is almost negligible (less than 1% of the forest land).

A certain percentage of timber supply also comes from home gardens and other non-timber plantations as by products. The rest is illegally extracted from natural forests. Reduced local timber prices would cut down local supply, particularly illegal logging and would be effective in protecting the natural forests as well.
**Forest stakeholders and their interests**

Increased sensitivity towards environment from mid 1980s led to the formation of a large number of Non-Governmental Organizations (NGOs) and Community-Based Organizations (CBOs) who had conservation of forest cover as one of their main objectives. Almost every little village now has an environmental CBO and many of them carry out local level conservation activities with aforestation as a main activity. A school program initiated by the Central Environmental Authority (CEA) started in early 1980s under the name of Environmental Pioneer Brigade program covered over 6000 schools in the country. Tree planting was one of the most popular activities of the EPB program. However most of these NGOs and CBOs were confined to the local communities. The few national level environmental NGOs while engaging in various environmental awareness and conservation acts also paid attention to the forestry sector. While the combined influence of these organizations may have led to increased planting of trees, it was primarily confined to the private lands and non-forested public lands such as school yards, road reservations etc due mainly to the unavailability of State land and the territoriality of State agencies. Little or no incentives were created to expand these activities on State land which the agencies of the State view with great proprietary interest.

The demand for timber and timber-based products has increased over the years. According to FSMP statistics, of the total saw log supply of Sri Lanka, 22 per cent came from natural forests; with the rest coming from a variety of sources including imported timber, home gardens and plantations (State and private).

The State agencies, the State Timber Corporation (STC) in particular has a monopoly on timber within State forests and State plantations. Private sector timber comes from those logged on private land or timber purchased from the STC by saw mills. This however, does not take into account illegal felling of timber within the State forests and plantations.

Sri Lanka has several plantations companies that focus primarily on tea, rubber and coconut. Several of these have small areas of natural forests coming within them. These natural forests provide protection and shade for water bodies and streams as well as provide fuel and fire wood.

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\(^v\) Wickremarathne, D (2004).
Table 2

Consumption and Imports of Timber Products in Sri Lanka in 1994

<table>
<thead>
<tr>
<th>Product</th>
<th>Consumption</th>
<th>Imports</th>
<th>Imports as a % of consumption</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sawnwood</td>
<td>544,000 m³</td>
<td>29,000 m³</td>
<td>5%</td>
</tr>
<tr>
<td>Plywood</td>
<td>28,000 m³</td>
<td>23,000 m³</td>
<td>82%</td>
</tr>
<tr>
<td>Fibreboard</td>
<td>2,500 m³</td>
<td>2,500 m³</td>
<td>100%</td>
</tr>
<tr>
<td>Particleboard</td>
<td>1,500 m³</td>
<td>1,500 m³</td>
<td>100%</td>
</tr>
<tr>
<td>Paper and paperboard</td>
<td>130,000 t</td>
<td>102,000 t</td>
<td>78%</td>
</tr>
<tr>
<td>Paper making fibre</td>
<td>31,000 t</td>
<td>12,100 t</td>
<td>39%</td>
</tr>
</tbody>
</table>

Source: FSMP, 1995

**Forest policy**

The policies of the colonial governments supported exploitative economic practices such as opening up of large extents of land for plantations directly contributing to deforestation. The Waste Lands Ordinance of 1897 was introduced to nullify customary relationships the people had with the forest surrounding their villages and vest these forest lands in the state which later sold them for timber and for plantations. The focus of the early forest legislations was on “the protection of what used to be ample forest resources, for the exclusive exploitation by the administration, based on their economic value”\(^\text{vi}\); i.e. the value of timber and game – skins, horns, meat, tusks etc. The colonial policy towards forest was largely defined by the approach that it was a resource to be exploited.

The government policies of the early post independence era (post 1948) were defined largely by welfare and development agenda aimed at increasing the quality of life of the growing population and no significant shift in the policy towards forests from the pre-colonial era occurred during the early post independence era. If at all the policy was to further

\(^{vi}\) Central Environmental Authority (1994)
exploit the forests to expand agriculture, settlement, infrastructure and other societal needs for the growing population. During this period government sponsored large scale deforestation was a common practice to facilitate development.

At the societal level too, scattered deforestation was occurring at a very high rate to enable the expansion of agriculture and settlements and the governments adopted a “let it happen” policy by regularizing encroachers. The official approach to forest management in 1960s promoted the harvesting of timber even from the wet zone natural forest including the Sinharaja which is now a world heritage site. This policy led to clearing of both dry zone and humid zone forests which affected about 77000 hectares of the virgin Sinharaja Forests from 1970-1977. This was finally halted due to strong public protest.

Twenty years after independence, in 1968, the State Timber Corporation was established to process State timber extracted from natural forests or State plantations. Private sector could purchase timber from the State Timber Corporation.

A significant change in forest policy towards supporting environmentally friendly production did not emerge until after the 1970s. The growing environmental concerns and awareness at a global level also influenced local society and governments, and the state responded positively with new policies aimed at environmental conservation. Thus the current constitution adopted in 1978 specifically declares that “The State shall protect, preserve and improve the environment for the benefit of the community”\textsuperscript{vii}. In or around 1990, a moratorium on commercial extraction of timber from natural forest was imposed as a policy measure with no legislation to support same. The result of the Moratorium was that the State Timber Corporation which previously had a monopoly on logging in natural forests coming within the jurisdiction of the State no longer had this concession. The Moratorium hailed as a success of public opinion is still in effect and no concessions are issued for logging in natural forests. However, this does not automatically reduce illegal logging.

Thus the forest policies until the 1990s were of an exploitative nature. The role of multiple stakeholders was not recognized and the State managed its considerable land estate with little consultation. As far back as 1882 it was indicated that courts have tended to regard the [State] not as a trustee for the whole nation, but as a land-holder.\textsuperscript{viii} The upshot of this was that the State was free to manage the forests coming under it as the State saw fit and in keeping with the current agendas of the State. No distinction was made between illegal logging for subsistence purposes versus illegal commercial logging and trade.


\textsuperscript{viii} Vincent, F d’A (1882)
The present National Forest Policy which is part of the FSMP of 1995 recognizes the promotion of multiple-use forestry and that the natural forests outside the protected area system should be used sustainably to provide for the growing demand for bio-energy, wood and non-wood forest products, and various services, especially for the benefit of the rural people, while ensuring that the environmental objectives are also met. It recommends reforms which include those aimed at empowering people and rural communities to manage and protect multiple-use forests, mainly for their own benefits, building partnerships in forestry development activities and developing and strengthening forestry institutions, both State and non-government. Based on the above, the Policy recognises the enhancement of the contribution of forestry to the welfare of the rural population, and strengthening the national economy, with special attention paid to equity in economic development.

However, significantly, 15 years after the FSMP, no legislative amendments have taken place to implement those components of the Policy and the FSMP requiring greater participation in decision-making and management of the forest resource. The amendments to the law in recent times have by and largely emphasised stronger enforcement and enhancement of fines instead.

No statistics are available to support the contention that stronger enforcement and higher fines reduce illegal activity. In the pilot study area stronger enforcement has had an impact on the villagers entering the forests. However, whilst the impact of the villagers on the forest is reduced, this then puts the burden on the forest officers to police the area more vigorously since with the absence of the villagers inside the forest, illegal activities can become more rampant.

Policy usually is hardly static and gets reflected in a variety of documents. While formal policy documents are prepared and amended from time to time, they require legislative and other change to be given effect. Other than formal policy documents, the policy of the Government gets reflected in law, regulations, and the practice of agencies.

Thus from the 1970s the Government has been recognising the unwritten policy of legalising encroachments on State land. Being an unwritten policy one cannot state with certainty when and where the Government will decide to legalise encroachments. From time to time programmes to legitimise encroachment are carried out by issuing permits and grants for State land. This clearly would act as an incentive to encroachment.

There is no formal uniform policy-making process in Sri Lanka. Policy is generally formulated at a centralized level and is presented by the Minister to Cabinet. Upon receiving Cabinet approval; it becomes an accepted policy of government. There is limited formal opportunity for stakeholder intervention in policy formulation and in decision making.

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ix Sri Lanka Forestry Sector Master Plan

x Sri Lanka Forestry Sector Master Plan.
The law does not provide any formal process for doing so. Sometimes, Ministries do engage in public consultation in policy formulation and the Ministry of Environment under which the environment and natural resources agencies are placed is a pioneer in this. However, even amongst these agencies there is little uniformity of approach.

**Forestry institutions**

The Ministry of Environment comes under the central Government. It was established in 1990 and its mission is to provide “leadership to manage the environment and natural resources in order to ensure national commitment for sustainable development for the benefit of the present and future generations”. Its vision is “a healthy and pleasant environment, sustaining nature for the well being of the people and the economy”. Amongst the agencies coming under the Ministry are the Department of Forest, the Department of Wildlife Conservation and the CEA.

The main responsibility of the Forest Department is the management of forest areas declared in terms of the Forest Ordinance and also the regulation of activities within State land in general. The recent amendments to the law in 1995 demonstrates that the Forest Department is moving in the direction of forest conservation as represented in the declaration of the Knuckles Conservation Zone as a Conservation Forest. The long title of the Forest Ordinance as enacted in 1906 states that it is for an Ordinance consolidating and amending the law relating to forests and the felling and transport of timber. In 1995 this long title was amended to include conservation, protection and management objectives. However, the external manifestation of this change has been that the Forest Department has now the added responsibility of conservation.

The Department of Wildlife Conservation is mandated with managing the protected areas established in terms of the Fauna and Flora Protection Ordinance of 1937 (FFPO) and species protection. The changing role of the Department of Wildlife Conservation is reflected in the amendments to the long title of the ordinance from protection of fauna and flora to protection, conservation and preservation of fauna and flora and prevention of commercial exploitation in 1993.

Although the National Environmental Act (NEA) mandates that the Central Environmental Authority to recommend to the Minister a system of rational exploitation of forest resources, together with a system for the encouragement of citizen participation in conservation to keep the country’s forest resources at maximum productivity management of forest occupancy, no such steps have been taken so far in terms of the NEA. To a limited extent the NEA mandates the implementation of environmental assessment in respect of certain activities which includes the extraction of timber covering land area exceeding 5 hectares and conversion of forests covering an area exceeding 1 hectare into non-forest uses.
Below the Parliament, are the Provincial Councils, some of which have established provincial ministries of environment and agencies to manage land within the province. Protection of the environment, social forestry, the establishment and promotion of agro-linked industries, establishment of pastures are devolved subjects. However, Provincial Councils are very much dependent financially on the Central Government channelled through the Ministry of Provincial Councils and Local Government which restricts their autonomy greatly. Direct revenue sources to these Provincial Councils are limited. By and large these Provincial Councils toe the line with Government policy. The North Western Province has established a provincial environmental agency with functions similar to the Central Environmental Authority but limited to the province. There are no provincial institutions established that deal with forestry issues directly. The pilot project site is situated within the Central Provincial Councils jurisdiction.

As stated above, there are several plantations companies in Sri Lanka that concentrate mainly on tea, rubber and coconut. Hence their relevance vis-à-vis forest management is minimal.

**Overview**

The greatest challenge to forest governance nationally is presented by the legislative and institutional structures which were established for and functioned for the last 100 years as revenue protectors of the State and as a force policing a land estate 'owned' by the State. The law does not recognise stakeholder participation and governance and therefore, in the absence of an enabling environment, the necessary institutional structures and skills have simply not developed within the agencies concerned. Participatory tools, grievance redress measures, adequate and timely notification tools etc., have not been developed. These deficiencies were glaringly brought to the fore in the pilot site exercise where the rigid approaches of the Forest Department mandated by the restrictive provisions of the Forest Ordinance (FO) has created unwarranted tension and uncertainty in the minds of the non-State stakeholders including civil society and to a limited extent the private sector.

The greatest opportunity presented is the agency shift from purely exploitation and harvesting to conservation as represented by the amendment to the FO in 1995. Globally the subject of conservation is more closely linked with stakeholder participation and joint management responsibility than purely harvesting objectives. Hence this opportunity should be exploited to the full in moving the Forest Department towards better governance. Although not limited to Forestry issues, the National Involuntary Resettlement Policy of the Government of Sri Lanka which mandates that those who are adversely impacted by development projects should be involved in the decision making process. This policy however is not being implemented other than in an ad hoc manner.
The project pilot site(s)

The pilot activity in Sri Lanka is located in the mountainous forest region known as the Knuckles Range which straddles the districts of Kandy and Matale. It is one of the key watersheds of the country and covers 30% of the catchment areas of the Mahaweli River (the largest river in Sri Lanka). Over 6 major waterways and hundreds of small streams drain the Knuckles Range.

Knuckles Range is geologically one of the oldest segments of the island and the highly diverse terrain is largely attributed to this geological formation. It has an extremely rugged geomorphology with high peaks and deep valleys with over 35 peaks rising over 300 meters. The highest point rises over 1900 meters.

Climatically the Range is extremely diverse as it is located in the intermediate zone between the two major climatic zones – the Dry Zone and Wet Zone. At upper reaches it experiences cool montane weather while lower reaches experience dry humid weather. It receives rain during both monsoons and the level of rainfall varies between 2500 mm to 5000 mm.

The Knuckles Forest situated therein is one of the most ecologically significant biodiversity hot spots within Sri Lanka. Its rugged variation in topography and high elevation has given it a unique place in the faunal and floral diversity in Sri Lanka.

The Knuckles Forest contains over 1033 flowering plants belonging to 141 families of which 160 are endemic to Sri Lanka and among them 3% are nationally threatened. Although the forest covers only 0.5% of the land area of the country it contains 33% of all the flowering plants in the county. A unique vegetation in the area is the pygmy forest of which trees are generally 2-3 meters in height. It also has high faunal diversity with 247 species of vertebrates, 25 species of fresh water fish, 20 species of amphibians, 53 species of reptiles, 128 species of birds and 31 species of mammals.

In the year 2002 the Minister of Environment declared a greater part of the Knuckles Forest as the Knuckles Conservation Forest (KCF) xi affording it the highest level of protection in terms of the Forest Ordinance. There are 80 villages situated outside and encircling the KCF. Five villages which are situated within the Knuckles Forest have been left out of the official Knuckles Conservation Forest boundary demarcation.

The decision making process with regard to KCF is primarily confined to the Forest Department. Although there is a Knuckles Committee consisting of high government officials and political representatives, it is not really operational. The villagers and the private land owners are outside the decision making process and as such they are ignorant about the KCF and the vision for KCF of the Forest Department.

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The pilot site consists of three of the encircling villages to the north of the KCF – Illukkumbura, Pitawala and Etanwala. The Pilot site office is located in Illukkumbura and the other two villages – Pitawala and Etanwala are located respectively three and five kilometres away from the Pilot Site Office. First two villages have direct road access while one and a half kilometre walk is required to reach Etanwala.

As the villages were small it was decided to incorporate three villages into the pilot project. Extensive discussions were held with the local FD officials and the communities in the selection of the three villages. All three villages are located in the same watershed and share the same experience in relation to the KCF.

The basic information on the villages is given below.

Table 3 Basic Information on Pilot Site Villages

<table>
<thead>
<tr>
<th>Characteristics\villages</th>
<th>Etanwala</th>
<th>Pitawala</th>
<th>Illukkumbura</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>189</td>
<td>203</td>
<td>222</td>
</tr>
<tr>
<td>Male</td>
<td>96</td>
<td>97</td>
<td>110</td>
</tr>
<tr>
<td>Female</td>
<td>93</td>
<td>96</td>
<td>112</td>
</tr>
<tr>
<td>Families</td>
<td>54</td>
<td>70</td>
<td>72</td>
</tr>
<tr>
<td>Government Employees</td>
<td>6</td>
<td>9</td>
<td>40</td>
</tr>
<tr>
<td>Houses</td>
<td>50</td>
<td>58</td>
<td>67</td>
</tr>
<tr>
<td>Paddy Lands</td>
<td>131</td>
<td>80</td>
<td>59</td>
</tr>
<tr>
<td>Home Gardens</td>
<td>75</td>
<td>105</td>
<td>167</td>
</tr>
<tr>
<td>Samurdhi recipients</td>
<td>48</td>
<td>51</td>
<td>54</td>
</tr>
</tbody>
</table>

Source: Village Officers and Samurdhi Officers (2006)

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xii A poverty alleviation program of the Government commenced in 1995 consisting of welfare and other programmes.

Local stakeholders

The three key local stakeholder groups involved in the Pilot site are as follows.

Forest Department: The KCF is declared in terms of the Forest Ordinance and thus falls within the jurisdiction of the FD. Statutorily, the FD is the only decision making body with respect to KCF. The FD is very keen to maintain the KCF as a conservation forest and their long term vision is to get the KCF declared as a Mixed World Heritage Site. The FD has not traditionally involved the community and private sector in the decision making process and does not have much experience working with the community and private sector in a tripartite approach. Thus the concept of a level playing field is alien to the process.

Civil Society: The civil society is dominated by three sub-categories identified by ownership and land use. The first consists of the large number of villagers that have traditionally practiced paddy cultivation. This is practiced on land owned by them largely with ancestral title. Prior to the declaration of the KCF the people in the area also practiced chena cultivation in the forest and used the forest for a wide range of non-timber forest produce (NTFPs). The villagers considered the forest to be an organic extension of their own lands and moved liberally in and out of the forest. However with the declaration of the KCF all this came to a grinding halt. Realistic alternatives were not provided for the villagers up to date. This has led to an antagonistic relationship between the villagers and the Forest Department in spite of the recognition that the protection of the forest enhances the sustainability of the water source for paddy cultivation.

The second sub-category consists of land owners who have bought land in the area. Over 35 such private land owners found that their lands situated within the Knuckles Forest was planned for acquisition by the Government for the purpose of the KCF. However, although the acquisition has not yet taken place, the danger of acquisition looms larger than ever. As a result subsequent to the declaration of the KCF, they have not made any improvement on their land and hesitate to make any investment. They demand a clear policy statement from the government on the status and the future of their land. They are willing to cooperate with the Forest Department in furthering the conservation goal by engaging in non-extractive and non-destructive uses such as ecotourism.

The third sub-category consists of those in the first and second sub-categories and others who cultivate cardamom either on their land or on State land presently falling within the KCF

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xiii Sri Lanka practices slash and burn cultivation, popularly known as chena cultivation. This practice depends on clearance of new forest lands for cultivation. Although the practice has declined in the recent years and chena plots are becoming sedentary the practice has not completely stopped. In 1988 about 1,186,960 ha of land in the country were classified as chena or abandoned after short term use. The practice of clearing new forest land for chena is officially banned and discouraged but in remote areas it continues albeit at a smaller scale.
and who have until the declaration of the KCF been permitted by the Forest Department to carry out such cardamom cultivation. Now, with the declaration of the KCF, no new permission is issued for cardamom within the KCF and a program has been launched to phase out existing cultivation. But the practices continue to this day by both the large scale farmers as well as by the villagers in the central part of Knuckles away from the pilot site. Attempts by the Forest Department to evict the cardamom growers have not been very successful.

The average family size of the households in the pilot site is four. 86% of the households are male-headed. 4 per cent of families have family members with tertiary level education and for 97 per cent of the households the highest level of education of family members is secondary.

Private sector involvement in the project sites vis-à-vis forestry related matters was minimal at the time of the commencement of the study. However, subsequently, partly due to project intervention, the private sector involvement has gradually increased.

**Local livelihoods**

Three pilot sites were selected for the survey and basic characteristics of the three villages are presented in the following table.

<table>
<thead>
<tr>
<th>Village</th>
<th>Number of HHs</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Etanwala</td>
<td>42</td>
<td>166</td>
</tr>
<tr>
<td>Ilukkumbura</td>
<td>52</td>
<td>199</td>
</tr>
<tr>
<td>Pitawala</td>
<td>55</td>
<td>220</td>
</tr>
<tr>
<td>Total</td>
<td>149</td>
<td>585</td>
</tr>
</tbody>
</table>

There are no landless households in the survey area and about 90 per cent own more than one plot. Farming is the main occupation of more than 75 per cent of the households and is the secondary source of income of 17 per cent. 15 per cent of householders are

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government employees who earn monthly salaries. The employment composition of three villages shows a variation. More than 93 per cent of the households in Etanwala are farmers whilst it is only 52 per cent in Ilukkumbura. All other households in Etanwala are government sector workers. The highest number of government workers can be found in Ilukkumbura (30 per cent), followed by 8 per cent in Pitawala. About 64 per cent of households have only a primary source of income and they do not have alternative income sources.

The livelihood of the villagers of the pilot area may be recognised as those which are non-forest dependent and those which are forest dependent. The livelihood generally consists of farming, salaried employment and home gardening and very small income from forest products. The average monthly household income is around Rs. 10,511. Agriculture has been an important source of income of about 80 per cent of the households, where average monthly agricultural income is Rs. 5,715 per household. Income is unevenly distributed among households. The income level of 24 per cent of households is less than Rs. 1,000 per month. Monthly income is greater than Rs. 20,000 for about 15 per cent of the households. According to income measures, around 57 per cent of households are poor.

The relationship between households and the forest is analyzed based on the degree of dependency. The forest products harvested by the households may be categorized into timber and NTFPs. In addition, the perceptions of households on ecosystem services provided by the forests were considered.

**Income from NTFPs before KCZ declaration**

Although majority of households harvest NTFPs for subsistence purposes, only 11 households (7%) had been engaged in collecting such products for commercial purposes. The average income generated by them is Rs. 1188 per season per household. It seems that income generated through NTFPs decreases as the distance from the particular village to the KCZ increases. None of the households from Pitawala village, located about 1 km from the KCZ boundary have harvested NTFP for sale. Households from the Ilukkumbura (the closest to the KCZ) situated about 0.3 km to KCZ had earned Rs. 1213 per season on average.
Table 4

Income generated through NTFPs (Rs. / household / season) before KCZ

<table>
<thead>
<tr>
<th>NTFP</th>
<th>Etanwala</th>
<th>Ilukkumbura</th>
<th>Pitawala</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garcinia</td>
<td>0 (0)</td>
<td>154 (7)</td>
<td>0 (0)</td>
<td>155 (7)</td>
</tr>
<tr>
<td>Cycus</td>
<td>0 (0)</td>
<td>650 (2)</td>
<td>0 (0)</td>
<td>650 (2)</td>
</tr>
<tr>
<td>Bee</td>
<td>0 (0)</td>
<td>906 (4)</td>
<td>0 (0)</td>
<td>906 (4)</td>
</tr>
<tr>
<td>Nelli</td>
<td>0 (0)</td>
<td>1169 (4)</td>
<td>0 (0)</td>
<td>1169 (4)</td>
</tr>
<tr>
<td>Kitul</td>
<td>600 (1)</td>
<td>200 (3)</td>
<td>0 (0)</td>
<td>300 (4)</td>
</tr>
<tr>
<td>Other</td>
<td>0 (0)</td>
<td>283 (3)</td>
<td>0 (0)</td>
<td>283 (3)</td>
</tr>
<tr>
<td>Total</td>
<td>600 (1)</td>
<td>1213 (10)</td>
<td>0 (0)</td>
<td>1157 (11)</td>
</tr>
</tbody>
</table>

On average, the NTFP income earned by all the surveyed households is Rs. 80 per season per household.

**Income from NTFPs after KCZ declaration**

Number of households, earning income by selling NTFPs has been decreased to 4 after the KCZ was declared. But the mean income they earn is increased. Earlier none of the villagers have harvested Cycus / curry leaves for commercial purposes. Now 2 households from Etanwala are involved in harvesting Cycus / curry leaves from the forest, earning Rs. 1489 per season per household.
Table 5

Income generated through NTFPs (Rs. / household / season) after KCZ

<table>
<thead>
<tr>
<th>NTFP</th>
<th>Etanwala</th>
<th>Ilukkumbura</th>
<th>Pitawala</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garcinia</td>
<td>0 (0)</td>
<td>80 (1)</td>
<td>0 (0)</td>
<td>80 (1)</td>
</tr>
<tr>
<td>Cycus</td>
<td>1750 (2)</td>
<td>0 (0)</td>
<td>0 (0)</td>
<td>1750 (2)</td>
</tr>
<tr>
<td>Nelli</td>
<td>0 (0)</td>
<td>1188 (2)</td>
<td>0 (0)</td>
<td>1188 (2)</td>
</tr>
<tr>
<td>Total</td>
<td>1750 (2)</td>
<td>1228 (2)</td>
<td>0 (0)</td>
<td>1489 (4)</td>
</tr>
</tbody>
</table>

The average income from NTFPs, after KCZ declaration is Rs. 10 per household per season. On average there is 88% of reduction of income earned by NTFPs, following the declaration of KCZ.

Timber is harvested by the households to meet the subsistence needs only. Even before the declaration of KCF timber felling activities were not targeted commercial objectives. However the percentage of households harvesting timber has been dramatically decreased to 9 per cent following the declaration, where prior to declaration, it was 88 per cent due to the natural reluctance to engage in illegal activity and to face prosecution.

18 per cent of households have expressed that illegal timber felling is still been carried out in the area and 6 per cent of the households have witnessed such incidences. People involved in these activities include villagers and outsiders, as realized by households.

The actual incidence of illegal timber felling before and after the declaration of the KCF, are difficult to determine. Difficulties in policing the rugged terrain, limited resources and rent seeking at all levels impact enforcement measures in the KCF. However, illegal logging appears to be a problem that is impacting the management of the KCF as highlighted by the media even subsequent to the declaration of the KCF.\[x\]

From a governance perspective what is apparent is that, at least in the pilot villages, access to the forest for timber for domestic purposes has been severely restricted. The villagers, during discussions indicated a definite fear of entering the forest for any purpose for fear of prosecution hence the antagonistic relationship. Overnight by a Gazette declaration and strict policing, the villagers have been denied access to a forest that previously they considered a de facto open access forests.

\[x\]
The feeling was clear that they were being sidelined in important decisions pertaining to the environment they live in although there is a clear recognition of the authority of the State to manage State land.

NTFPs are being harvested for both commercial and subsistence purposes. The percentage of households harvesting NTFPs is also significantly decreased after KCF declaration. This has no significant relationship with the household income level. The restricted access to forest may be a reason for the decline in dependency evidenced.

Although majority of households harvest NTFPs for subsistence purposes, only 11 households (7 per cent) had been engaged in collecting such products for commercial purposes. The average income generated by them is Rs. 1188 per season per household. It seems that income generated through NTFPs decreases as the distance from the particular village to the KCF increases. Proximity to the resource is thus a definite factor in dependence. None of the households from Pitawala village, located about 1 km from the KCF boundary have harvested NTFP for sale. Households from the Ilukkumbura (the closest to the KCF) situated about 0.3 km to KCF had earned Rs. 1213 per season on average.

Number of households earning income by selling NTFPs has decreased to 4 after the KCF was declared. On average there is 88 per cent of reduction of income earned by NTFPs, following the declaration of KCF.

The figures on NTFP dependence should be augmented by the subsistence use values. Although subsistence use could not be valued in this study, other such studies pertaining to the villages encircling the Knuckles Forest that have been carried out prior to the declaration demonstrate that such subsistence use as well as income earned from NTFP’s is significant.\textsuperscript{xvi}

Around 82 per cent of the households have responded that persons from outside the bordering villages come to collect forest products. At present as far as direct impact is concerned around 44 per cent households have found the arrival of such outsiders detrimental.

The villagers have been engaging in cardamom cultivation for more than 20 years, according to their knowledge. This was carried out mainly within the State forests with the knowledge of the Forest Department. However, with the declaration of the KCF, the Forest Department is seeking to put an end to cardamom within the KCF. Although replanting and

\textsuperscript{xvi} See Gunatilake (1995) findings that on average, 58 per cent of total income and 59 per cent of the monetary income are earned from the forest resources.
new planting of cardamom is prohibited with KCF, villagers still harvest cardamom from the existing plots in the forest.

One of the owners of cardamom plots in the Pitawala village revealed that cardamom had been a very good source of income for them with a single season’s income of cardamom being equivalent to 10 times the income derived through farming.

In addition to this the villagers in all three villages also cultivated chena during the dry season (May to September) within the State forests. This too has been restricted subsequent to the declaration of the KCF. Chena crops provided them not only with cash income but also high fibre grain, vegetables, herbs and leaves.

Before Knuckles conservation zone is declared, 90% of the households had engaged in chena cultivation. The income generating crops grown in Chena lands include mustard and kurakkan. Chena had been a source of income for about 72% of the villagers, providing cash income about Rs. 1669 per season per household. Around 57% of the kurakkan harvest and 85% of the mustard harvest was consumed by the household members. This provides evidence to conclude that kurakkan was an important diet and a nutrition source in the past (before KCZ was declared).

Table 6
Chena cultivation\textsuperscript{xvii}

<table>
<thead>
<tr>
<th>Crop</th>
<th>Before KCZ</th>
<th></th>
<th>After KCZ</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Harvest</td>
<td>Amount sold</td>
<td>Income</td>
<td>Harvest</td>
</tr>
<tr>
<td>Kurakkan</td>
<td>546 (130)</td>
<td>343 (80)</td>
<td>1129 (75)</td>
<td>298 (2)</td>
</tr>
<tr>
<td>Mustard</td>
<td>46 (126)</td>
<td>43 (111)</td>
<td>927 (103)</td>
<td>90 (1)</td>
</tr>
<tr>
<td>Total income</td>
<td>1669 (80)</td>
<td>Total income</td>
<td>4500 (1)</td>
<td></td>
</tr>
</tbody>
</table>

Overall the average income earned by chena cultivation per season is Rs. 1209 per household

\textsuperscript{xvii} The values given in the parentheses indicate the number of households cultivation the particular crop, given particular situation
For Etanwala and Ilukkumbura villages Kurakkan had been a major income source before KCZ declaration and for Pitawala village, located about 1km away from the conservation zone, mustard has been the major income generating chena crop. About 83% of the households in Etanwala, located about 0.5 km away from the KCZ, had earned an income through this.

Table 7

Income generated through chena cultivation (Rs. / household / season) before KCZ

<table>
<thead>
<tr>
<th>Chena Crop</th>
<th>Village</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Etanwala</td>
<td></td>
</tr>
<tr>
<td>Kurakkan</td>
<td>1534 (67%)</td>
<td>1129 (50%)</td>
</tr>
<tr>
<td>Mustard</td>
<td>525 (74%)</td>
<td>927 (69%)</td>
</tr>
<tr>
<td>Total</td>
<td>1765 (83%)</td>
<td>1669 (72%)</td>
</tr>
</tbody>
</table>

Although chena cultivation is totally banned following the declaration of Knuckles conservation zone, still 4 households (3%) are engaged in chena and they cultivate the same crops. Only one household has provided the amount of income derived from this. It is Rs. 4500 per household per season. On average this is Rs. 30 per season per household for the whole sample, after KCZ.

Thus it may be seen that with the declaration, the villagers have lost access to the State forests with resulting loss of livelihood from cardamom, NTFP and also chena products as well as the subsistence value there from.

Some of the measures adopted by the Forest Department to compensate for the negative impact of the declaration of the KCF are the provision of farmer’s woodlots where farmers are allowed to grow other crops between the timber trees and the households receive 20 per cent of the timber value after 30 years on the basis of an agreement reached with the Forest Department. These are carried out on lands which do not come within forest reserves, village or conservation forests.

Although the promotion of ecotourism is another measure proposed it is still in a preliminary stage of implementation.
The IUCN Forest Governance Project has been the vehicle for bringing in other forms of alternative income generating activities to the area by enhancing the market access to vegetables cultivated at the pilot villages. Thus the presence of the Project at this volatile instance has been instrumental in empowering the villagers and providing supplementary income thus reducing the lure of engaging in illegal activities pertaining to the KCF.

Customary and Statutory law and forest governance\textsuperscript{xviii}

Sri Lanka’s present legal framework pertaining to forests is a result of approximately 450 years of colonisation superimposed over the traditional systems. The maritime provinces of Sri Lanka (the low country extending from the coast inwards) were controlled firstly by the Portuguese and then the Dutch. Finally the entire island came under the control of the British by the Convention of 1815 – the Kandyan provinces in the central hill country being the last to fall. The pilot sites are also situated within these Kandyan Provinces.

Thus in the territories of Kandy the traditional practices survived intact for a longer period. It suited the colonial administration to affirm that “all the land belonged to the King”\textsuperscript{xix} and that in the Kandyan districts, the British Crown succeeded to the rights of the Singhalese kings while in the Maritime Provinces the British Crown succeeded to the rights of the Dutch. This concept of absolute ownership of the king is debatable. However, what matters for the purpose of this study is that there existed a system of tenure that was recognised and respected by all. The tenurial right extended not only to the paddy or cultivated land but the appurtenant land which may be forested or under traditional chena.\textsuperscript{xx}

However, what is clear is that there existed under the traditional system a series of secure tenure arrangements that prevailed in the country which included Gabadagam – royal

\textsuperscript{xviii} Please note that this chapter also incorporate Customary Law and Forest Governance. Sri Lanka has had a rich history in forest management from the times of the ancient Kings. The evidence presented by the various ancient slab inscription and other manuscripts demonstrate a holistic existence between the man and natural environment. However, due to a series of historical events set out below, the statute law has almost entirely submerged this traditional existence other than in a very peripheral context. Therefore, the following report is structured so as to capture the ancient customs, practices and rules and their transition to the present statute based system.


\textsuperscript{xx} Hayley, F A (1923). The laws and Customs of the Sinhalese or Kandyan Law. Navrang publication, New Delhi. 1993

\textsuperscript{xxi} Thus in Attonery General v. Wanduragla [5 NLR 98] Justice Lawrie cites Sir John d'Oyly thus. “Every field, with a few exceptions, had attached to it a garden and a jungle ground called hena, which, as a matter of course, was inherited and transferred with it.”
villages; Viharagam & Devalagam – tenurial arrangements for the maintenance of temples and other places of worship; Nindagam – lands granted to chiefs; Vidanagam – lands under the local officials for people subject to public service; and Koralagam – lands belonging to laymen subject to service to the king.

In addition to the tenurial system there also existed common property concepts that promoted community of action and cohesiveness in village communities. Thus "[t]he irrigating scheme passes from one allotment to another, arranged, when possible, in a series of terraces, in each of which the supply and depth is regulated by low ridges and bunds temporarily breached or dammed as occasion may require. The regulation of this supply, the formation of the enclosing ridges, … necessitate community of action on the part of the tenants of adjoining lands. … To produce a successful crop, organization is required, some panguwas needing, from the nature of the soil or elevation, treatment different from that of others. For this purpose the tenants appoint their own official, the vel vidana or irrigation headmen."...

Records of traditional tenure were maintained in ‘Lekam-mitiyas’ (traditional registers) under the kings. In the maritime provinces, the Portuguese and the Dutch maintained ‘thombo’ registers which recorded title to land. Thus, while in the Maritime Provinces, some sort of record of title to land existed, in the Kandyan provinces, this record keeping was irregular and with the passage of time this information disappeared.

The Kodawattawan Slab Inscription sets out an equitable system in the imposition of fines for irrigation related offences where a peasant farmer disputing the fine imposed by the land owners/s could elect to submit to a fine imposed by collective decision of the other peasant farmers instead.

Decision making followed the consensus approach through a series of village level institutions starting from Gansabhawa or council of elders. The Vevalketiya Slab Inscription indicates that justice was administered "by means of a Communal Court composed of headmen and responsible householders subject to the authority of the King in Council, the ‘Curia Regis’ …. This village court was empowered to carry into effect the laws enacted by the King in Council and promulgated by his ministers."

xxii A holding of a tenant.
xxvi Hayley, F A (1923). The laws and Customs of the Sinhalese or Kandyan Law. Navrang publication, New Delhi. 1993
Several cases particularly pertaining to fisheries related practices document traditional community or group rights. It appears that in the fishery sector a series of cases were brought before the British courts elaborating traditional practices. No such cases are visible from the forestry sector. Several reasons may have prompted this. One is that the colonial administration readily enacted legislation in respect of the forestry sector. The disputes in the fishery sector are between individuals and between villages whilst in the forestry sector such disputes would have been against the crown legislation and there was little will to challenge the crown. Another possible reason is that whilst fishing is the primary livelihood for fisher folk, for agricultural people, forest produce would have been only supplementary income engaged in by the women folk as gatherers.

However, there is sufficient evidence that certain forests were also seen as communal property. For example, the forests adjoining a village were used in common as appurtenant to the village for pasturage or for collecting forest produce. Codrington (1938) describes traditional mulkate chena where it is the village as a whole that has the right to practice chena cultivation in a certain area and not the right of an individual to cultivate a certain block.

With colonization, land became an important asset, for the purpose of timber and for coffee cultivation. Thus a series of legal instruments were brought into effect, the result of which was to alienate the people from the forests and to vest large areas of land in the Crown.

The process of alienation of people from the forests and negating the traditional tenure commenced through a series of legislative instruments. These include the regulation No. 2 of 1822 – for the protection of government revenue from timber growing in the royal forests, and regulation No. 1 of 1833 – for the protection of government revenue i.e. timber from private gardens the Crown Lands Encroachments Ordinance (CLEO) of 1840 and the Waste Lands Ordinance (WLO) of 1897.

These resulted in an enormous Crown ownership of land with large tracts of land – to which satisfactory title or interest could not be demonstrated as required by the law (generally by document) – vesting in the Crown. Systematic regular felling of timber commenced during this period (1830 – 1840). For this purpose and for coffee cultivation, large areas of land were sold to individual cultivators and timber businessmen at a minimum value. This resulted in large scale clear felling for timber and for coffee cultivation.

Today, the official figures indicate that a population of approximately 20 million survive on a precarious toehold on less than 20% of the land area of the country. Thus, an enormous

responsibility vests with the State agencies to manage the remaining land estate effectively and efficiently on behalf of the ultimate beneficiaries, the people.

The Forest Ordinance No. 16 of 1907 was enacted to consolidate the law relating to forests and the felling of trees for timber. The Forest Ordinance recognises three categories of forests i.e. reserved forests, village forests and conservation forests. In addition, the FO also applies to forests not included within a reserved, village or conservation forest. The Ordinance does not set out the objectives of a reserved forest. Village forests are declared for the benefit of a village community or communities. Conservation forests may be declared in order to protect unique ecosystems, genetic resource or the habitat of rare, threatened or endemic species or forests which need to be preserved to achieve an ecological balance in the area by preventing salinization or drying up of rivers, ensuring adequate rainfall, preventing landslides and fires hazardous to human life.

The FO outlines the actions that are prohibited within reserved and conservation forests. These prohibited actions include ‘trespass’ thus indicating that even unauthorised entry upon such areas would constitute an offence. Community or individual rights within such areas and the manner in which such rights may be acquired is not defined. Certain activities are permitted within these areas subject to a permit and not as of right. However, the occasional reference to the exercise of rights within reserved forests in the FO suggest that at the time of the enactments of the FO there were such rights which could be recognised under the FO.

In village forests all private rights that existed prior to the declaration of the village forest would continue to be recognised whilst regulations may be made for the management of village forests, prescribing the conditions under which the community may be provided with timber or other forest produce or with pasture, and the duties of such communities in respect of the protection and improvement of such forest. However, no such village forests can be traced on the ground not having been properly managed by the communities or the authorities.

The FO enabled a protection from conviction in certain forest offences pertaining to clearing of land and chena cultivation where the State failed to prove that the trees in the said forest were of more than twenty years growth, and where the accused satisfied court that he claimed the said forest by inheritance or upon deed based upon inheritance and that he or his predecessors in title have on at least two occasions cultivated it according to the customary cycle of cultivation after intervals of several years for similar lands in the same locality. However, in amending the law in 1995, this recognition of customary practice too has been repealed from the law. Thus presently, the operation of the FO has almost entirely extinguished any customary rights within reserved forests.
The FO has jurisdiction over forests not declared as reserved, conservation or village forests. In such areas, activities such as clearing, setting fire to, breaking up the soil of, or making use of pasturage or of forest produce may be carried out only in compliance with rules made by the Minister. Thus, one interpretation would be that in the absence of such enabling rules, these activities are prohibited. This however, does not affect any rights of pasturage that existed at the time of enactment of the law. The Minister is empowered to exempt any person or class of persons or any local area from the operation of any such rule.

In addition to the above the FO also contains a permit system. However, this permit system is not for forest concessions but is merely for the regulation of timber in transit and regulates timber even from private land.

**Land tenure and ownership rights in forest resources**

The FO defines ‘forest’ as all land at the disposal of the State. In terms of the FO land at the disposal of the State includes all forest, waste, chena, uncultivated or unoccupied land unless it can be proven to the satisfaction of Court that some person has lawful title or has acquired title by means set out in the Ordinance including a right against the State by a certificate of no claim by the State, or entitlement to possess under a written grant or lease by the British, Dutch, or Sri Lanka Governments. Thus eventually entitlement to such land is once more referable to a right granted by the State.

Tenure and ownership rights within ‘State land’ is determined in terms of the State Lands Ordinance (SLO) and the Land Development Ordinance (LDO) which apply in respect of ‘all land to which the State is lawfully entitled’. The Forest Ordinance does not contain provisions pertaining to the conferment of title.

The gradual process by which community rights were usurped by individual rights has already been set out. It is a ‘person’ and not a ‘community’ that can affirm a right against the presumption in favour of the State to forest, waste, unoccupied and uncultivated land.

**Existing categories of land tenure in forest resources in the country**

Article 33(d) of the Constitution provides that the President has the power to make grants and dispositions of lands and immovable property vested in the Republic.

The State Lands Ordinance of 1947 (SLO) provides for the grant and disposition of State land, for the management and control of State land and of the foreshore and for the regulation of the use of the water of public lakes and public streams. The Land Commissioner administers this law. The Ordinance provides for the making of absolute or provisional grants of State land, for the sale, lease or other disposition of State land, for the
issuing of permits for the occupation of State land and for the issuing of licenses to take or obtain any substance or thing found in State land.

The LDO provides for the systematic development and alienation of State land. The Land Commissioner and the other officers are appointed under this Ordinance. Alienation of State land under this Ordinance is commenced by the issuing of a permit and payment of the purchase fee. Upon completion of the permit conditions a grant is issued to the permit holder in respect of the holding.

Prior to 1995, where a Court determined that title to a forest reserved under the FO is to be vested in any person, the FO provided that the land ceases to be reserved from such date. However, the 1995 amendment to the FO has repealed this provision. This has immense ramification to an individual who claims a bona fide right against the State and succeeds in affirming such right in a Court of law. In effect it seeks to negate the effect of a Court order affirming a private right. No case law could be found where the significance of this repeal is discussed.

Use rights

Within a village forest scheduled species of trees are the property of the State whilst the rest of the forest may be managed by the communities for whose benefit such forests have been declared. However, at present no such village forests exist on the ground.

Regulation No. 01/1979 enacted in terms of the FO provides for the free grant of timber or forest produce for works of public utility, for school buildings and for weaving centers & industrial centers. The same regulation refers to reserved forest to meet timber requirement of villagers of a specific area but fails to elaborate upon the types of requirements envisaged. These regulations are not applied in a uniform manner and the villagers are unaware of the existence of such regulations. In any event from a governance perspective these provisions do not confer upon the villagers any opportunity to engage in the decision making process.

The Pasture Lands (Reservation and Development) Act of 1983 provides for the reservation of State lands as pasture lands. This law recognises even an unincorporated body of persons for the purpose of creating rights over pasture land.xxix

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xxix It provides for the Land Commissioner or an officer authorized in writing by him in consultation with the Director of Animal Production and Health to lease any pasture land to any State institution or body of persons, whether corporate or unincorporated, engaged in the business of livestock breeding, where satisfied that such institution or body of persons has the capacity to manage and develop such pastureland.
The Land Settlement Ordinance of 1931 (LSO) provides for the reserving of areas of land for the practice of communal chena (traditional slash and burn cultivation). However, no reserved land under this provision can be found. Although these provisions may have been applied in the past in the present context such reserving of land hardly takes place.

The FO states that the rights of any person in or over pasturage in respect of State forests not included in a village, conservation or reserved forest in existence are preserved there under. However, these provisions are rarely if ever implemented particularly due to the ignorance of the rights holders.

One means of regulating the use of forest timber is the restriction on timber in transit i.e. the prohibition of the transport of timber within, into, or out of any specified local area without a permit. Thus regulations are prescribed setting out the various species within the different areas that are subject to such control. The implementation of these regulations is monitored by an elaborate and resource intensive system of property marking, checking stations etc.

These restrictions were originally a means of safeguarding government revenue. Presently however the perception has changed and they have come to be seen as a conservation measure, ensuring that only legally felled timber is being transported. Studies have concluded that the timber permit system, has failed\textsuperscript{xxx}.

Access rights

No clear access provisions are found in the law vis-à-vis forests. As stated above, access to reserve and conservation forests is restricted. Thus trespass in a reserved or conservation forest is an offence and is punishable under the Ordinance. The term ‘trespass’ has not been defined in the law. However, criminal trespass has been defined as entry upon or remaining within the property in the occupation of another with intent to commit an offence, or to intimidate, insult, or annoy any such person in occupation.\textsuperscript{xxxi}

Control rights

No direct control rights exist to the benefit of civil society in respect of forests. The National Environmental Act provides for environmental impact assessment (EIA) for certain listed activities including the extraction of timber covering land area exceeding 5 hectares, conversion of forests covering an area exceeding 1 hectare into non-forest uses and clearing of land areas exceeding 50 hectares.

\textsuperscript{xxx} Gunatilake and Gunaratne, (2002)

\textsuperscript{xxxi} § 427 of the Penal Code.
Stakeholders other than the State have limited opportunity in providing input in making decisions relating to forests. In the declaration of the Knuckles Conservation Forest, there was limited consultation with the public, though not mandated by the law. This consultation however did not include the peripheral communities.

**Transfer rights**

Private lands have no general restrictions on transfer rights. State land is alienated in terms of the LDO. A grant in terms of the LDO restricts the rights of the grantee to dispose and to mortgage same and imposes limits on succession. Thus even land alienated in terms of the LDO is not freehold land. Land alienated in terms of the LDO may not be seized and sold in execution of a decree of Court other than in the event of a permitted mortgage. A permitted mortgage indicates a list of banking and other institutions which may seek such enforcement. A disposition may be carried out other than where prohibited in terms of the LDO. A person may only nominate as successor, the spouse or a person belonging to the group of permitted relatives specified in the law. No such restrictions exist in respect of private land. A recent attempt by the Government to lift such restrictions imposed on the alienated land by a law titled Land Ownership Act did not succeed in view of the fact that the Supreme Court declared the draft law unconstitutional.

**Tenure security**

Other than the restrictions refereed to above, grants and permits under the LDO are recognised under the FO and other laws and may not be abrogated other than for violation of the conditions therein. They also give the holder of the permit or grant sufficient dominium to seek eviction of outsiders from the land in question.

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**Notes:**

xxxii § 39 of the LDO.

xxxiii § 42 of the LDO.
Economic issues and instruments

No specific legal instruments govern investment in the forest sector per se. This would be largely governed by the laws relating to land.

Foreign investment laws administered largely through the Board of Investment (BoI) could provide economic incentives for the wood processing industry. The Board of Investment seeks to promote investment in Sri Lanka by providing a one stop shop for approvals in commencing enterprises in Sri Lanka and other incentives including tax breaks. The BoI may enter into agreements with enterprises, granting them exemptions from the provisions of several laws including the Inland Revenue Act, the Customs Ordinance and the Exchange Control Act.

Fiscal and pricing measures

The management model for protection of State lands is a highly command and control model which too provides limited incentives for the conservation of these lands. There are no direct incentives for the ‘forest product processing industry’.

The FO defines ‘reserved forest’ as including a plantation or chena planted with forest trees. This creates a strong negative incentive to investment and planting of forest trees.

It is estimated that, on average 13 per cent of the timber price is attributed to the cost for obtaining permits. The very high consumer prices trigger illegal logging.

Credit institutions

Due to legal restrictions on land rights, land alienated by the State does not prove attractive to commercial banks as collateral. Land alienated by the State in terms of the LDO is subject to protected tenure. Protected tenure in this instance means that the rights of the person to whom an alienation has been done is restrained by law in respect of sale, mortgaging of such alienated land. This has been identified as a negative incentive to the maximum productivity of land. Several companies are engaged in promoting the planting of timber trees as an investment option with returns ranging from 17 – 20 years. The impact of this venture is unclear since these timber species still have not matured to harvesting stage.

xxxiv De Silva, Lalanath (2002).
xxxv Seneviratna, (2002)
Anti-corruption

Bribing has been a common practice in timber trading system in Sri Lanka. A large segment of the timber marked as coming from private lands actually has its origin in natural forests. Often valuable timber is illegally felled from the natural adjacent forests and smuggled into private land and then permits are obtained through bribes and corruption as if they were originally from private lands. The permit system designed to protect natural forests by limiting timber felling to private lands have become a textbook example of policy failure and leading the exact opposite outcome.

Although Sri Lanka has established a Bribery Commission, no forest related matters have been prosecuted so far.

Access to information, public participation, and benefit-sharing

Access to information

Sri Lanka has no access to information law. The FO requires that prior to the declaration of reserved forests and conservation forests, the significance of such a declaration be notified to the surrounding villages. This however, is far too limited and comes too late in the process to serve as a governance tool.

The environmental assessment procedure implemented in terms of the National Environmental Act and the Coast Conservation Act carry a public consultation component which requires providing access to information for defined projects. This has become a very importance piece of legislation in ensuring better governance. However, it has had limited impact on the forestry sector.

The laws related to evidence enable copies of public documents to be produced in court. This is limited to ‘public documents’ which includes documents forming the acts, or records of the acts of public officers, legislative, judicial, and executive.

Seneviratna, (2002)
Gunatilake and Gunaratne (2002)
Public participation

There is little opportunity for communities to be heard and to participate in the management of forest resources. The process follows a decide – announce – and justify approach.

In terms of the FO there is a duty cast on residents of a village to bring to the notice of the Village Headman the commission of any forest offence in exchange for timber and other forest produce privileges. Every person who exercises any right in a reserved forest or a village forest, or who is permitted to take any forest produce from or to cut and remove timber, or to pasture cattle, or to carry on chena cultivation in such forest, is under a duty to assist a forest officer or a police officer in the event of a fire. These are remnants of a bygone era and are wholly out of step with governance principles. If these provisions are to be put into effect it is necessary that the FO first outline the type of rights available within forested areas and the Ordinance clearly fails to do so.

Benefit-sharing

No Provisions have been enacted towards benefit sharing in the forestry sector. All activities pertaining to the timber and non-timber forest resources within reserved forests are subject to regulations and permits there under. The law does not provide any special recognition to the villagers and communities in the surrounding of the forest or that are forest dependent in the issuance of permits. In practise however, the Forest Department has entered into agreements with communities that surround forests giving them the right to harvest forest produce.

The FD has tried to bring about some benefits of aforestration on State lands to low income households through agro-forestry woodlot development on land which do not come within reserved, conservation or village forests. About 1000 ha of State land has been given out on contract to low income households. The labour inputs are subsidized, while permission has been granted to grow other crops between the timber trees and the households receive 20 per cent of the timber value after 30 years. The FD is also piloting more participatory forestry approaches in several areas adjacent to natural forests.

xxxix Agreement entered into with the communities surrounding the Nilgala forest to harvest Nelli – Phyllanthes emblica; a major ingredient in Ayurvedic medicine.  
Compliance and enforcement

Jurisdiction of statutory authorities

The primary statutory authorities in relation to the forest sector are the Forest Department, the Wildlife Department and the Land Commissioners Department. The FO vests jurisdiction for managing Forest reserves as well as Conservation Forests in the form of protected areas and also regulates access to other forests on State land. The Fauna and Flora Protection Ordinance vests the Department of Wildlife Conservation with jurisdiction over protected areas declared there under and listed species of fauna and flora. The State Lands Ordinance and Land Development Ordinance regulate State land in general and the alienation of State land in particular. However, there is much overlap and inconsistencies in these laws and unclear mandates for administration. The FO and the State Lands Ordinance both regulate access to and use of State land and it is unclear as to which one would prevail in the event of a conflict.

Even where the law is clear, other factors such as absence of boundary demarcation on the ground, scarcity of resources inhibit the enforcement ability of the statutory authorities.

The authority for the management of State forests is highly fragmented. The practice of chena on State land for example is regulated in terms of all the following laws:

Table 8

<table>
<thead>
<tr>
<th>Law</th>
<th>Year of enactment</th>
<th>Impact on Chena</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forest Ordinance</td>
<td>1907</td>
<td>Regulating the right to practice chena</td>
</tr>
<tr>
<td>Land Settlement Ordinance</td>
<td>1931</td>
<td>Communal chena</td>
</tr>
<tr>
<td>State Lands Ordinance</td>
<td>1947</td>
<td>Granting the right to practise chena on State land</td>
</tr>
<tr>
<td>State Lands Encroachments Ordinance</td>
<td>1840</td>
<td>Presumption in favour of the State in respect of chenas and other lands which can be only cultivated after intervals of several years</td>
</tr>
</tbody>
</table>
By and large the statutes that establish these authorities provide command and control measures of enforcement with little emphasis on participatory approaches.

**How illegal activities are defined**

Illegal activities are defined by means of activities which are absolutely prohibited within a designated area and activities that may be carried out with authorisation. The activities regulated vary according to level of protection afforded. The nature of the activities varies from the felling of timber to pasturing cattle and collecting non-timber forest produce. Requirements for planned management of protected areas as well as public participation are limited. The FO is largely prescriptive in nature.

The prohibited activities are generic and broadly defined to be as inclusive as possible. An example is section 7A of the FO which sets out activities prohibited within a Conservation Forest as including the following:

- trespasses and cattle trespass,
- causing damage to or interfering with any tree.
- collecting or removing any plant, tree or any other forest produce,
- cutting grass or pasturing cattle,
- removing, uprooting, destroying or causing any damage or injury to any plant,
- erecting any building or occupying any building erected,
- making any fresh clearing,
- clearing or breaking up any land for cultivation or any other purpose.

Similar restrictions exist in other categories of forests. The attempt appears to have been to make as comprehensive a list as possible of prohibited activities rather than articulate it in terms of rights and obligations.

Thus not only commercial but day to subsistence acts also becomes restricted once a Conservation Forest is declared. Thus no type of use rights can be exercised within a Conservation forest unless these rights can be affirmed with reference to some authority granted by the Government.
Penalties for illegal activities and enforcement authority

The law specifies the penalties for illegal activities. These penalties have been increased from time to time. For example, the fine for cattle trespass in terms of the 1966 amendment to the Forest Ordinance was imprisonment for a term not exceeding six months or to a fine not exceeding five hundred rupees while the 1995 Amendment to the law elevated the penalty to imprisonment for a term not less than six months and not exceeding four years or to a fine not less than two thousand five hundred rupees and not exceeding twenty-five thousand rupees.

In the pilot site, more than the two thirds of population has heard about forest offences by others. Members of five households were fined and another 24 (16 per cent) households have been warned by Forest Officials.

The table below indicates that the actual recovery of fines is well below the estimated damage caused due to forest clearing and illegal felling.

Table 9

<table>
<thead>
<tr>
<th>Year</th>
<th>Nature of the forest offence</th>
<th>Estimated loss due to impact on Forest (Rs)</th>
<th>Fine (Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>Forest clearing -7 cases</td>
<td>236,871</td>
<td>27,500</td>
</tr>
<tr>
<td></td>
<td>Illegal felling – 4 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Timber transport – 1 case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2005</td>
<td>Forest clearing – 2 cases</td>
<td>401,847</td>
<td>86,000</td>
</tr>
<tr>
<td></td>
<td>Illegal felling – 11 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Possession of timber – 5 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Timber transport – 1 case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>Forest clearing – 7 cases</td>
<td>1,396,337</td>
<td>45,000</td>
</tr>
<tr>
<td></td>
<td>Encroachments – 1 case</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Illegal felling – 12 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Possession of timber – 4 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Timber transport – 1 case</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2007</td>
<td>Forest clearing – 7 cases</td>
<td>195,190</td>
<td>45,000</td>
</tr>
<tr>
<td></td>
<td>Illegal felling – 10 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Possession of timber – 5 cases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Timber transport – 1 case</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Matale District Forest Office
Accountability of statutory authorities

The law does not contain such accountability measures. The statutory authorities are accountable to Parliament. The opportunity exists of lobbying a Member of Parliament to raise a question to be answered by the Minister concerned. The Parliamentary standing orders provide for questions relating to public affairs to be posed to a relevant Minister relating to matters which are their responsibility. Public Petitions are a powerful tool for the public; whereby the attention of Parliament could be drawn to issues pertaining to administration. Public Petitions too are presented by a Member of Parliament. However, the impact of this tool on forest governance is uncertain and no clear impact could be discerned in respect of forest governance.

The FO contains no accountability mechanisms. Decisions pertaining to issuing licenses, management decisions in respect of State forests etc., are carried out by the Department almost as if it was a decision taken by or on behalf of a private and owner. The exception to this is the supervisory jurisdiction of Courts described below.

Some attempt has been made to prevent conflict by prohibiting forest officers from trading in timber or forest produce.

Administrative remedies and judicial and alternative dispute resolution mechanisms

There is no administrative appeals forum for forest offences. The power to commute offences under the Forest Ordinance referred to above is one means of resolving a dispute without having recourse to Court. The Human Rights Commission of Sri Lanka is empowered to investigate infringements of fundamental rights and to either make recommendations thereon, refer same to a Court with jurisdiction to hear same or to refer it to conciliation or mediation as appropriate.

Fundamental rights litigation in the Supreme Court and public law remedies such as writs to the Court of Appeal and Provincial High Courts are some of the measures by which Courts may review the actions and inactions of public officials. Both these tools are being used by the public and civil society in challenging administrative acts and decisions though less so in forest related activities. Most forest related cases are initiated by the non-governmental organisations working on environmental issues.

At the village level the customary mechanism of decision making was the gam Sabha or the village council consisting of the principal men of the village meeting at a public place in the village. Their role was mainly to try and compromise the disputants and village level decisions on boundaries, petty crimes were usually decided upon by the council. It appears that matters related to forest produce etc., were referred to it. Thus Owella Hiregey
Kankanam v. Meddumma Dureyala Mutuwa a decision of the Council was sought in relation to a Kitul Tree in 1829. The jurisdiction of the Gam Sabha was recognized by the Charter of 1833. Its functions were preserved in some form though the Village Council’s Ordinance of 1924, presently repealed.

Standing

Sri Lanka has a strong civil society resulting in the emergence of public interest litigation (PIL) as a powerful force. With the advent of PIL, relaxed standards on standing have gradually come to be adopted by Court. In Environmental Foundation Ltd. v. Minister of Public Administration and six others, it was held that there are decisions both in Sri Lanka and abroad expanding the principle of locus standi to include an applicant, who can show a genuine interest in the matter complained of and that he comes before Court as a public spirited person, concerned to see that the law is obeyed in the interests of all” and that “[u]nless any citizen has standing, therefore, there is no means of keeping public authorities within the law”. Thus in recent times there is a prevalent tendency to institute public interest litigation on a variety of issues including those pertaining to the management of natural resources.

Judicial decisions related to forest governance

In Kiri Banda v. Booth (1901) Court stated that forests were inter regalia and could belong to subjects only by a special grant. This decision favours the colonial administration as explained hereafter and the thinking of Courts has since then been reversed to some extent.

As far back as 1882 it was indicated that that courts have tended to regard the [State] not as a trustee for the whole nation, but as a land-holder. Therefore, the provisions of the FO were used by the Authorities for the protection of State land as if the State were a private land holder and not for the management of the resource i.e. forest in its ecological sense.

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xi Hayley, F A (1923).
xii Section 225 of the Pradeshiya Sabhas Act of 1987.
xiii (1997) 2 Sri.L.R. 306
xlii 5 New Law Reports 284
xliv Vincent, F d’A (1882)
In Y. M. Sultan v. The Kachcheri Surveyor, Trincomalee, the accused had attempted to make out that he had been cultivating the land in question for a period of 33 years and that the records in the department showed that the accused had cultivated the land for a period of 25 years. The Accused moreover sought to make out a case of title to the said land which would have required the matter being adjudicated by a different Court with Civil jurisdiction. However, Court followed the principle laid down in the case of Wijesundera v. Karmanis Appu et al, i.e. “that where the real object of the prosecution under the Forest Ordinance is to protect Crown land the prosecution may proceed under that Ordinance even though there is a dispute as to the Crown's title to the land”.

Attorney General v. Podiappuhamy referred to above also follows this principle and states that forest land remains forest land (as defined) notwithstanding several years of cultivation, if such cultivation is unauthorised. However, the question is whether the real object of the FO should be protection of Crown land or the protection and efficient management of a resource i.e. forest ecological system.

In the recent case of O. S. Perera v. Attorney-General, a somewhat different view was expressed. There it was held that timber being an essential commodity in everyday life “it is difficult to accept an argument that the Ordinance was designed solely to protect forests and trees etc.” It was further held that the recognition of the need for timber “creates a legitimate [interest] in the nature of a right to the people to be allowed to transport timber for one’s legitimate need”. Thus there is a “a duty to exercise the discretionary power of issuing or refusing to issue a permit to transport timber bona fide and properly”. This decision sets a significant milestone in the implementation of the tripartite approach by moving such decisions away from the purely discretionary realm and closer to conferring rights on those with legitimate interest.

In the Supreme Court special determination in respect of the Land Ownership Bill, the Court attempting to recognise the underlying responsibility of the State held that “[f]rom time immemorial, land has thus being held in 'Trust' for the people in this island; now a Republic”.

In Bulankulama and others v Secretary, Ministry of Industrial Development and others, the Court went beyond the argument of the State as a ‘trustee’ and developed an argument favouring a shared responsibility between the organs of the State and the public in the protection of natural resources.

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xlv  74 New Law Reports 287
xlvi  [1932] 2 Ceylon Law Weekly 86.
Thus clearly the cumulative impact of the recent decisions laid down by the superior Courts of the country favour the management of its natural resources from a beneficiary perspective rather than the State itself as the sole beneficiary. In particular the Bulankulama judgement recognises a shared responsibility in managing natural resources, for the realisation of which, stakeholder participation is imperative. However, such judgements are seen as one off things and rarely contribute to overall policy formulation.

In Alawatugoda Ratemahatmeya v. Kiriwantexliviii the Court posed the question as to how, if a piece of Crown land has no boundaries, boundary marks, or clearly defined limits of some kind, a person is to know whether he is inside or outside of a piece of Crown land and the further question of whether a purely forest offence can be imputed to a man, if he cannot know whether he is acting outside or inside a land at the disposal of the Crown.

**Documented cases**

The KCF experiment demonstrates as documented in this review the detrimental impacts of the rigid implementation of the law on local forest dependent communities. Even where there is willingness to consider the grievances of the forest dependent communities on the part of the authorities, the rigid provision of the law do not permit sufficient flexibility. The villagers and other private land owners who were not consulted in the management decisions as far as the KCF is concerned are now in the process of finding out what rights if any are available to them and attempting to arrive at a consensus with the Forest Department in respect of their lands. In fact the present project has been instrumental in assisting these stakeholder groups.

**Combined impact of statutory law and court decisions**

As has already been set out, the legal framework governing forest management in Sri Lanka is outdated and was originally enacted with a different objective, i.e. vesting all forest, waste, unoccupied and uncultivated land in the State, managing them for revenue, for timber production and for alienation for coffee and other monoculture plantations. The main objective of the laws was to vest valuable forest land in the State and deny public access to such land with the result that over 80% of the land estate in Sri Lanka is vested in the State. However, management of this large land estate of the State was and still is inefficient. Large extents of State land lay idle, boundaries unclear, and with limited or no management. Nevertheless, the management of the Forest estate particularly in terms of the FO has seen a shift from exploitative forestry to conservation as indicated by the legislative amendments.
Governance aspects however have still failed to permeate the management thinking and decisions continue to be made in a vacuum.

The statutory law fails to provide a level playing field for stakeholder participation nationally. This is reflected in the project site surveys. The law is very much command and control oriented.

The Bulankulame judgement may be hailed as a pioneering judgement where the Supreme Court recognises the joint responsibility between the Government and the public in environmental protection in general. In this it goes beyond the decision of the Supreme Court in the Special Determination on the Land Ownership Bill where the trusteeship of the State in managing land was affirmed. However, as stated above, these judicial decisions rarely if ever make their way to the policy formulation and the legislative process. The law has not been amended to take into account these considerations. At present therefore, there exists a clear disconnect between the judicial view and what the legislation provides. Even the more recent amendments to the FO in 1995 instead of being more governance oriented, seeks to take away some of the judicial remedies available.

**Wider socio-economic influences on forests, livelihoods and voices**

The socio-economic conditions at macro level are an important dimension in good forest governance.

**Macro-economic policies and policies of other sectors**

High tariffs on timber imports are seen as a huge inefficiency in timber markets today. With the escalating demand for timber, it increases the pressure on natural forests. In addition, government regulation of timber market creates imperfect conditions in the timber market. As a result of timber market regulations, the producers receive very low prices, while as consumers have to pay excessive prices.
Effect of donor support and consequences of it ending

A number of donor funded projects have been launched since 1980s to conserve the forest resources of Sri Lanka.

Forest Resources Management Sector project was funded by the Asian Development Bank to address the problems of loss of forest cover and conversion of forestlands into non forests by instituting participatory sustainable forest management through improving livelihood opportunities, reducing poverty, and improving forest sector governance. The project was initiated to implement the recommendations made by the Forestry Sector Master Plan with a total cost of US $ 40million. Accordingly the overall goal of the project was to increase the value and sustainability of Sri Lanka’s forest by creating a policy and governance framework to enable local communities and the private sector to participate in forest resource development and management.

The Participatory Forestry Project implemented during the late 1980s and early1990s addressed issues such as participatory sustainable forest management, buffer zone development, agro forestry, increasing tree cover in homesteads, stream reservations, public and private places.

However, as stated above no legislative changes have come forth that enhance the participation of forest related communities in the decision making process. The activities of the projects have been limited to policy and programmes.

Power relationships and corruption

Bribing is seen as a common practice in trading timber, because regulations do not allow producers to receive reasonable prices and it is very time and money consuming to obtain permits to cut trees legally.

Forestry resources represent a valuable commodity and attract illegality, corruption and patronage. It is often local businessmen closely connected with local politicians who make money out of illegal environmental activities. Such activities include illegal mining of gems in forest areas, or felling and transporting of timber. There may also be public officers, such as the police who are themselves engaged in illegal environmental activities. In other cases, public officers, such as forestry officers may take bribes to issue the necessary permits and documentation for illegal environmental activities. Even to receive appropriate permission for legal environmental activities without excessive delays may, in some instances, require bribes or political connections. These activities arise due to low public service salaries compared to the returns from illegal activities, lack of disciplinary action and low morale.
The links between local businessmen engaged in environmental damaging activities and local politicians is exacerbated in a political context of widespread patronage (see box 1) where permits to exploit resources are a reward for political support and offer a quick way to offset election expenses. Local businessmen may pay off politicians to retain political protection, while the local administration, police and magistrates may fear negative impacts on their careers if they obstruct the wishes of a politician. In others cases these officials may be part of the same patronage culture, or are co-opted through bribery or turn a blind eye, so that the many regulations in place to constrain environmentally damaging activity are of limited value.

Box 1: Patronage, power and the market

Patronage is used here to mean the use of political connections to achieve certain ends. Patronage is not only a constraint to formal management, but can totally undermine it. On a general level, patronage involves doing favours in return for political support. Patrons include Ministers, Members of Parliament (MPs), members of the local council (Pradeshiya Sabha) or Provincial Council, or those with access to such individuals. The more established and wealthier members of society often have the strongest links to these patrons. Patrons benefit from political support that can mean supporting, funding or campaigning for the party or the politician in question.

Patrons can facilitate access to resources available from government, such as employment or loans, making the bureaucracy work to a client’s advantage, or even support illegal activities. MPs, especially if in power and some lower level politicians can influence the careers of public employees (through transfers to a remote area or support a promotion) which make it difficult for demands to be refused. But patronage has to remain unofficial and often borders on illegality. So the process makes use of weaknesses and loopholes in the formal organizational framework and thus reinforces these weaknesses. Lack of action against activities backed by a powerful patron can be explained by lack of resources, or limited capacity. However politicians are also constrained. The extension of patronage by politicians is often linked to a client’s wealth and, therefore, obliged to support large business interests to a certain extent. However, often with a change in political regime, one set of businesses will lose their backers and may be replaced by another set of businessmen.

For natural resource management, these issues need to be confronted. One option is to use pressure, such as transparency, to reduce illegal patronage and a second approach is to engage in dialogue with key patrons and their private sector clients.\textsuperscript{xlix}

\textsuperscript{xlix} Foell, J., et al. (2000)
Poverty, inequity and gender

Poverty reduction is one of the key areas of focus in the Sri Lanka’s development agenda over the years. According to the national statistics, 15 per cent of the population subsists below the poverty line in 2007. The poverty head count index is on the declining trend over the years. However, the striking feature is that a significant proportion of households are concentrated around the poverty line, so that even a small shock can make a large of households under poverty. Thus, although the headcount index is decreasing over time, households show a greater vulnerability to poverty. On the other hand, inequality in income distribution is also an issue, where the measured Gini coefficient is nearly 0.40. Income transfer programs have been initiated by the respective governments, time to time in order to ensure at least basic needs of the poor households are met.

Poverty is a prominent issue in the most of the remote areas of the country, which are peripheral to natural forests. Lack of access to social services, infrastructure and employment opportunities makes such households deprived. Even within a community, income distribution is fairly inequitable. However, in the Sri Lankan context, there are no forest dwelling communities and those who are living around the forests are primarily agriculture dependent. Thus policies on poverty alleviation and gender issues have not specifically addressed the issues linked with forest governance.

When compared with other Asian countries the dependency of peripheral communities on forests, as a means of livelihood is less. Although households extract NTFPs from the forests, for subsistence purposes, the commercial extraction is quite limited to certain forest products and localities. However, the agriculture dependent households are engaged in commercial and subsistence agriculture in the cleared forest lands in the form of shifting cultivation. Shifting cultivation is seen by the peripheral communities as one of their main livelihoods. The economic losses created by forest conservation interventions is largely due to banning of shifting cultivation in the natural forests.

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1. www.statistics.gov.lk
2. World Bank (2007)
Stakeholders, economics, law and forest governance

How legal mandates create incentives and/or disincentives for illegal activity.

Evaluation of the effectiveness of ‘forestry institutions’ in Sri Lanka is complicated. Firstly, the legislative framework applicable to forestry resource is fraught with uncertainty. The FO defines forest as ‘all lands at the disposal of the State’ irrespective of the forest coverage. This definition was included in the law for historical reasons – the various laws that contained presumptions in favour of the State in respect of forest, waste, uncultivated and unoccupied land were well in operation at the time the FO was enacted. Thus the law had to be flexible enough to incorporate any new land that came within the Crown (State) lands. In the present context however, the situation is much clearer. Already the major part of the country’s land estate has been settled and covered by final settlement plans in terms of the Land Settlement Ordinance. (Berugoda, 1998)lii. Thus there is no justification for continuing with the outdated definition any longer.

A broad mandate as defined in the FO strictly limits the implementation capacity of the Forest Department. It is unable to formulate policy and programs applicable to ‘forested’ land since a large portion of the lands coming under its jurisdiction is not actually forested. As stated in the long title to the State Lands Ordinance the management and control of State land should be in terms of the SLO and by the Land Commissioners Department. The efforts of the Forest Department should be in respect of lands that are actually forested. The broad and overlapping mandate of the Forest Department thus is a major factor affecting the efficiency of the Department. This in turn forms a significant incentive for illegality since the Forest Department with its limited resources is unable to manage the entire land estate of the State.

The FO defines forest as ‘all lands at the disposal of the State’ irrespective of the forest coverage. Thus any Government agencies having an interest in State land could become a concerned party. The main laws pertaining to State land demonstrate the legislative confusion presented in the management of State land. The FO defines “all land at the disposal of the State” as including all forest, waste, chena, uncultivated, or unoccupied land unless proof is adduced by a person to the satisfaction of the court that a valid title or right has been acquired by such person as against the State.iii The LDO which was enacted in

lii Berugoda S. (1998)
liii “land at the disposal of the State ” includes-
(a) all forest, waste, chena, uncultivated, or unoccupied land, unless proof is adduced to the satisfaction of the court that some person has acquired, by some lawful means, a valid title thereto, or
1935 with the object of the "systematic development and alienation of Crown land" defines State land as all land to which the State is lawfully entitled together with all rights, interests and privileges attached or appertaining thereto. It appoints a Land Commissioner with responsibility for the administration of State land. The SLO of 1947 provides the overall framework for managing the State land estate and the foreshore. State land is defined herein as all land in Sri Lanka to which the State is lawfully entitled or which may be disposed of by the State including all rights and privileges attached to or appertaining to such land. The SLO provides for the making of grants and for the sale, lease or other dispositions of State land and provides for the issuing of permits for the occupation of State land. It also provides for the issuing of licenses to take or obtain any substance or thing found in State lands. These provisions therefore duplicate the provisions of the FO, thus making the administration of State land inefficient.

Thus the same piece of land may be subject to multiple management regimes under different laws. Jurisdictional overlap thus is a major set back in the management of State forests. With multiple authorities, the no single authority of the State assumes primary responsibility for the management of the State land estate. At a given time considerable confusion may exist as to which Government agency has direst control over a forest land. The management regimes are different according to which authority is managing the particular piece of State land at the time and the rigour with which the management objectives are pursued is also not uniform. This creates the environment where illegal activity even up to the level of encroachment on State land can occur. Also the fact that there is no transparency in the management of the State land estate results in these matters surfacing too late to take remedial action.

The Forest Ordinance is prescriptive. The available enforcement approach is command and control. Little participatory management tools are made available via the legal framework. (De Silva, 2002) points out that implementing social forestry activities within this framework creates legal and administrative conflicts in that the “creation of user rights and obligations over State land on the one hand and the management of forestry objectives on the other” is managed by two separate agencies namely the Land Commissioner’s Department on the one hand and the Forest Department on the other. Due to historical reasons other important functions under the FO are also divided up between various agencies. While the FO determines forest reserves and conservation forests, public notice of same is required to be

(b) has acquired a right thereto as against the State by the issue to him of any certificate of no claim by the State under the State Lands Encroachments Ordinance or the Definition of Boundaries Ordinance, or

(c) is entitled to possess the same under a written grant or lease made by or on behalf of the British, Dutch, or Sri Lanka Governments, and duly registered in accordance with law.

all lands resumed by the State under the provisions of the Land Resumption Ordinance, and all which have been declared to be the property of the State by any Order passed under ‘The Waste Lands Ordinances, 1897 to 1903, the Land Settlement Ordinance, or to which the State is otherwise lawfully entitled.

liv Long title to the Land Development Ordinance No. 19 of 1935.
given by the Divisional Secretary for the area. Thus the public notification responsibility is with a different agency of Government.

The general definition of forests in the law also impacts the boundary definition. The State land estate is made up of lands that have come within the State through a variety of processes and due to lack of management by the State and due to encroachment, has organically merged with the village boundaries in many areas. This in turn acts as an incentive to illegal activity either deliberate or accidental.

**How customary and/or statutory tenure, access and use rights to forest land and resources operate as incentives and/or disincentives for illegal activity.**

The statutory framework managing the forest lands, as explained above does not recognize the creation of rights over such State land. The limited recognition of rights suggests that they were intended to recognize rights that were there when the FO was enacted and not rights that may emerge subsequently. Thus the outcome of this has been that the perspective of the communities has changed over the years. The present average villager does not view the forest estate in terms of rights recognized under the law because there are none. Where there is little policing he may enter the forest for subsistence use or even exploitive use. Where the policing is rigorous his interaction with the forest would be strictly curtailed. This applies to those who engage in illegal activity too. Where the policing is less rigorous, those who engage in illegal activity would see opportunity to enter and extract what can be extracted with or without the support of the authorities, knowing that the average villager would not interfere.

As explained above, customary tenure has little acceptance in State forests other than under the Fauna and Flora Protection Ordinance. Although the Forest law which are over a century old have had an immense impact on customary tenure, due to the limited enforcement activities of the authorities, customary practices can still be detected in certain areas of the island. However, no concerted effort has taken place to identify and document such practice mainly because the law frowns upon them.

The limited recognition of customary tenure where the State land ownership is extremely high creates further pressure on land. This in turn has led to frequent encroachment on State forests particularly under political patronage. The unofficial policy of the Government has been to legitimize encroachments from time to time. This in turn creates a greater incentive to encroach on State land in the hope of obtaining legal rights in terms of the Land Development Ordinance.
Functioning of customary and statutory mechanisms for participation in decision-making and benefit-sharing

As explained above there are no mechanisms for participation in decision making and benefit sharing in the FO.

Statutory measures for participation are limited to the environmental assessment provisions in terms of the NEA, the Coast Conservation Act and the FFPO. These provisions provide public comment and public hearing in respect of certain activities which have significant impact on the environment. The environmental assessment approaches are particular weak in post approval monitoring.

There are no statutory measures for stakeholder decision-making in the law pertaining to the forestry sector.

How customary and statutory compliance and enforcement mechanisms operate as incentives and/or disincentives for illegal activity

With the vast land holding of the State, boundary demarcation of the entire forest estate of the State is an issue. The absence of clear boundaries hampers the enforcement of the statutory provisions pertaining to State forests.

The strictly defined provisions of illegality in terms of the FO limit the possible activities within State forests. This clearly acts as a disincentive for the average villagers to enter and engage even in subsistence activities within State forests. The law fails to distinguish subsistence activities from commercial activities. This is a major issue for this assessment, but it is only related to compliance and enforcement to the extent that having the same penalties for illegal subsistence use as for illegal commercial use creates inequity.

The law fails to recognize customary activities in forest areas. The cumulative impact of these factors is the alienation of the average villager from the surrounding forest areas. The Forest Department does not have sufficient personnel and resources to carry out rigorous policing of the forest areas coming under its jurisdiction. By also prohibiting the villagers from entering the forest for their subsistence use, the villagers are encouraged to turn a blind eye to what goes on within the forest even if it is their back yard. Thus greater opportunity and incentive is created for those within to engage in illegal activity. Although some help may be obtained from the village for such illegal activities it is usually the minority element that corporate and is usually perceived in a negative light by the other villagers. With no regular movement of villagers through the forests, these exploitative illegal elements are free to carry out their activities within State forests. This isolation also creates the opportunity for corrupt official practices since there is little transparency and accountability.
Recommendations

To the greatest extent possible, the attempt has been to link these recommendations to the challenges identified in the previous sections. The recommendations have been kept within what is achievable in the near and medium term.

Revise the Legal Framework pertaining to the management of forests

As set out above, the legislative framework for the management of State forests is based on facts and assumptions that were valid over one hundred years ago at a time when Sri Lanka was still under colonial rule. The political and sociological context of the country has seen much change since then. Therefore, in order to make the law relevant to the present needs and to make it a forward looking piece of legislation it is recommended that this legal framework be revised and updated.

In the present context this revision should focus primarily on the FO. Rather than making superficial changes to the law, the entire Ordinance should be reviewed from a governance perspective and also to enable the Forest Department to prioritise and to manage the forested lands of the country so that further depletion of forest cover can be arrested whilst meeting the aspiration and needs of forest dwelling communities and other stakeholders. This would vastly improve the management and enforcement capacity of the Forest Department whilst recruiting civil society as equal partners in the decision making and management of State forests and also bring the law in harmony with the recent decisions of the Supreme Court which envisages the State and civil society acting as partners in the management of natural resources.
Revise the Forest Ordinance to bring in important aspects pertaining to better governance approaches

Introduce requirement for the planned management of forests

At present the FO does not mandate the planned management of forests. Although planning takes place at the implementation level the absence of a formal process denies the opportunity for non-State sectors to participate therein.

The FO should mandate a planned approach to the management of forests declared thereunder. Such a planning process would also afford opportunities for stakeholder participation in decision making as well as in implementation.

Such planning should not be limited to inward looking planning but should take into account the surrounding areas – villages, buffer areas etc., and result in an expanded spatial planning horizon. This includes the recognition of continued dependence on forests, the villager’s needs and aspirations and the flow of benefits to all stakeholders concerned. Approaches such as Landscape and Livelihood Strategy (LLS) and tools such as Strategic Environmental Assessment (SEA) Social Impact Assessment (SIA) can be employed towards this end.

Develop tools to facilitate public access to forestry decision making

As demonstrated in the pilot study, the present law falls drastically short of the requirements for public access to forestry decision making. Hence these tools have to be developed as a priority. However, unless incorporated into the law i.e. mandated or at the least enabled through law, these tools may not get implemented.

As ultimate stakeholders the public should be empowered through transparency and accountability measures to a) be able to see the process of decision making (transparency) b) provide inputs to the decision making c) be satisfied that their concerns have been given adequate consideration by the decision makers. All three levels are absent from the present statutory framework.
Develop mechanisms for the recognition of customary, collective rights regimes

This recommendation has two major components. The first is that even though the law fails to recognise customary law, it is still practised in certain areas particularly due to little or no State interference and management of the Forest areas. Hence, firstly, such customary practices should be collated and enabled with the existing legal framework where it is consistent with conservation and protection regimes.

Secondly, the customary practices revealed through such a study and as already documented in the existing literature demonstrate the basic principles thereof which can be utilised as templates in designing community and collective participation in decision-making and management of forest estates.

The benefits of such a process are that these customary approaches have woven their way into the very social fabric. The breach of these customary rules result firstly in social ostracism and the village generally polices its own as has been demonstrated in the subject area of irrigation where traditional, customary practices still prevail. Thus the enforcement of customary rules is less resource intensive (the villagers police themselves) and such rules are more willingly complied with.

An important tool in facilitating participatory management of forests is the development of tools that recognise collective or group rights based on the equitable principles adopted in customary law. Thus the law should also enable collective rights to be recognised thus making the village as a whole responsible for the implementation of the customary rules.

Establish a Communication System between among stakeholders

A proper communication system between the local stakeholders and the FD should be established. The communication strategy should firstly focus on an awareness campaign to raise awareness on forest related laws and their significance. The strategy should also be able to provide affected communities with timely and effective information on changes to forest management regimes in their area, which affect them. Such a communication strategy is in fact a first step in creating a governance regime. The establishment of the National Forest Working Group is an important step in this direction.

Define forest boundaries

The absence of clear boundaries pertaining to the several forest categories and the implications thereof have been discussed in this study. It is necessary that the Forest Department be supported in its efforts at boundary demarcation as a priority matter.
Table 10

Income from home gardens (Rs. / household)^iv

<table>
<thead>
<tr>
<th></th>
<th>Etanwala</th>
<th>Ilukkumbura</th>
<th>Pitawala</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Timber</td>
<td>0 (0)</td>
<td>7000 (3)</td>
<td>0 (0)</td>
<td>7000 (3)</td>
</tr>
<tr>
<td>Fruits</td>
<td>0 (0)</td>
<td>900 (4)</td>
<td>0 (0)</td>
<td>900 (4)</td>
</tr>
<tr>
<td>Vegetables</td>
<td>3000 (1)</td>
<td>1000 (4)</td>
<td>0 (0)</td>
<td>1400 (5)</td>
</tr>
<tr>
<td>Other trees</td>
<td>0 (0)</td>
<td>1917 (3)</td>
<td>680 (1)</td>
<td>1608 (4)</td>
</tr>
<tr>
<td>Total</td>
<td>3000 (1)</td>
<td>2863 (12)</td>
<td>680 (1)</td>
<td>2716 (14)</td>
</tr>
</tbody>
</table>

^iv The numbers given in parentheses indicate the number of households in each case. The total number of households is 149.

Detrimental Impacts of KCF as Perceived by Households

<table>
<thead>
<tr>
<th>Detrimental impact</th>
<th>Number of families</th>
<th>% of families</th>
</tr>
</thead>
<tbody>
<tr>
<td>No timber / wood</td>
<td>50</td>
<td>34</td>
</tr>
<tr>
<td>No chena cultivation</td>
<td>75</td>
<td>51</td>
</tr>
<tr>
<td>Increase in animals</td>
<td>11</td>
<td>7</td>
</tr>
<tr>
<td>No resources can be used</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td>Environmental pollution due to ecotourism</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>No firewood</td>
<td>17</td>
<td>11</td>
</tr>
<tr>
<td>Loss of livelihood</td>
<td>7</td>
<td>5</td>
</tr>
</tbody>
</table>

Source where households first came to know about KCF

<table>
<thead>
<tr>
<th>Source</th>
<th>Number of Households</th>
<th>Percentage of Households</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting organized by the forest department</td>
<td>19</td>
<td>13</td>
</tr>
<tr>
<td>Word of mouth</td>
<td>36</td>
<td>24</td>
</tr>
<tr>
<td>When poles were established</td>
<td>48</td>
<td>33</td>
</tr>
<tr>
<td>Word of mouth and when poles were established</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>When surveying started</td>
<td>8</td>
<td>5</td>
</tr>
<tr>
<td>When forest officers came</td>
<td>16</td>
<td>11</td>
</tr>
<tr>
<td>Through Dumbara Surakmno</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>Total</td>
<td>147</td>
<td>100</td>
</tr>
</tbody>
</table>
Annex 1

Summary of Past Studies

An economic assessment has been done by Gunatilake (1995) prior to the conservation zone was declared by the Forest Department.

Accordingly the studied communities are heavily dependent on forest resources. On average, 58% of total income and 59% of the monetary income are earned from the forest resources.

Contribution of the total income by each activity

<table>
<thead>
<tr>
<th>Activity</th>
<th>Number reported</th>
<th>% contribution</th>
<th>Average income ($ / family / year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paddy cultivation</td>
<td>72 (90%)</td>
<td>11.9</td>
<td>184.9</td>
</tr>
<tr>
<td>Other annual crops</td>
<td>41 (51%)</td>
<td>3.9</td>
<td>106.4</td>
</tr>
<tr>
<td>Perennial</td>
<td>23 (29%)</td>
<td>1.6</td>
<td>78.6</td>
</tr>
<tr>
<td>Home gardens</td>
<td>79 (98%)</td>
<td>4.3</td>
<td>61.5</td>
</tr>
<tr>
<td>Livestock activities</td>
<td>40 (50%)</td>
<td>0.6</td>
<td>39.8</td>
</tr>
<tr>
<td>NTFP</td>
<td>80 (100%)</td>
<td>16.1</td>
<td>224.9</td>
</tr>
<tr>
<td>Shifting cultivation</td>
<td>72 (90%)</td>
<td>20.2</td>
<td>315.8</td>
</tr>
<tr>
<td>Cardamom</td>
<td>41 (51%)</td>
<td>22.5</td>
<td>601.9</td>
</tr>
<tr>
<td>Other income sources</td>
<td>67 (84%)</td>
<td>19.2</td>
<td>321.3</td>
</tr>
</tbody>
</table>

(Source: Gunatilake, 1995)

The forest resource-related activities included shifting cultivation, cardamom cultivation and NTFP extraction from the forest.

The estimated average annual income loss is US$ 817.5, if the conservation program restricts the utilization of forest resources completely.

The major monetary income was provided by cardamom cultivation (41%) and other income sources (28%).

Contribution of different activities of the farming system for cardamom growers and non-growers
The forest dependency is greater among cardamom growers (68%), than the non-growers (40%)

Since this study was conducted prior to the declaration of KCZ, three levels of degree of protection have been considered to calculate the potential income losses, as depicted in the following table.

Estimated average annual household income losses under different degrees of protection (US$)

<table>
<thead>
<tr>
<th>Degree</th>
<th>Average income loss</th>
<th>% income loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only cardamom production is banned.</td>
<td>308.4</td>
<td>22.1</td>
</tr>
<tr>
<td>Cardamom production and shifting cultivation are banned.</td>
<td>592.3</td>
<td>42.2</td>
</tr>
<tr>
<td>Cardamom production, shifting cultivation and extraction of NTFP are banned.</td>
<td>817.5</td>
<td>58.3</td>
</tr>
</tbody>
</table>

The total income loss can be reduced by 27.5% if the communities are allowed to use NTFPs.

The percentage income loss under all three degrees of protection increases as income increases.
Therefore it has been concluded that the conservation zone would have impacted more on high income groups, since even the lowest income group lose about 40% of their income while higher income groups lose 70% of their income.

The study carried out by Gunatilake (1994) reveals the factors determining the degree of dependency on forest resources in the Knuckles forest area.

Involvement in non-agricultural activities and higher productivity of paddy reduces forest dependency.

Those who are involved in cardamom production, chena cultivation and those who rear buffaloes are more dependent on forest resources

Higher income groups show greater dependency on forest resources, when both subsistent and commercial forest based activities are put together.

Education shows a negative impact on forest dependency when subsistence activities are only taken into account.

It is concluded that the development process will reduce the subsistent forest dependency over time.

The measures recommended to reduce forest dependency in the area include,

- Better education facilities
- Creating more non-agricultural employment opportunities for the peripheral communities
- Implementing programs to upgrade agricultural productivity.

The author adds that these measures may not reduce commercial forest dependency.

A recent study done by Gunawardane (2003) reveals measures taken by the Forest Department has not been successful in controlling cardamom cultivation in the Knuckles area and suggests that immediate measures should be taken to ban cardamom cultivation and to remove all the cardamom growers as a measure to conserve the forest.

Main sources of income of many villagers are agriculture, both paddy and shifting cultivation, cardamom cultivation in the forest, animal husbandry, tapping of kitul for treacle and jaggery and as hired labor mostly during the off cultivation seasons. A part of the forest is used for cattle grazing.

Beside from the traditional agricultural crops, farmers are now engaged in tobacco cultivation also and intensive vegetable cultivation during the off seasons and also bee keeping and small other industries.
Cardamom is grown in 23 villages (5 in Matale and 18 in Kandy district). The average annual household income of cardamom cultivating families is Rs. 50,000 – 75,000. The average family income varies from 12,000 – 15,000 only.

Around 35% of the national cardamom production is obtained from Knuckles forest.

90% of the plantations have been established in highly environmentally sensitive areas. Most of the plantations are found on 30% - 70% slopes and cultivations are done without paying attention to soil conservation measures. This has led to severe soil erosion.

The forest department has introduced many other alternative income sources to discourage cardamom cultivation, but due to the high prices offered, the cultivation gets further expanded.

The main forest products obtained from the forest are fuel wood, medicinal plants, bush meat, ornamental plants and sap of Kitul.

There are about 489 cardamom plantations in Knuckles area, where 52% of cultivators are found in Matale, 44% in Kandy and 4% in other districts. Half of the blocks are maintained by the family members of cultivators.

Around 11% of the blocks have already lost the canopy cover and 21% of the blocks are highly degraded following cardamom cultivation. Illegal tree felling was observed in 20 blocks, 13 from Kandy district and 7 from Matale district.

The cultivation are has increased upto 2721ha in year 2000 (the total Knuckles land area is approximately 21,000 ha) and of that 50% of area has been increased during the last three decades.

A summery of the past studies conducted in Knuckles forest area and other forest areas are presented in the annex.

Percentage contribution of different sources to total household cash income.

<table>
<thead>
<tr>
<th>Village</th>
<th>Agriculture</th>
<th>Salaried Employment</th>
<th>Home Garden</th>
<th>Chena</th>
<th>NTFP</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Etanwala</td>
<td>37.34</td>
<td>62.52</td>
<td>0.06</td>
<td>0.00</td>
<td>0.08</td>
<td>100</td>
</tr>
<tr>
<td>Ilukkumbura</td>
<td>38.76</td>
<td>60.51</td>
<td>0.58</td>
<td>0.15</td>
<td>0.00</td>
<td>100</td>
</tr>
<tr>
<td>Pitawala</td>
<td>75.67</td>
<td>24.27</td>
<td>0.01</td>
<td>0.00</td>
<td>0.00</td>
<td>100</td>
</tr>
<tr>
<td>Total</td>
<td>54.37</td>
<td>45.36</td>
<td>0.20</td>
<td>0.05</td>
<td>0.02</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Author’s calculations using primary survey data (2006)
### Number of Households harvesting NTFPs

<table>
<thead>
<tr>
<th>NTFP</th>
<th>Before declaration</th>
<th>After declaration</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firewood</td>
<td>143 (96%)</td>
<td>90 (61%)</td>
</tr>
<tr>
<td>Wood (for agricultural purposes)</td>
<td>144 (97%)</td>
<td>81 (55%)</td>
</tr>
<tr>
<td>Rare medicinal plants</td>
<td>146 (97%)</td>
<td>70 (48%)</td>
</tr>
<tr>
<td>Common medicinal plants</td>
<td>144 (97%)</td>
<td>73 (50%)</td>
</tr>
<tr>
<td>Yams</td>
<td>96 (65%)</td>
<td>39 (27%)</td>
</tr>
<tr>
<td>Garcinia</td>
<td>128 (87%)</td>
<td>55 (37%)</td>
</tr>
<tr>
<td>Cycus / Curry leaves</td>
<td>124 (85%)</td>
<td>57 (39%)</td>
</tr>
<tr>
<td>Bea honey</td>
<td>89 (61%)</td>
<td>23 (16%)</td>
</tr>
<tr>
<td>Nelli</td>
<td>117 (80%)</td>
<td>45 (31%)</td>
</tr>
<tr>
<td>Kithul treackle</td>
<td>43 (29%)</td>
<td>16 (11%)</td>
</tr>
<tr>
<td>Wax</td>
<td>15 (10%)</td>
<td>7 (5%)</td>
</tr>
<tr>
<td>Other NTFPs</td>
<td>55 (51%)</td>
<td>12 (11%)</td>
</tr>
</tbody>
</table>

Source: Author’s calculations using primary survey data (2006)

### Income generated through NTFPs (Rs. / household / season) before KCF

<table>
<thead>
<tr>
<th>NTFP</th>
<th>Etanwala</th>
<th>Ilukkumbura</th>
<th>Pitawala</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garcinia</td>
<td>0 (0)</td>
<td>154 (7)</td>
<td>0 (0)</td>
<td>155 (7)</td>
</tr>
<tr>
<td>Cycus</td>
<td>0 (0)</td>
<td>650 (2)</td>
<td>0 (0)</td>
<td>650 (2)</td>
</tr>
<tr>
<td>Bee</td>
<td>0 (0)</td>
<td>906 (4)</td>
<td>0 (0)</td>
<td>906 (4)</td>
</tr>
<tr>
<td>Nelli</td>
<td>0 (0)</td>
<td>1169 (4)</td>
<td>0 (0)</td>
<td>1169 (4)</td>
</tr>
<tr>
<td>Kithul</td>
<td>600 (1)</td>
<td>200 (3)</td>
<td>0 (0)</td>
<td>300 (4)</td>
</tr>
<tr>
<td>Other</td>
<td>0 (0)</td>
<td>283 (3)</td>
<td>0 (0)</td>
<td>283 (3)</td>
</tr>
<tr>
<td>Total</td>
<td>600 (1)</td>
<td>1213 (10)</td>
<td>0 (0)</td>
<td>1157 (11)</td>
</tr>
</tbody>
</table>

Source: Author’s calculations using primary survey data (2006)

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iv The values given within brackets indicate the percentage of households out of the total sample of 148.

vii The numbers given within the brackets indicates the number of households earning income out of the particular product.
Income generated through NTFPs (Rs. / household / season) after KCF

<table>
<thead>
<tr>
<th>NTFP</th>
<th>Etanwala</th>
<th>Illukkumbura</th>
<th>Pitawala</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Garcinia</td>
<td>0 (0)</td>
<td>80 (1)</td>
<td>0 (0)</td>
<td>80 (1)</td>
</tr>
<tr>
<td>Cycus</td>
<td>1750 (2)</td>
<td>0 (0)</td>
<td>0 (0)</td>
<td>1750 (2)</td>
</tr>
<tr>
<td>Nelli</td>
<td>0 (0)</td>
<td>1188 (2)</td>
<td>0 (0)</td>
<td>1188 (2)</td>
</tr>
<tr>
<td>Total</td>
<td>1750 (2)</td>
<td>1228 (2)</td>
<td>0 (0)</td>
<td>1489 (4)</td>
</tr>
</tbody>
</table>

Source: Author’s calculations using primary survey data (2006)

Income from Shifting Cultivation and NTFP before and after KCF (SLR/month)

<table>
<thead>
<tr>
<th>NTFPs</th>
<th>Etanwala</th>
<th>Illukkumbura</th>
<th>Pitawala</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before KCF</td>
<td>48</td>
<td>977</td>
<td>0</td>
<td>1,025</td>
</tr>
<tr>
<td>After KCF</td>
<td>282</td>
<td>198</td>
<td>0</td>
<td>480</td>
</tr>
<tr>
<td>Difference</td>
<td>(234)</td>
<td>779</td>
<td>-</td>
<td>545</td>
</tr>
</tbody>
</table>

| Shifting Cultivation | Before KCF | 17,579 | 18,914 | 7,916 | 14,420 |
| After KCF           | 0          | 0      | 0      | 0     |
| Difference          | 17,579    | 18,914 | 7,916  | 14,420 |
| Total income loss   | 17,346    | 19,693 | 7,916  | 14,965 |

Source: Author’s calculations using primary survey data (2006)

Timber supply from private commercial timber plantations is still not significant. Several studies conducted on Sri Lankan timber industry have highlighted the need to rationalise the timber permit system and to boost the forest plantation sector. This sentence belongs in section 7 on forest stakeholders, where there must be some description/discussion of the private sector.

The numbers given within the brackets indicates the number of households earning income out of the particular product.
References


Barrow, E. et al. (In press). Civil society, law enforcement and forest governance in Africa.


Foell, J., et al. (2000), “Participatory Approaches to Natural Resource Management: The Case of Coastal Zone Management in the Puttalam District”, SOAS, University of Sussex, UK.


World Bank (2007), Sri Lanka Poverty Assessment Engendering Growth with Equity: Opportunities and Challenges