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DEVOLUTION OF FOREST RIGHTS AND SUSTAINABLE FOREST MANAGEMENT: A REVIEW OF POLICIES AND PROGRAMS IN 16 DEVELOPING COUNTRIES

PROPERTY RIGHTS AND RESOURCE GOVERNANCE PROJECT (PRRGP)

OCTOBER 2011

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ACRONYMS AND ABBREVIATIONS

BZCF	Buffer Zone Community Forestry
CADC	Certificate of Ancestral Domain Claim (Philippines)
CADT	Certificate of Ancestral Domain Title (Philippines)
CBFM	Community-Based Forest Management (Tanzania, Nepal, and Philippines)
CBFMA	Community-Based Forest Management Agreement (Philippines)
CBNRM	Community-Based Natural Resource Management
CF	Community Forestry (Nepal)
CFA	Community Forest Associations (Kenya)
CFM	Community Forest Management
CFUG	Community Forest User Group
CPC	Communal People's Committee (Vietnam)
CRMF	Community Resource Management Framework
DENR	Department of Environment and Natural Resources (Philippines)
DFO	District Forest Officer
DRC	Democratic Republic of the Congo
FAO	United Nations Food and Agriculture Organization
FD	Forestry Department
FDRE	Federal Democratic Republic of Ethiopia
FECOFUN	Federation of Community Forest Users, Nepal
FLA	Forest Land Allocation
FLH	Forest Leaseholds (Nepal)
FPIC	Free Prior and Informed Consent
FRA	Forest Rights Act (India)
FSC	Forest Stewardship Council
GIM	Green India Mission
GOI	Government of India

GON	Government of Nepal
HKm	*Hutan Kemasyarakatan* (Indonesia) (community-based forests)
IPRA	Indigenous Peoples Rights Act (Philippines)
ITTO	International Tropical Timber Organization
JFM	Joint Forest Management (India, Tanzania, Zambia)
JFMA	Joint Forest Management Area (Zambia)
KdTI	*Kawasan dengen Tujuan Istemewa* (Indonesia) (zone with a distinct purpose)
LHF	Managed Leasehold Forest
MBR	Mayan Biosphere Reserve
MELCA	Movement for Ecological Learning and Community Action
MFSC	Ministry of Forests and Soil Conservation
NGO	Non-Governmental Organization
NTFP	Non-Timber Forest Product
PES	Payment for Ecosystem Services
PESA	*Panchayat* (Extension to the Scheduled Areas) Act
PFM	Participatory Forest Management (Ethiopia and Tanzania)
RBC	Red Book Certificate (Vietnam)
REDD	Reducing Emissions from Deforestation and Degradation
RRI	Rights and Resources Initiative
RUP	Resource Use Permit
SFE	State Forestry Enterprises (Vietnam)
SNNP	Southern Nations Nationalities and Peoples (Ethiopia)
UNFCCC	United Nations Framework Convention on Climate Change
URT	United Republic of Tanzania
USAID	U.S. Agency for International Development
VLFR	Village Land Forest Reserve (Tanzania)
WAJIB	Forest Dweller Associations (Ethiopia)

EXECUTIVE SUMMARY

About 80 percent of the forested area of the developing world is held under public ownership. Many critics of state ownership argue that public stewardship of forests has been poor, pointing to high rates deforestation on land owned and administered by governments. These criticisms have given rise to a movement by governments, international development organizations, forest policy researchers, environmental groups, and among forest communities themselves in support of the devolution of forests rights from governments to communities, families, and individuals. Advocates of forest rights devolution argue that forests will more likely be managed sustainably and the livelihoods of forest communities will be more secure where a greater share of use, management, and other rights to forests are in the hands of people who live and work in and near forests.

This paper examines 16 countries in Latin America, Africa, and Asia that either have undertaken policy reforms to devolve a substantial number of forest rights to communities or that appear to have the potential to do so in the near future. Recognizing that one party rarely holds all tenure rights to a given resource, this paper uses a "bundle of rights" framework to examine the mix of rights governments have typically devolved to communities and individuals, as well as what rights are retained by governments. Rights most typically devolved to communities include clearer use, management, and marketing rights, as well as longer duration of use rights and the right to exclude potential resource claimants not associated with the principal user community. Governments tend to retain the right to alienate land; that is, communities are not allowed to sell their land. The right of communities to restrict and regulate the use of local resources by persons not considered *bona fide* community members was found to be an important pre-condition to community efforts to regulate successfully forest use among their own members. Having control of resources can provide impetus to development of sound forest management rules and conventions by communities, but successful community management is not assured.

In addition to the diversity of tenure arrangements associated with the devolution of forest rights, this paper considers a number of factors that enhance, impede, or complicate in interesting and significant ways processes of rights devolution and successful community-level forest management. Among these often very dynamic factors are the opportunity costs for land uses that typically compete with forestry and agroforestry, especially agriculture; the characteristics of user groups, including their relative mixes of income from forests, farming, remittances, and other sources; the degree of social organization locally and the presence and effectiveness of external nongovernmental organizations (NGOs) and other forms of technical and political support; and the economic and political influences, nationally and internationally, of reducing emissions from deforestation and degradation (REDD+) and other programs that seek to promote forest conservation globally.

LATIN AMERICA

An impressive process of forest rights devolution is underway across Latin America. A recent study of eight Latin America countries with significant territory under forest cover found that, in aggregate, the absolute area of public forests administered by governments decreased by 50 percent between 2002 and 2008. By 2008, 36 percent of forests in Latin America were publically owned, compared with 68 percent in Asia and 98 percent in Africa. The comparatively rapid pace of forest rights devolution in Latin America has several drivers, including the strength of Latin America's Indigenous Peoples' rights movement, considerable international support for the movement, and recognition by Latin American countries and the international community of the environmental importance of forests. The rise of more democratic and accountable governments has also been a factor. While communities have a presumed greater number of use and

management rights, ultimately ownership of forests remains with states, and governments often condition approval of extractive and other forest uses on preparation and approval of fairly sophisticated management plans. Rarely do communities have the professional capacity or the funds to hire professional foresters to produce plans. Although NGOs provide some measure of technical and management support, their reach is limited. Still, a process is underway across much of Latin America that treats devolution of a substantial array of forest rights to communities as essential to improving forest conservation and forest-based livelihoods.

Some observers draw analogies between the agrarian reform movements in Latin America of the 1960s and 1970s that sought to distribute rights more equitably to agricultural land, to what they characterize as "forest reform," a movement that seeks in similar ways to improve the livelihoods of forest communities through comprehensive interventions that include assignment of clear property rights to forests. "Forest reform," to the extent that it represents an integrated approach to conservation and livelihoods development with rights devolution at its center, is a model that merits greater application in Asia and Africa.

AFRICA

Forest rights in Africa remain heavily concentrated in governments. That said, forest rights devolution is moving up the policy agenda of a number of African countries, including most notably Tanzania, whose 2002 Forest Law sanctions creation of village forest reserves. Other countries, including Kenya, Zambia, Ethiopia, Ghana, and Mali, have taken tentative steps toward rights devolution. New forestry initiatives in Africa more typically focus on benefit-sharing schemes. These schemes allow communities to engage in forest-based enterprises on state-administered land, often with outside commercial partners in the timber extraction or eco-tourism sectors. Typically forest use and management activities are based on management plans prepared by communities and their partners and approved by forest authorities. While having the potential to increase forest-based livelihoods and improve forest stewardship, benefit-sharing schemes tend not to give sufficient attention to the level of incentives required to induce sustained participation by the intended community beneficiaries. Moreover, because very limited rights are actually devolved, communities are skeptical about the long-term government commitment to the arrangements. State overreaching of forest regulation is especially evident in African countries that vest ownership of trees occurring on individual farms in the hands of the state. This creates disincentives for farmers to invest in agroforestry. Reforms of forest codes in Sahelian West African countries (to return ownership of trees occurring on farms to farmers) have shown considerable promise and have contributed to what some characterize as "The Greening of the Sahel." Implementation of these reforms has been uneven, with greatest commitment seen in Niger.

ASIA

Asia is moving more slowly toward devolving rights over forests than Latin America, but substantially faster than Africa. Between 2002 and 2008, there was a significant growth in the amount of publicly owned forests reserved for use by communities and indigenous people.

Unlike Latin America and Africa, the Asia region as a whole is experiencing an expansion in forested area. According to the 2010 Global Forest Assessment of the Food and Agriculture Organization of the United Nations (FAO), Asia's annual rate of change in forest cover between 2000 and 2005 was estimated at +0.48 percent (FAO 2010). Much of the region's growth in forest cover is driven by afforestation taking place in China, which experienced a net gain in forest cover of nearly nine million hectares between 2000 and 2010. However, a number of other countries, including Bhutan, India, the Philippines, and Vietnam, also experienced substantial expansion of their forested area. Additionally, although Indonesia reported a net loss in forest cover during the 2000s, its deforestation rate has fallen substantially from what it was in the 1990s.

Two major pathways to forest governance devolution are represented among our five Asia case study countries–India, Indonesia, Nepal, the Philippines, and Vietnam. India, Indonesia, Nepal, and the Philippines have focused on devolution approaches that emphasize delegating or transferring rights and responsibilities over state forest land to collectivities, and in some cases where rights' transfers are partial, sharing revenues

generated from sales of forest products. Vietnam, on the other hand, has emphasized approaches to devolution that delegate or transfer rights and responsibilities over state forests to households and individuals. The two most commonly used approaches in Vietnam include long-term forest land allocations to individuals and households and long-term contracts to households or individuals permitting them to use and protect degraded forest lands.

Perhaps the most important lesson to be derived from Asia's experience with forest governance devolution is that tenuous use rights and weak benefit-sharing models only go so far toward providing the security and financial incentives needed to invest in forest improvements and protection at landscape-scales. Vietnam's experiences indicate that providing households with strong rights and security of tenure to agricultural holdings can yield long-term and consistent positive conservation and livelihood benefits through the creation of an enabling environment for agricultural intensification.

RECOMMENDATIONS

This paper concludes with recommendations on how international donors, national governments, and NGOs might better target future investments in programs aimed at helping developing countries achieve their sustainable forest management goals through devolution of forest rights. Strong local organizational capacity, good national and local rights governance, and positive alignment of financial and other incentives, in addition to rights devolution, are often essential to favorable outcomes.

Co-management and benefit-sharing schemes should not be seen as substitutes or alternatives to substantive rights devolution. In fact, co-management initiatives and benefit-sharing schemes will more likely yield greater benefits in terms of improved forest conditions and better livelihoods where communities hold substantive rights to forests. Where communities hold rights, they are able to negotiate other kinds of management agreements from positions of greater strength, and on terms that will prove more beneficial to them. Government and donor initiatives should simultaneously promote co-management and benefit-sharing *and* rights devolution.

Historically, government forestry agencies have overly relied on regulation and policing of forest use, and relations with communities as a result have often been adversarial. Devolution of forest rights to communities will require reorganization of forest agencies in ways that give greater capacity to community technical assistance programs. An undue continuing emphasis on policing and regulation sends mixed signals to communities and in many settings retards the progress of forest reform implementation.

1.0 THE CONTEXT OF THE STUDY

Forests cover roughly four billion hectares of the globe (United Nations Food and Agriculture Organization [FAO], 2010) and an estimated 800 million people depend on forest resources for their livelihoods (Rights and Resources Initiative [RRI]/International Tropical Timber Organization [ITTO], 2010). The majority of the world's forest land (75 percent) is owned by national governments (RRI/ITTO, 2010). However, state ownership of forest land has been declining since the 1980s when it became clear that many national governments in developing countries lacked the means, capacity, and/or political will to manage their forests in ways that would permit them to address critical poverty, equity, and conservation concerns (Agrawal et al., 2008). During the 1990s, the expansion of community control over forest resources gained popularity as a potential solution to the inadequacies of state-centric forest management capacity, including its negative effects on the economic and social welfare of communities residing in or near forests.

Over the past several decades, a combination of internal grassroots pressure coupled with external pressure from international aid and conservation communities has resulted in a substantial expansion in the forested area over which local communities and Indigenous Peoples have ownership rights (Agrawal et al., 2008). An estimated 200 million hectares of forest land shifted from state to community control world-wide between 1980 and 2000 (White and Martin, 2002). Communities acquired formal ownership rights to an additional 175 million hectares worldwide between 2002 and 2008 (RRI and ITTO, 2009). Devolution in forest rights during this period was most extensive in Latin America, where forests owned by states declined by 50 percent in the eight countries studied.

However, the majority of forest communities and their inhabitants still lack formal ownership rights or secure use and access rights to forests despite more than two decades of concerted effort on the part of local activists, nongovernmental organizations (NGOs), bilateral and multi-lateral donors, and some national governments to devolve ownership rights or management authority to local communities and Indigenous Peoples. Moreover, formal ownership patterns vary greatly across regions and countries. For example, in 2008, 43 percent of tropical forestland area in Latin America was held by nation-states, while 71 percent of the tropical forest in the Asia/Pacific region and 99.5 percent in Africa was under nation-state ownership (RRI/ITTO, 2010).

The on-going movement to devolve forest ownership and management authority to local communities and indigenous people has its roots in and co-evolved with the emergence of sustainability as a dominant paradigm for forest management worldwide. The *Forest Principles* and Chapter 11 of Agenda 21, both of which were developed as part of the United Nations Conference on Environment and Development held in 1992, outline the basic tenets of sustainable forest management (FAO, 2010). These, and subsequent documents related to sustainable forestry, stress the need for managing forests in ways that meet a diverse set of human needs while addressing environmental conservation concerns, including the maintenance and enhancement of biodiversity, water quality, soil stability, and carbon sequestration.

On-the-ground efforts to implement sustainable forest management suggest that meeting the twin goals of conserving resources while providing for sustainable livelihoods requires paying attention to the interactions of a broad set of factors, including forest governance and tenure systems (Wilkie et al., 2003). Additionally, several decades of research that explore the links between tenure arrangements and forest management indicate that property rights and tenure security strongly condition the ways in which people and governments use and manage forest resources (Persha et al., 2011). What forested landscapes look like and

who benefits from their presence are both heavily influenced by who has formal ownership rights to the forest, who has rights of use and access, and whether those ownership, use, and access rights are contested, enforceable, or long-lasting.

A recent study of 80 community-managed forests found that locally autonomous decision-making was associated with higher levels of forest carbon and livelihood benefits (Phelps et al., 2010). Research by Bray et al. (2008) in Mexico and Guatemala comparing deforestation rates for protected areas and community forests found that rates were similar for both. Comparative studies of community-managed forests indicate that in some circumstances, devolving rights to local or indigenous groups can have positive outcomes for both forest conservation and poverty alleviation (Persha et al., 2011). However, other studies indicate that efforts to devolve forest governance have a mixed record of success in conserving forest ecosystems while equitably distributing the benefits derived from community-managed forests (RRI/ITTO, 2010).

Overall, the literature on community-based forestry points to strong tenure rights and security as necessary but insufficient conditions for sustainable forest management (Romano and Muller, 2009). A flurry of recent studies emphasize the importance of developing better understandings of the circumstances under which devolving forest rights to local communities and Indigenous Peoples can support the twin goals of conserving forests and providing viable forest-based livelihood opportunities (Barsimantov et al., 2011; Persha et al., 2011; Sudtongkong and Webb, 2008).

The past five years has seen resurgence in interest among international donor organizations in acquiring better understandings of tenure regimes and the ways in which allocations of resource rights affect how local communities and Indigenous Peoples use, manage, and benefit from forests. Some of this interest is fueled by trends in the forestry sector, including widespread conversion of secondary forests into biofuel plantations, growing demand from countries experiencing rapid economic growth, such as India and China, for forest products (RRI, 2011). Rising world food prices have also created pressure for farmers in Africa, Latin America, and Asia to clear more forested lands as they are pushed off of more productive agricultural lands being bought up by foreign and local investors (Cotula et al., 2009). At the same time, an increasingly large percentage of the world's forests are being placed into various forms of protected status to conserve biodiversity and maintain their ability to provide ecosystem services, including carbon sequestration through new reduce emissions from deforestation and forest degradation (REDD+) initiatives. In the face of these converging demands, many forest dwellers are increasingly at risk of losing both their land and access to the resources they need to survive (RRI, 2011). Strengthening the rights of local communities and their inhabitants to the land and forest resources on which they depend is viewed as an important tool for helping many of the world's poorest people meet their basic needs (Sunderlin et al., 2008).

The growing recognition of the importance of forest ecosystems in mitigating changes in the global climate regime has played a particularly prominent role in the intensification of donor interest in investing in devolution and tenure reforms. The Intergovernmental Panel on Climate Change identified deforestation in developing countries as a significant contributor to carbon emissions (Seymour and Forwand, 2010). The 13th Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC) underlined the need for demonstration projects aimed at REDD+ in developing countries. The Copenhagen Accord, and subsequent Cancun Agreements, moved the REDD+ concept a step further by focusing attention on the need to support activities that enhance, as well as protect, forest carbon, laying the groundwork for a global mechanism to incentivize REDD+ activities.

Phelps et al. (2010) raise concerns that REDD+ and other payments for ecosystem services mechanisms will interrupt the 25-year trend toward devolving rights and responsibilities over the world's forests from centralized state governments to local communities and indigenous groups. They argue that REDD+ creates strong incentives for recentralization of the world's forests, which in turn is likely to foster systems of forest governance that are incompatible both with community-based forestry and with sustainable forest management. Struggles over who will benefit from programs that pay landholders for ecosystem services, including carbon storage, have already emerged as governments, Indigenous Peoples, local communities, and other stakeholders seek to exert claims over rights to own, sell, and manage these services (RRI/ITTO, 2010).

On the other hand, research examining the potential impacts of REDD+ as well as other payment for ecosystem services programs has also identified instances where climate change mitigation and Payment for Environmental Services (PES) programs have provided the financial wherewithal and political will for governments to tackle much-needed tenure and land policy reforms (Sommerville, 2010). As countries prepare to implement REDD+ on a broad scale, getting forest governance devolution and tenure systems "right" is increasingly seen as essential for ensuring that forest dwellers receive an equitable share of the benefits associated with REDD+ programs (Cotula and Mayers, 2009; Hatcher, 2009).

This paper assesses efforts over the past two decades to devolve forest rights to communities and Indigenous Peoples in Latin America, Asia, the Pacific Islands, and Africa. A framework with five elements is applied to 16 countries that by virtue of the alignment of key tenure and policy considerations show promise as places for productive investment of the resources of the United States Agency for International Development (USAID) and other donors on behalf of rights devolution and sustainable forest management. In-depth case studies were developed for 6 of the 16 countries. These countries–Peru, Guatemala, Ghana, Tanzania, Indonesia, and Vietnam–were selected because the authors concluded that their experiences in wrestling with some particularly difficult obstacles to devolving rights offer important lessons for efforts elsewhere that aim to devolve rights successfully.

The paper begins with an overview of recent trends in the forestry sector that are driving the current interest among international donors in identifying the combination of factors that contribute to successful devolution of forest tenure rights. The success of global initiatives to REDD+ programs may be particularly dependent upon the degree to which governments embrace forest rights devolution as an element in their REDD+ policies and programs. REDD+ payments for carbon sequestration, if they are going to sufficiently incentivize tree and forest conservation behaviors supportive of REDD+, must arguably go as directly as possible to forest users. There is a danger that national governments will want to capture directly the large new revenues potentially on offer through REDD+ with the effect that few benefits will reach forest communities. Many would view this as an unfair outcome. States may revert to old, discredited devices (particularly policing and strict regulation) to ensure forest conservation targets are met. REDD+ should encourage governments to further devolve forest rights and not to arrest its progress.

For the purpose of this paper, devolution is defined as "the transfer of rights and responsibilities [to forests] to local communities, groups, committees and households (Katila, 2008, p.11)," while tenure is "the system of rights, rules, institutions and processes regulating resource use and access" (Cotula and Mayers, 2009, p.3). Forest tenure is reliant on and conditioned by forest governance, which is defined in this paper as the process by which decisions are made about the use and management of forests (Cotula and Mayers, 2009).

2.0 OBJECTIVES, METHODS, AND ORGANIZATION

This report aims to answer three questions:

1. What forest governance devolution approaches have been tried in Latin America, Africa, and Asia during the past 20 years?
2. How successful have the different approaches been, and what factors contributed to or hindered their success?
3. What are the implications of these experiences for efforts to conserve and sustainably manage forests, including activities associated with REDD+?

To answer these questions, forest governance devolution efforts are examined in 16 countries (listed in Table 2.1), and use a bundle of rights framework to develop a typology of devolution approaches. A qualitative assessment is provided of the extent to which the different approaches have been successful. Success is considered from two perspectives: the extent to which rights over forest resources were actually devolved (both statutorily and in practice), and the extent to which rights devolution led to positive joint outcomes for ecological conditions and livelihoods. Key factors are also identified that have facilitated or blocked efforts to devolve rights, as well as factors that have prevented or supported the achievement of conservation and livelihood gains.

TABLE 2.1: CASE STUDY COUNTRIES

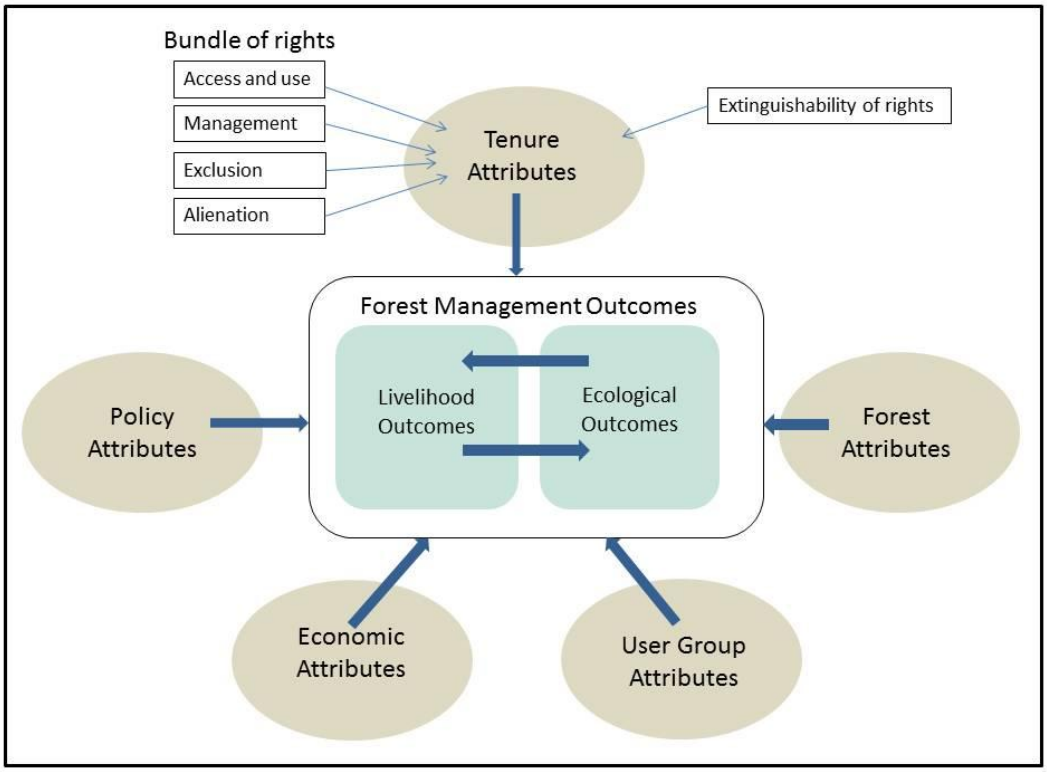
Region	Countries
Latin America	• Bolivia • Brazil • Guatemala • Mexico • Peru
Asia	• India • Indonesia • Nepal • Philippines • Vietnam
Africa	• Democratic Republic of Congo • Ethiopia • Ghana • Kenya • Tanzania • Zambia

The 16 cases are developed using a framework of key factors identified in the literature as playing a pivotal role in shaping how forests are managed (see Figure 2.1). The framework is a modified version of one used by Barsimantov et al. (2011) in their work comparing tenure systems in Guatemala and Mexico and includes the following five factors:

- **Forest attributes** (e.g., size, value to the community, value in global markets);
- **User group attributes** (e.g., degree of social heterogeneity, internal power dynamics, power relative to external social actors);
- **Forest tenure system attributes** (e.g., existence of legal pluralism [and extent to which there is tension between statutory and other legal systems], distribution of bundle of rights [to forest lands *and* trees], functionality of the *de jure* and *de facto* tenure systems);
- **Economic attributes** (e.g., incentives to retain, enhance, or remove tree cover; alternative livelihood opportunities); and
- **Policy system attributes** (e.g., laws and policies likely to influence decisions about forest management, quality of overall governance, quality of forest governance).

A more detailed description of the case study methodology and the 16 cases to which it is applied are provided in Annexes A and B of this report.

FIGURE 2.1: ANALYTICAL FRAMEWORK FOR EXPLORING LINKS BETWEEN FOREST GOVERNANCE AND FOREST MANAGEMENT OUTCOMES



The five-factor framework is used to examine the different configurations of tenure systems, user group characteristics, and resource attributes associated with sustainable resource management in 16 developing countries in which efforts have been made to devolve rights to forests, where a relatively large forested estate is present, and where USAID is likely to target investments. To the extent possible, countries with a mix of tenure types within their forest estates were included(e.g., publicly-owned and managed, communally owned and managed, forests managed by individuals and communities on a concessionary basis, etc.).

Using this framework as a guide, the success and weaknesses of each approach are analyzed, highlighting how the tenure elements interface with user characteristics and resource attributes. Challenges the case study countries have encountered in their efforts to devolve legal rights are also documented, including implementing devolution legislation. For five of the case study countries, vignettes are presented that illustrate particular difficulties faced and innovative solutions fashioned in devolving forest rights to communities.

There are limitations of the framework when using it at the national scale and when relying solely on documentary evidence. The framework would be more effectively applied at sub-national or local scales, and when supplemented with primary data gathered through interviews and observations. Nonetheless, the framework has value as a tool for planning, implementing, and evaluating forest rights devolution initiatives and its further development and application is recommended.

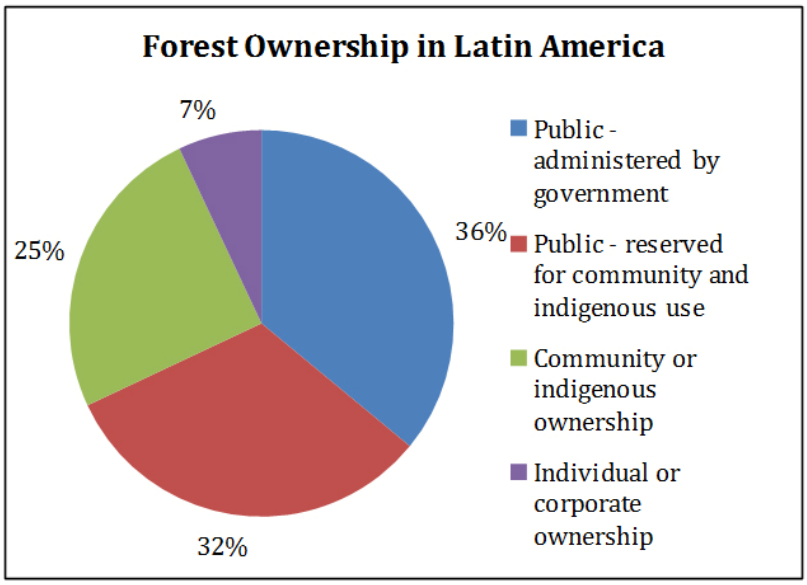
A summary and synthesis of the case study materials and key findings for each region is presented in Sections 3.0 (Latin America), 4.0 (Africa), and 5.0 (Asia). Section 6.0 presents a typology of devolution approaches constructed from the case studies. The typology provides a better understanding of the commonalities and differences in devolution approaches within and across regions. Section 7.0 provides a set of concluding remarks and recommendations for tenure investments promoting and consolidating the processes of forest rights devolution.

3.0 EXPERIENCES WITH DEVOLUTION IN LATIN AMERICA

Several Latin American countries have moved rapidly in recent years to devolve a greater array of forests rights from states to communities and Indigenous Peoples (see Figure 3). A 2009 study of global forest trends by the Rights and Resources Initiative and the International Tropical Timber Organization (RRI/ITTO, 2010) found that in the eight Latin American tropical forest countries studied, the absolute area of public land that are owned and administered exclusively by government decreased by 50 percent from 2002 to 2008, from 453 million ha in 2002 to 227 million ha in 2008. (The countries in the study were Brazil, Colombia, Venezuela, Guyana, Suriname, Ecuador, and Honduras). The absolute area of forest owned by governments, but designated for use by communities and indigenous people in these countries increased from 29 million ha in 2002 to 46 million ha in 2008, a 59 percent increase. The area of forest land owned by communities and Indigenous Peoples increased by 47 percent (from 105 million ha to 155 million ha) between 2002 and 2008. During the same six-year period, the area of forests under public ownership in Africa actually increased slightly in the 14 tropical forest countries studied in Africa and remained relatively constant in the 8 countries studied in Asia.

Of particular interest to this study are the factors driving devolution, in terms of supportive policies and social and economic drivers, and also in terms of aspects of the region's historical and political experience that might explain why the process of rights devolution in Latin America appears to have gained considerable momentum compared to Africa and Asia. Because it is recognized that no single set of factors likely explain devolution, this report examines the specific mix of historical, political, and environmental factors driving devolution in the case study countries: Guatemala, Peru, Bolivia, Brazil, and Mexico. The political, economic, and policy factors that may hinder processes of devolution underway in some of the case study countries, particularly Peru and Bolivia, are also of interest.

FIGURE 3.1: DISTRIBUTION OF FOREST OWNERSHIP IN LATIN AMERICA



Source: RRI/ITTO, 2010

Sunderlin (forthcoming, 2011) seeks to explain the factors driving what he characterizes as the global forest transition–a transition from state ownership of land in the tropics to more extensive ownership by communities. This is a fitful, tentative (but discernable) process, most pronounced in Latin America. He notes that in the pre-colonial era, forests in the tropics were for the most part owned and managed by communities, and that their use was governed by customary tenure arrangements. Community control was suppressed under colonialism and ownership of forests, in the main, was vested in states. State ownership facilitated forest timber exploitation and taxation of forest uses. The aims of usurpation of forest rights were not just economic, but were also an expression of a set of political, cultural, and religious biases underlying imperialism that served to justify the suppression of the rights of forest people. "Colonial laws and regulations prohibiting customary forest management practices asserted that indigenous rural people (including forest people) are backward, uneducated, destructive of natural resources, and in need of guidance toward enlightened modern beliefs, behavior, and practices." (Sunderlin, forthcoming, p. 4).

Sunderlin suggests that a combination of five factors explain why governments have increasingly proven willing to devolve rights to communities, beginning in the 1980s:

- Failed government control, as evidenced in rapid deforestation, forest degradation, and depletion of timber stocks under state stewardship;
- Decentralization and devolution, processes that have their origins outside of the forestry sector that seek to promote economic efficiency, public accountability, and "good governance," have spread to the forestry sector;
- Removal of timber rents, due to the marked decline of timber supplies resulting from over-harvesting;
- Democratization, "the opening up of political space for asserting claims over lands and resources and for expressing dissent over past in justices and violations of rights;" and
- International human rights campaigns, which have proved successful in putting pressure on states to improve the human rights of Indigenous Peoples and ethnic minorities (Sunderlin, forthcoming, p., 5–6).

While Sunderlin believes that the combination of these five factors largely explain what's driving forest rights devolution globally, there are additional phenomena particular to Latin America that explain why the continent's proportion of forests under state ownership is much less than that of Africa and Asia, and why the pace of rights devolution is so much higher. Some of these factors are specific to Brazil, which has the largest territory under forest and the largest carbon stocks of any country in the world. These additional factors include:

- The colonial presence ended longer ago in Latin America than in many African and Asian countries;
- There has been a strong international solidarity movement in support of Indigenous Peoples' rights in Latin America;
- The timber sector has been weak in Latin America in comparison to Asia;
- There are strong institutions in support of democratization in Latin America; and
- There is comparatively large space for political resistance (Sunderlin, forthcoming, p. 6–7).

3.1 FROM "AGRARIAN REFORM" TO "FOREST REFORM"

Devolution of forest rights in Latin America gains much of its impetus from two political phenomena: resistance on the part of indigenous communities to historical political marginalization, including denial of secure land and resource rights; and support for the aspirations of indigenous and poor communities from local and international solidarity groups, including the environmental movement. Democratization of domestic politics has also given freer hearing to the claims of forest communities for more secure tenure rights. Yet building democracy is often an erratic process; three of the five case countries score poorly on the World Governance Indicators (Bolivia, Guatemala, and Peru). Brazil's scores are generally positive while Mexico's are mixed. Hence, significant international interest in conserving tropical forests has coalesced with indigenous and community land rights movements in bringing about important new land tenure and communal forest reforms in Latin America, including Guatemala's Maya Biosphere Reserve, Brazil's Legal Amazon, and the forestry law reforms of Mexico and Bolivia.

A paper by Pacheco et al (2008) draws distinctions between the land reforms that many Latin American countries embarked on in 1960s, when forested and cleared lands were transferred to peasants for agricultural purposes, to a new era of what they characterize as *forest reform*, in which forest rights are transferred to communities with the expectation that livelihoods will be based largely on sustainable forest utilization.

Their conclusions are drawn principally from a survey of forest reforms in Bolivia, Brazil, Nicaragua, and Guatemala undertaken beginning in the mid-1980s. Forest reforms across these and other Latin American countries share several salient features:

- Land titles are granted with the understanding that forest cover will be maintained. While communities are granted use, management, and exclusion rights, alienation rights in most cases remain with the state;
- Most of the reformed forestlands are demarcated and titled as collective or communal properties, as opposed to individual parcels more typically the case under 1960s-era agrarian reforms;
- A significant portion of forestland transfers has been to indigenous and ethnic communities, whose claims are based on cultural identity and ancestral possession;
- Reforms attempt to address simultaneously conservation, livelihood, and rights-based goals;
- Reforms are driven "from above" and "from below," as states respond more vigorously to local practices and demands for reform; and

- Forest reforms take the form of a diversity of tenure models, including indigenous territories, extractive reserves, agro-extractive and forestry settlements, and community concessions.

In the sections that follow, we explore distinctive aspects of forest tenure reform in five Latin America case study countries (Mexico, Brazil, Guatemala, Peru, and Bolivia).

3.2 MEXICO: *EJIDOS* AS A LATIN AMERICAN PARADIGM FOR FOREST RIGHTS DEVOLUTION

Mexico's long history of rural resistance, national revolution in the early 20th century, and democratization in the late 20th century is in many ways a paradigm of the forces that are shaping forest ownership and management across Latin America. A distinctive aspect of Mexico's approach to tenure and forest policy reform is that it eventually sanctioned *de facto* land use practices that were developed by communities, rather than requiring the development of a new national model. Over half of Mexico's land is in common property, either within *ejidos* or indigenous or agrarian communities. Another 25–33 percent is privately owned, with very little land belonging to the government. Communal land tenure schemes were developed after the Mexican revolution as part of the Constitution of 1917 and remained largely unchanged until 1992. These schemes emerged in response to peasant demands for land rights. Under the original *ejido* design, the state had a significant amount of control over *ejido* land use decisions. In 1992, Article 27 created extensive changes to the *ejido* system, allowing greater autonomy in decision making and providing greater flexibility for defining property relations within *ejidos*. Since the passage of this law, agricultural lands and housing lots can be divided and sold with a two-thirds majority vote of *ejido* members, yet forests must remain under communal tenure. It has been hypothesized that this creates an incentive to clear forest to create salable agricultural land, especially in areas where forest land has agricultural potential.

Tenure reforms that favored communities eventually benefitted from changes in forest management policies. Forest policies evolved from an emphasis on conservation in the 1930s, to a focus on entering into short-term concessions with timber companies from the 1940s to 1970s, to state owned logging companies from the 1970s to the early 1980s. Since the 1980s, ownership of some forests over-harvested by state enterprises reverted to communities. Currently, *ejidos* have use, management, and exclusion rights to their communal forests. Although they have ownership rights to their trees, they must have a federally approved 10-year forest management plan before commercializing timber production. A licensed forester must develop these plans; however, community members have substantial freedom to choose how they will use their communal forests.

Local forest governance in Mexico is democratic, representative, and autonomous when compared to other countries in Latin America. Since the mid-1990s, the Mexican government has implemented several programs that strongly support community forestry, and second-tier communal organizations have assisted in bringing these programs to interested communities. The NGOs that have worked in Mexican forests have also been generally successful in deferring to the leadership of communities rather than promoting their own agendas. In the past, private and state logging companies had significantly more power than communities, but this has been reversed with current Mexican land reform and forestry laws. At the same time, indigenous communities often lack access to information and have less voice in forest management, and as a result are less able to secure the range of forest-based benefits to which they are entitled. Lastly, although communities and *ejidos* have significant power nationally, power differentiation within communities and *ejidos* is a growing reality.

Mexico's forest conservation efforts receive considerable support from national and international biodiversity conservation movements, groups supporting preservation of Mayan archaeological sites found in forests along the Yucatán peninsula, and influential commercial interests associated with ecotourism. Mexico is also renowned in the Community-Based Natural Resource Management (CBNRM) community for its community forestry experience, particularly with certified timber. The federal government currently invests approximately $100 million annually in forest preservation, watershed, bio-diversity protection, and PES programs.

Mexico's commitment to community forest rights is the product of decades of struggle, legal experimentation, and the eventual emergence of a national consensus supportive of community tenure and forest management. The fact that Mexico has vested a considerable amount of its natural forest estate in clear community ownership puts it in a strong position to participate in REDD+, PES, and a host of other local and international initiatives that support placing responsibility for conservation in the hands of local resource users. The best opportunities for protecting forests may lie in investing in better enforcement of protected areas, increasing capacity for communities and *ejidos* to defend their territories against internal attempts to convert land to agriculture and encroachment by small-scale agriculture, increasing value added from forest products combined with more jobs in secondary processing, improving efficiencies in wood processing, and providing alternative income sources to colonists who are expanding small-scale agriculture. Improving the governance of weak communities and *ejidos* as well as supporting strong alternative livelihoods within these places should be another emphasis for future efforts.

3.3 BRAZIL: RESERVES AND CONCESSIONS AS THE BASIS OF FOREST RIGHTS DEVOLUTION

Of the four other Latin American cases included in this assessment, Brazil has made the most gains in terms of widespread and relatively effective forest governance devolution. The three other Latin American case countries–Guatemala, Peru, and Bolivia–have taken important steps toward devolving secure forest rights to communities, but their reforms have been tentative and remain incomplete.

Brazil has 477 million ha of primary forest, the vast majority found in the Legal Amazon. The Legal Amazon as defined by the Brazilian government includes the states of Acre, Amazonas, Amapa, Para, Rondonia, Roraima, Tocantins, Mato Grosso, parts of Maranhao, and a small part of Goias. It covers approximately five million km^2 (59 percent of Brazil). Despite concerns about forest loss only 15 percent of the Amazonian forest had been deforested by 2009. Deforestation and degradation of forests in the Amazon account for over 70 percent of Brazil's carbon emissions. A large portion of Brazil's national territory was never fully colonized, and 27 percent of the Amazon is still in internal dispute. The processes of colonization and deforestation driven by government-sponsored settlement programs, commercial agriculture, and cattle ranching have been more or less successfully countered by a resistance movement based on "ethnogenesis" and biodiversity conservation which has strengthened the claims of Amerindians to land in the face of the invasions (Sunderlin, 2011, p. 7).

In the Brazilian Amazon, 44 percent of land has been placed into Indigenous Territories or Conservation Units. Indigenous communities have use, management, and exclusion rights to their forests, although they must create forest management plans for products harvested to sell. Conservation Units include several types of reserves and settlements, including extractive reserves, sustainable development reserves, agro-extractive settlements, and forestry settlements. Extractive reserves and sustainable development reserves are available as renewable concessions to associations that create sustainable natural resource use plans. Agro-extractive and forestry settlements have permanent usufruct rights that can be requested by associations of families, which permit them to maintain their homes and use forest resources. The titles to these lands are given communally, allowing residents to exclude other users. Titles do not include alienation rights.

Another component to Brazil's recent forestry reforms includes the development of concessions in national forests. Brazil began in 2007 to grant 40-year concession rights for sustainable timber harvesting, providing concessionaires use and exclusion rights and requiring them to follow annual management plans developed by the federal forestry service.

Approximately 23 percent of land in the Amazon is privately owned. Private landowners have a full bundle of property rights, including alienation rights; however the Brazilian government retains the right to regulate land use practices. Existing law requires private landowners to maintain 80 percent of their land in forest, although this is rarely enforced and currently under review.

Indigenous, community, and private rights in the Amazon are considered to be relatively secure. Federal and state governments of Brazil have been showing a greater willingness to enforce agrarian and forest laws. Similarly, national and international NGOs have provided support to indigenous and agro-extractive communities in defending their territories and preparing land use plans. Nonetheless, significant conflicts still exist among communities, loggers, colonists, and others over forest and land rights; the vast expanse of the region makes it difficult for communities to protect their indigenous and communal rights.

The Brazilian Amazon is uniquely poised to play a significant role in carbon sequestration markets. It produces some of the highest levels of carbon emissions through deforestation and degradation of any country in world. Additionally, there is growing political support nationally on behalf of enforcement of sustainable land use policies. Brazil has substantial institutional capacity, an active and well-organized civil society sector, and an increasingly strong body of environmental legislation. For these reasons, several countries and voluntary carbon programs have invested in Brazil's national Amazon Fund. The significant amount of land that is still untitled and the poor regulation of land tenure in the Amazon, however, are major threats to the success of REDD+ policies. Many plans incorporate payment for environmental services as primary mechanisms to reduce deforestation and degradation; however improved delimitation and regulation of land tenure are critical first steps for such payments to be successful.

3.4 GUATEMALA: EXPERIMENTING WITH COMMUNITY CONCESSIONS

Guatemala has the largest forest area in Central America at approximately 3.7 million ha. It also has high rates of deforestation, estimated at 1.47 percent per annum between 2005 and 2010. Guatemala's largest forest region is the Maya Biosphere Reserve (MBR) in the Petén district. The reserve covers 2.1 million ha and borders the Mayan forests of Belize and Mexico, forming the largest expanse of contiguous tropical forest north of the Amazon. Land uses in the MBR include timber and non-timber forest product extraction, a small amount of subsistence crop production, and ecotourism based on the reserve's high biodiversity and extensive network of Mayan archeological sites.

Prior to the reserve's establishment in 1990, the Petén was largely lawless, with unclear tenure and resource rights. Between 1959 and 1990, a military-led government program was in charge of promoting the development of the area, granting extensive land to timber concessions and favoring private interests. Forests were widely degraded and little reforestation occurred. At the same time, the nation was undergoing a violent internal conflict. As the program and the conflict came to their ends in the late 1980s, international conservation interests proposed the protection of the area as a biodiversity resource. The initial stages of the reserve piloted the idea of community concessions mixed with protected areas. The Peace Accords of 1996 further opened the space for community concessions by requiring greater access to lands for indigenous and rural peoples. By 2006, 12 community concessions had been granted, constituting a total land area of about 500,000 ha, or about one-quarter of the area of the MBR. In these concessions, communities have management and exclusion rights as long as they obtain Forest Stewardship Council (FSC) certification. Because the concessions are on state-owned forestlands, communities do not have alienation rights. Concession agreements are for 25 years, and upon review are renewable for 25 years. Individual households within concessions receive between 50–80 percent of their income from the sale of timber and non-timber forest products (NTFP) (Barry, 2008; Carrera et al., 2004).

Community forest concessions in the MBR have been widely viewed as a tenure and management model that can support the promotion of sustainable community forest management within protected areas. Because the MBR has both concessions and parks, researchers have been able to explore the hypothesis that communal management in a region or country that is difficult to govern may be more effective for forest conservation. The success of this experiment relied on a significant amount of external financial and technical support, however. The outstanding questions are the extent to which devolution of forest rights based on community concessions can be sustained in the MBR and replicated in other countries.

Outside the MBR, communal rights to land are incomplete and often unclear. The 1985 constitution of Guatemala recognizes communal tenure, the 1996 Peace Accords mandated the devolution of land rights to Guatemala's indigenous communities, and a 2005 law recognizes forms of indigenous and non-indigenous communal land tenure. However, there is no explicit mechanism to define and recognize communal rights to forests outside the biosphere reserve.

In the highlands, municipalities are generally the owners of forest land. Some communities have obtained ownership rights of lands in these areas; others have use, management and exclusion rights; and still others have only use rights to municipal land. Unlike in the Maya Biosphere Reserve, where policies were developed largely as a result of pressure from conservation interests, the forests of the highlands receive less international attention. They are valued nationally for their role in watershed protection and the potential for developing commercial mining, hydroelectric, and timber products (Elias et al., 2009). Thus, discussions have begun about the possibility of extending the community concession system to these areas.

The success of Guatemala's experiment with community concessions over other land management alternatives (e.g., protected areas) suggests that community concessions may be a worthwhile investment for REDD+ activities. The significant investment of international aid and political will on the part of the Guatemalan government were crucial backdrops for this experience. In order to continue success and abate growing deforestation in the MBR, the Guatemalan government and communities will need the resources to prevent illegal immigration and forest clearing. In the highlands, the most promising approach to decrease deforestation will likely include recognizing communal land rights and providing incentives for communities to protect watersheds and engage in sustainable extraction of timber and non-timber resources.

3.5 PERU: COMMUNITY TITLES AS A FOUNDATION FOR COMMUNAL FOREST MANAGEMENT

The Constitution of Peru vests ownership of all natural resources in the state. Most resources are on public land, which individuals and companies can access through time-limited concessions. Concessions exist for timber, NTFPs (such as Brazil nut), reforestation, ecotourism, mining, and conservation, among others. Concessionaires have use, management, and exclusion rights, although they must observe resource management regulations set by state resource agencies. While communities may have use rights within concessions, they can also hold communal title to areas that may contain agricultural, forest land, and settlements. Titles include the use, management, exclusion, and transfer rights of non-forest lands.

Peru's ambitious agrarian reform process began in 1969. But the era of redistributive agrarian reform ended in 1991, and subsequent land policy has sanctioned and promoted the subdivision of land into individual parcels, land sales, transfers, inheritance, rental arrangements and title mortgaging. The Land Law of 1993 legalized the parcelization and sale of communal land, contributing to tensions between communities holding group title on the one hand and the state and private interests wishing to secure rights to the land on the other. While communal rights are legally recognized, the management of title records is poor and there is considerable conflict and confusion over title. Poor land records complicate efforts by communities to challenge illegal logging and land invasions.

Approximately 1,200 indigenous communities have title to over 13 million ha of forestland. As of 2002, 72 percent of official peasant communities also had land title, primarily in the coastal and highland regions. In the coastal and highland areas, communities are proprietors of their land and thus have use, management, exclusion, and alienation rights of the land. Communal land in these areas can be privatized and sold with a majority vote. In the lowland forests of the Amazon, communities have use, management, and exclusion rights within communally titled areas. They are also allowed to divide and sell land with a 50 percent majority vote (down from 65 percent since the 1990s). Forested areas in communal areas cannot be alienated, however, and the state retains rights to lease use rights to particular resources to private companies.

On publicly owned land, concessions are allocated on long-term leases to individuals, communities, and private enterprises. Concessionaires receive use, management, and exclusion rights but must abide by national laws for resource extraction, including obtaining approved management plans. At times, there have been disagreements over whether concessions have been allocated on *de facto* communal land.

The right of government to sell or assign lease rights unilaterally to existing community land to private interests has been the source of considerable conflict between peasant organizations and the Peruvian government, particularly since the signing of the Free Trade Agreement between the US and Peru in 2007. In 2008 and 2009, the president issued several decrees that would have facilitated corporations' (mining, oil, and logging) access to indigenous lands and concessions utilized by indigenous and peasant communities. The decrees would have also allowed for the government to redistribute idle land to private interests. At the time it promulgated the decree, the government vetoed a bill supported by rural communities, the Conservation Bill for Indigenous Peoples. Although the decree was subsequently revoked, the promulgation of the decree has contributed to a growing sense of tenure insecurity among indigenous and peasant communities.

Indigenous and rural communities have become better organized and have obtained greater access to national and international support groups to obtain forest rights. In the Amazonian department of Madre de Dios, individual families have secured tenure rights to Brazil nut concessions with the help of regional and international NGOs. Throughout Peru, both indigenous and communal areas have organized assemblies for decision-making and negotiating with external actors. Even with this support, however, the Peruvian government has been actively pursuing development activities that limit existing communal rights and promote privatization of land rights. New land and resource policies have been made without the inclusion of *campesino* and indigenous communities.

This lack of community focus has extended into discussions of Peru's involvement in REDD+. Since 2008 indigenous groups have chastised the government for engaging in REDD+ policy making without transparency and participation of Indigenous Peoples. They have argued that many of the proposed projects will principally benefit external, primarily international, actors and provide little in the way of benefits for indigenous and peasant groups. In partial response to these criticisms, Peru launched a complete review of forest policy through a multi-stakeholder platform, placing emphasis on participatory management and transparency in forest management and conservation. The government has been promoting carbon sequestration through reforestation with a view to future participation in REDD+ benefit schemes.

A major obstacle for implementation of REDD+ activities in Peru is the lack of clear tenure for indigenous and peasant communities, and community-level displeasure at not having a significant voice in the policy-making process. On the other hand, Peru has legislation in place providing for community titles with a full range of the kinds of use, management, exclusion and other rights that would enable community participation on REDD+ programs. Peru has already demonstrated its interest in REDD+ programs and has quickly developed readiness and demonstration activities. Peru is one of four countries considered to have the most immediate potential for forest carbon generation because of the substantial amount of forests, low opportunity costs, good governance, market functionality and readiness conditions.

3.6 BOLIVIA: SIGNIFICANT DEVOLUTION OF FOREST RIGHTS PLACES COMMUNITIES IN CONFLICT WITH TIMBER INTERESTS ASSERTING OVERLAPPING OR PRE-EXISTING CLAIMS

Similar to Peru, Bolivia has a significant amount of tropical forest cover, much of it still intact in the Northern Amazon. As with most other Latin American countries, the government of Bolivia retains control over how natural forests can be managed, although communities and private individuals may obtain concessions or titles with resource use, management and exclusion rights. Over 14 million hectares of forest

have been declared indigenous territory and recent tenure reforms have led to a significant redistribution of forest areas through the issuance of titles to agro-extractive communities.

The Agrarian Reform Law of 1996 established communal property rights. The Forestry Law permits greater variety in the types of stakeholders that can hold rights to forests, including indigenous communities, agro-extractive communities, and communal and industrial concessions. It also defined the conditions under which these groups could use and commercialize forest resources. In the Northern Bolivian Amazon, a decree allowed for the allocation of 500 hectares per family within communal titles, a substantial increase in the size of forest available to forest-based communities motivated by the dependence on Brazil nut extraction as a primary economic activity.

In 2008, the first stage of land-titling to agro-extractive communities was completed in the department of Pando. Throughout the rest of Bolivia, however, the formal titling of land for rural communities is largely incomplete. Significant conflict among political parties and stakeholders (such as private timber concessions and Brazil nut "*barraqueros*") who held land rights to areas now being redistributed has led to tension over the land reform and some doubts over its long-term viability. Indigenous communities have had legal title for longer, although the boundaries to their areas are sources of considerable inter-communal conflict and difficult to defend against invasion. Unlike agro-extractive communities, forests that belong to indigenous communities may be titled to individual communities or a group of communities, causing even further confusion and debate about boundaries. Internal conflicts among communities and conflicts between external political actors can make land use planning difficult for all communities. Pressure from logging companies, migration, expanding agriculture, and cattle ranching also pose threats to indigenous and agro-extractive communal forests.

The current political climate of Bolivia has helped indigenous and agro-extractive communities assert and defend land claims. Various organizations represent community interests in national political fora. These organizations, along with numerous national and international NGOs, cooperatives, and government groups, support communities in their efforts to strengthen tenure security.

In addition to communal titles, approximately 11 million ha of public forest has been allocated to industrial and communal concessions (Vargas and Osinaga, 2009). Both are based on a 40-year agreement, available for renewal as long as the concessionaires follow prescribed forest management guidelines. Over 95 percent of concession lands are industrial concessions that have obtained titles by applying to the national government. Designated areas have often overlapped with *de facto* communal land and Brazil nut collection sites, although the recent land reforms have attempted to address overlapping assignment of rights by providing compensation areas to either concessions or titled communities to complete their full land allotment. Communal concessions are allocated by municipalities on municipal forests and have been successful in limited areas, occupying only .5 million ha of Bolivia's public forests.

Although the devolution of rights to timber resources is significant, the uniqueness of Bolivia's forest rights devolution is that recent laws allow communities to use, manage, and exclude others from accessing a high-value non-timber forest product, Brazil nut. The rights to access such a product under limited regulations provides a substantial livelihood opportunity that is not dependent on deforestation or degradation. This livelihood strategy, combined with Bolivia's vast natural forest estate, makes it an important potential participant in REDD+ projects. Due to its significant internal struggles and its tenuous relationship with the U.S., however, USAID faces significant obstacles to investing in devolution of forest rights in Bolivia.

3.7 CONCLUSION: THE PERSISTENCE OF INAPPROPRIATE AND COSTLY FORMS OF REGULATION

Pacheco et al.'s (2008) distinction between agrarian reform and forest reform, cited at the beginning of this section, is a useful one. Agrarian reforms were redistributive programs initiated in the 1960s that assigned title to landless or tenant peasant families. Agrarian reforms were politically and often ideologically driven

processes that sought to ameliorate sharp divisions in land ownership within Latin American societies. Agrarian reforms unfolded during the Cold War and the predisposition of national governments to undertake wide-scale agrarian reform was sometimes a predictor of where countries stood in relation to the United States and the Soviet Union.

Forest reforms differ in that they are occurring in the post-Cold War era and have considerable support globally, and perhaps especially from the global environmental and conservation movements. While agrarian reforms often met fierce resistance from large landed interests, the political and economic influence of large-scale timber and ranching interests, including in Brazil, is waning. This is due to a combination of factors, including declining timber rents, the proven unsustainability of livestock production in the Amazon, and a greater capacity and willingness of governments to put a check on illegal land colonization. Indigenous communities have grown effective in asserting and defending their land and forest rights, with a considerable measure of support from allies in domestic and international civil society.

Something that 1960s-era agrarian reforms and contemporary forest reforms regrettably appear to share is low levels of public and private investment in the kinds of financial and technical services appropriate to the needs and circumstances of the kinds of forest enterprises pursued by communities. Credit markets are absent or closed to community enterprises. While communities have a presumed greater number of use and management rights, exercise of these rights is often tempered by requirements that they produce fairly sophisticated management plans, which are then reviewed and approved by state forest agencies, as a condition for undertaking most forms of extractive activity. Rarely do communities have the technical capacity or the funds to hire professional foresters to produce plans. NGOs have provided some measure of technical and financial support, but their reach is limited. According to Pacheco et al.,

> Forest reforms fall short in achieving their expected goals due to shortcomings in forestry regulatory frameworks and market conditions that are heavily biased against smallholders and community forestry. Ironically, land reforms are being accompanied by constraining forest regulations, mainly inspired by homogeneous models for large-scale commercial logging, thwarting the opportunities for smallholders and communities to use and adapt their traditional systems for forest resources management. The straitjacket that forest regulations represent for communities tend to increase the entry costs for them to formalize their forest management initiatives. In addition, the bureaucracy [associated with] the approval of formal management [plans] increases transaction costs to communities, pushing an important number of them to avoid it and operate informally (Pacheco et al., 2008: 17).

The phenomenon of states seeking to secure sustainable forest management through imposition of rigorous planning and management standards on communities that have finally secured hard-won rights is a common one across Latin America. In principle, governments have a rightful interest in the management outcomes of use practices employed by communities, particularly where misuse results in costly externality effects that must be borne by the larger public. That said, care must be taken to align expectations better about the form and content of management planning with practices and conventions employed by local resource users, and in ways that give more weight to the quality of outcomes and less to prescribing just how outcomes are to be achieved.

4.0 AFRICA: REBALANCING FOREST TENURE RIGHTS BETWEEN THE PUBLIC SECTOR AND COMMUNITY INSTITUTIONS

Across much of sub-Saharan Africa, two kinds of forest tenure systems–public ownership and customary tenure–interact, often uncomfortably, in governing the ownership and use of forests, trees, and other forest products:

4.1 *DE JURE* PUBLIC OWNERSHIP OF FORESTS ACROSS SUB-SAHARAN AFRICA

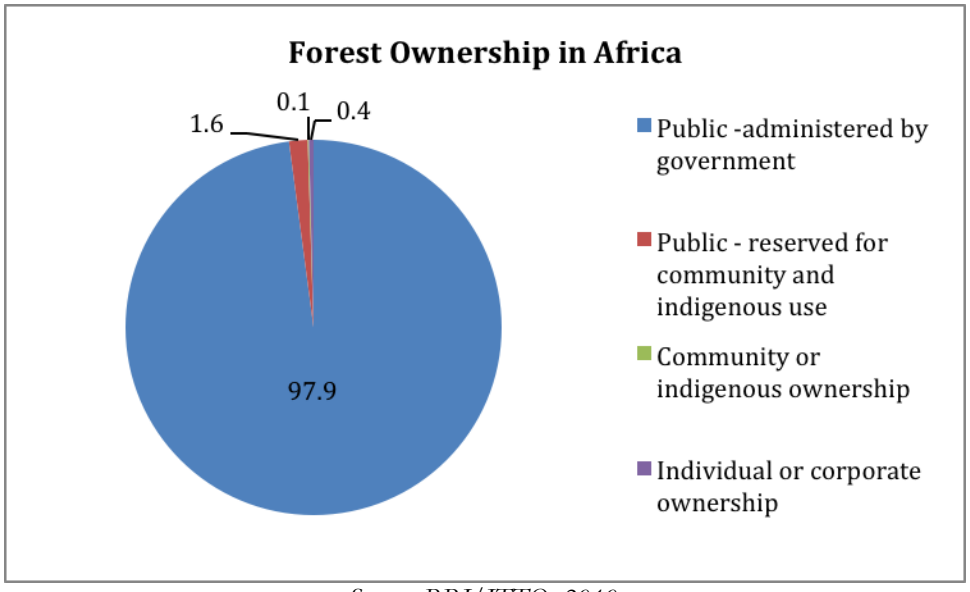
Public ownership of forests, in designated forest reserves but also in agricultural and pasture areas, is the dominant form of forest tenure across Africa. As indicated in Figure 4.1, over 98 percent of forested land falls under public ownership in Sub-Saharan Africa (RRI/ITTO, 2010). Such extensive public ownership of forested land is a direct inheritance from the colonial era, when colonial powers found it convenient to nationalize forest ownership to regulate commercial and subsistence forest uses through issuance of permits and by displacement of communities from forests considered of strategic economic value. *De jure* public ownership of land also applied to land used for crop and livestock production during both the colonial and post-colonial eras. Private, registered land rights during the colonial era were typically granted to the holdings of European settlers. In the post-colonial era, African governments have generally not promoted large-scale conversion of any land use category, including forested land, to freehold tenure in rural areas. In fact, less than one percent of the land area of sub-Saharan Africa is under cadastral survey based on formal assignment of title or deeds registration, and most of that area falls within South Africa and urban areas (Augustinus, 2003).

Colonial-era administrators considered small-scale farming systems to be destructive of forests, overlooking the importance small holders accorded trees and forests (and pastures) as important elements in their land use strategies. Presumed poor local stewardship may to a considerable degree be the result of the usurpation by states of the ability of local authorities to manage tree and forest use actively (Alden Wily, 2004). Public ownership of forest rights enables governments to control directly commercial timber extraction for export and to receive the greater share of timber-generated revenues through fees and licensing arrangements.

While states assert ownership of forests, forest laws often exempt 'customary uses' of forest products from state regulation. Forms of customary use include collection of firewood, cutting of timber for constructing residences, and collection of NTFP (such as honey). The value of these "products" typically exceeds the value of forest commodities by several multiples. For instance, in the Democratic Republic of the Congo (DRC), the value of firewood collected for local use is estimated to be 10 times greater than the value of commercially harvested timber (Marien, 2009). Nearly all timber products harvested are used locally and for subsistence purposes, and are thus exempted from direct state supervision of use.

In Zambia, the 1973 Forest Act vests formal ownership of trees and other forest products in the President, who holds those rights in trust and on behalf of the Zambian people. This provision was retained in the 1999 Forest Act, for which implementing regulations have yet to be promulgated. Section 20 of Kenya's 2005 Forest Act provides that "All forests in Kenya other than private and local authority forests are vested in the state." Section 20 enables members of forest communities to take forest produce that they customarily harvest, though sale of these products is prohibited. Similarly, Article 7 of the DRC's 2002 Forest Code vests ownership of forests and forest resources in the central government, while acknowledging customary use rights to forest products and services (Debroux et al., 2007).

FIGURE 4.1: DISTRIBUTION OF FOREST OWNERSHIP IN AFRICA



Source: RRI/ITTO, 2010.

Ghana's 1973 Timber and Tree Decree vests ownership of all naturally-occurring trees, including trees occurring on individual farms, in the state. Until very recently, the forest codes in the Sahelian countries of Senegal, Mali, Niger, and Burkina Faso, all of which were derived from the French colonial-era forest code enacted across the region in 1935, provided for state ownership of all trees. Since the mid-1990s, Mali, Burkina Faso, and Niger have rewritten their forest codes to exclude fields and fallow lands from the state forest domain. Mali's 2010 Forest Code (Chapter II, Article 64) still requires individuals to obtain authorization from the forestry service to harvest trees for commercial use, even if they have a title to the land on which the trees are located, and even if they have planted the trees themselves. They must also obtain a permit to transport any wood products harvested for commercial use on their land.

In African countries where ownership of trees and forests is vested in the state, forest agencies tend to lack the material and staff capacity to ensure observance of forest use rules and regulations that derive from their management authority. This contributes to a legal and regulatory vacuum. Local government and customary land authorities, with the support of their constituents, may wish to exercise sustainable forest management practices, based on customary law or local agreement, but lack the statutory authority to do so, at least on the

basis of ownership. Despite the legal hiatus, it is common for many communities to expect residents to observe some basic forest management practices, such as allowing collection of deadwood for firewood and charcoal making. But they typically lack legal authority, for instance, to restrict encroachment by outsiders within the boundaries of their traditional forest areas, or to regulate extraction of timber by commercial enterprises. In many important respects, state ownership impedes local collective action.

As noted in the cases of Zambia, Kenya, and the DRC, national forest laws may exempt from direct regulation certain "customary" uses of forests. However, cutting of timber for local use or trade is very commonly subject to direct state regulation. State forest agencies often exercise formal policing powers, including the powers of arrest and detention. Relations between forest agencies and farmers and small-scale tree and forest users are often tense and characterized by mutual suspicion. State ownership of trees enables governments to enter into direct contracting relations with large timber extraction enterprises; deals that provide little direct benefit to forest dwellers. Despite the heavy reliance of forest policy on direct regulation of forest use, state-owned and administered forests have experienced high levels of deforestation across Africa.

4.1.1 CUSTOMARY TENURE SYSTEMS AND LOCAL LAND USE CONVENTIONS PROVIDE DE FACTO FRAMEWORKS FOR LOCAL-LEVEL FOREST MANAGEMENT

Across much of sub-Saharan Africa, customary tenure systems operate to assign rights to land for habitation and subsistence agriculture. Customary systems generally limit use of forests to *bona fide* residents of local communities and to outsiders to whom communities have granted use rights, such as seasonal pastoralists. But because ownership of forests is vested in governments, traditional authorities often are unable to regulate forest use, particularly by non-villagers. This often results in open access situations in areas where village boundaries are in dispute or not easily defined, leading to overuse and forest degradation. While local forest users may share a desire to collaborate in managing local forests sustainably, they often lack the *de jure* exclusion, management, and even use rights to forests to do so effectively. Concentration of forest ownership rights and regulatory authority in state agencies severely limits the ability of local communities to manage local forests themselves, resulting in what one FAO study characterizes as a "non-functioning legality" and the persistence of a "sterile duality" in the forest sector in Africa (Onibon et al., 1999).

Under customary tenure systems, people gain access to land by virtue of their membership in a clan, family, linguistic community, or ethnic group that has ownership rights over a defined territory. Customary land rights are best thought of as social rights–rights that are gained through group membership as opposed to through purchase–though limited kinds of market transactions of customary land rights are increasingly taking place.

While customary land and resource rights may not be equitably distributed among community members, customary systems usually operate to provide land and resource use rights to all community members, including the poor. *De jure* ownership rights to forests, both inside and outside of designated reserves, and in many countries trees also, remain highly centralized in states. Devolution of tree and forest rights to farmers and forest dwellers through *in situ* customary systems has promise as one vehicle for rebalancing forest governance in Africa.

Attempts are underway across Sub-Saharan Africa to unravel some of the policy and legal contradictions that impede a balanced approach to forest and tree management. "A balanced approach" refers to one that recognizes the important and legitimate role of government institutions in framing forest policy to serve a variety of goals, including the management of forests for developmental, commercial, and environmental purposes, and in the national interest. A balanced approach, in the authors' view, would also ensure that communities living in and near forests have the legal authority to manage forest resources actively for the economic benefits and environmental services they provide. Governments would retain the ability to intervene on behalf of sounder management practices when local governance proves ineffective.

Re-balancing the roles and responsibilities for forest governance among the public sector, communities, and individual forest users is needed across Africa. Several African governments, with the support of citizens, forest communities, and international research and advocacy organizations and donors, are exploring new approaches to the management and governance of forests.

Two principal approaches are explored in this chapter:

- Benefit-sharing schemes, also known as joint forest management, where forest agencies work with communities to foster a more reliable stream of economic benefits from forests to local forest users. Rarely do these schemes involve substantive devolution of long-term forest rights to communities. The assumption is that a higher and more reliable stream of forest-based economic benefits will lead local forest users to take up forest conservation behaviors.

- Devolution of a greater share of substantive forest rights to community land institutions in concert with land administrative reforms that give equal statutory recognition to community tenure, on par with private tenure and public tenure.

The sections below assess and compare experiences with both approaches to forest governance reform.

4.2 FOREST BENEFIT-SHARING SCHEMES IN KENYA AND ZAMBIA: LIMITED DEVOLUTION OF RIGHTS AND UNCERTAIN BENEFITS

Forest policy makers have begun to think about how to make available to land users tangible forest benefits that reward good management practice and have the effect of reducing or eliminating deforestation, while limiting the actual devolution of substantive rights to individual users or local communities. A common feature of benefit-sharing schemes is the establishment of new local, participatory management bodies, based on organizational arrangements prescribed by forest agencies, and set up with the aid of forest agents or NGO staff. Examples include Joint Forest Management Committees (JFMAs) in Zambia, Community Forest Associations (CFAs) in Kenya, Participatory Forest Management (PFM) in Tanzania, and Participatory Forest Management User Groups in Ethiopia.

In some countries, such as Kenya and Zambia, forest user groups must constitute themselves as legally registered nonprofit organizations (CFAs in Kenya, for instance, must register under Kenya's Societies Act.) In other countries, such as Ethiopia, no specific guidelines have been established for Participatory Forest Management groups and their structures vary widely. In all of the case study countries where co-management groups exist, communities must develop forest use and management plans, which are subject to review and approval by forest officials. Benefit-sharing schemes seek to promote greater active participation of forest users in conservation but the range of rights granted communities is usually limited. The duration of agreements is often short-term or not specified.

Benefit-sharing initiatives tend to give greatest initial attention to resource use planning and setting up local management bodies but fail to grant communities significant management autonomy and control over rule development; they give little attention early in the process of scheme development to the terms of revenue-sharing arrangements. In Zambia, benefit sharing has not yet occurred because the implementing measures for the 1997 Forest Act authorizing JFMAs have yet to be established. Obtaining approval for management plans can be excruciatingly slow. In one Zambian JFMA, community members still did not have legal access or use rights to the forest three years after they began the JFMA process (Bwayo, 2007).

In Kenya, about 350 CFAs had been legally established as of May 2011. Communities can only begin using forest resources after their management plans had been approved, but only 50 management plans had been approved by May 2011; several CFAs were awaiting plan approval more than a year after submitting them.

Liz Alden Wily, in reviewing the design of a number of benefit-sharing schemes, observes that, "Communities usually serve less as decision-makers than those consulted, less as regulators than rule-followers, less as licensing authorities than licensees, and less as enforcers than reporters of offences to still-dominant Government actors. So-called joint forest management approaches have tended to allocate community partners high operational responsibilities but minor powers to determine, for example, who may use and not use the forest, under what conditions, and to license and enforce accordingly" (Alden Wily, 2003). Box 4.1 provides a list of the characteristics of benefit-sharing arrangements and indicates how they differ from rights devolution.

Box 4.1: Benefit-sharing arrangements fall short of rights devolution

- Benefit-sharing schemes are efforts to engage forest users in conservation, typically through establishment of local forest associations, but tend to give insufficient attention to reaching agreement with local beneficiaries on benefit-sharing formula early in the process.
- Benefit-sharing schemes are administrative models and not rights-devolution models per se. Benefits can be withdrawn or adjusted at the administrative discretion of government agencies. Farmers lack tree and forest tenure security and may experience uncertainty about the duration of the benefit-sharing arrangements.
- Forest agencies promote benefit-sharing schemes in part to enlist communities in forest conservation planning, with rules and rates of off-take set out in approved management plans. Despite good intentions, benefit-sharing schemes may prove to be expensive to administer and generate high transaction costs for government agencies and village participants alike.
- Benefit-sharing schemes are emerging in government circles as one model for distributing REDD+ benefits. Existing forest-benefit sharing arrangements (such as sharing of stumpage fees in Ghana) should be looked at critically for their administrative efficiency and their effectiveness in delivering meaningful benefits to individuals and communities.

A 2008 FAO study reviewing forest tenure issues concluded that very few joint forest management schemes in Africa were likely to prove sustainable because they failed to deliver tangible economic and financial benefits to community members. The study noted Senegal's relatively positive experience, due principally to the fact that community members can commercialize some forest resources and can receive part of the fines collected for non-compliance with rules (Romano and Reeb, 2008).

4.3 DEMOCRATIC REPUBLIC OF CONGO: CHALLENGES TO FOREST RIGHTS DEVOLUTION IN A CONTEXT OF GREAT CUSTOMARY TENURE COMPLEXITY

Under the current legal framework, local communities in the DRC have weak and relatively insecure *de jure* rights to both land and forests. The Bakjika Law of 1967 cancelled individual and community land property rights and vested all land ownership in the hands of the state (Debroux et al., 2007). Law 21/1973, which modified the 1967 law and forms the basis of DRC's current formal land tenure system, retains the notion of the state as sole owner of both the soil and subsoil (Debroux et al., 2007). However, a presidential ordinance required under the 1973 law to clarify the status of customary land has yet to be implemented.

DRC's 2002 Forest Code (Law 11/2002) vests ownership of all forests and their resources in the state (article 7), but it acknowledges customary use rights to forest products and services. These are not exclusionary use rights (article 41), unless the community acquires a forest concession. Customary rights pertain only to the meeting of subsistence needs rather than commercial use (Eba'a Atyi and Bayol, 2009).

De facto customary rights to forests vary depending on which ethnic groups reside in or use the area. Communities established by Bantu, Nilotic, and Sudanic peoples have customary tenure systems that differ substantially from those of the Indigenous Peoples, such as the Batwa, Aka, and Bakeli (Counsell, 2006; Huggins, 2010). Brown and Makana (2010) identified three very different tenure systems within a 200 km^2 area in northeastern DRC. It is not uncommon in many areas of the DRC for two or more tenure systems to overlap (Counsell, 2006). Moreover, rights within tenure systems of indigenous groups that still practice hunting and gathering are spatially and temporally dynamic, shifting as base camps are relocated (Counsell, 2006).

Members of "indigenous" groups and women are particularly vulnerable to being deprived of access rights to land (and forest resources) in areas where customary tenure systems are operational but land is scarce (Huggins, 2010). In areas where artisanal logging is expanding, customary use rights are often insecure as some traditional chiefs sell logging companies the rights to harvest trees without obtaining the consent of the individuals or families farming or harvesting forest products in the area (Brown and Makana, 2010).

4.3.1 MOVING TOWARD COMMUNITY CONTROL: SOCIAL RESPONSIBILITY CONTRACTS AND COMMUNITY FOREST CONCESSIONS

The DRC allocates rights to harvest timber for commercial use through concessions. Concessionaires in production forests (i.e., forests deemed suitable for industrial timber production) are required to develop management plans that are subject to state approval (article 99). They are also required to negotiate social responsibility contracts (article 89) with the local communities exerting use rights over the area included in the concession (Debroux et al., 2007). These contracts specify the financial and infrastructure investment obligations of the concessionaire to the local communities (article 89).

Communities potentially can use two different mechanisms in the 2002 Forest Code to formalize access and use rights to the forested land they hold under customary tenure (Norton Rose Group, 2010). One option is for communities to request that the state allocate forested land to them in the form of community forests in areas zoned as protected forests. However, the implementing decrees laying out the procedures for allocating community forests have not yet been passed and no community forests have been established (ITTO, 2010). A second option is for communities to acquire long-term concessions similar to those the state makes available to industrial logging companies in areas zoned as production forests. However, operationalizing the second option will require creating a legal mechanism for communities to acquire a legal personality (Forests Monitor, 2009a).

Importantly, the Forest Code leaves open the possibility that forest concessions can be allocated for purposes other than logging, including conservation, bio-prospecting, tourism, and environmental services (Debroux et al., 2007). However, a formally recognized legal mechanism for creating "community conservation zones" that explicitly would allow communities to dedicate part of their customary lands for conservation purposes (and manage the conservation zone themselves) does not yet exist (Forest Monitor, 2009b).

Although the Forest Code recognizes local communities' use rights to forests that have not been gazetted as protected areas, it does not state whether those rights are exclusive. Communities do not have the authority to enforce rules codified in the 2002 Forest Code (or other national legislation). Given that the state has limited capacity as well as lack of political will to enforce these laws, a serious and widespread enforcement vacuum exists. The capacity of communities to enforce *de facto* rights of exclusion varies greatly over this vast and politically unstable country.

From the standpoint of communities having a voice in forestry decisions, the 2002 code is a clear improvement in that it requires that the state conduct an examination of pre-existing use rights before it allocates new rights on forest lands (Debroux et al., 2007). Moreover, if legitimate use rights exist, the concession conditions must be adjusted to take them into account, and holders of use rights must be compensated for any loss of access (Debroux et al., 2007). In practice, determining who has what use rights to a forested area is a complex and often conflict-ridden process that often fails to account for the *de facto* use

rights of the politically less powerful Indigenous Peoples, such as the Bakwa, Batwa, and Bambuti, who may not be physically present at the time that inquiries are carried out (Musafiri, 2009). A strong network of local, regional, and international Indigenous Peoples' rights advocacy groups has recently emerged and is working toward ensuring that the customary tenure claims of Indigenous Peoples are better recognized.

4.3.2 SUMMARY OBSERVATIONS: THE NEED FOR GREATER SPECIFICATION OF COMMUNITY FOREST RIGHTS IN THE DRC'S 2002 FOREST CODE

The 2002 Forest Code represents an important new departure in DRC's approach to forest governance policy. Of particular importance are its provisions that would grant communities long-term, secure rights to forests, either in the form of community forests in areas currently zoned as protected forests or as forest concessions on terms comparable to concession rights granted to private logging companies. While a promising reform initiative, implementation of the Forest Code is stalled on a number of fronts. The following actions are needed to move DRC's Forest Code closer to implementation and improve the likelihood that it can achieve positive ecological and livelihood outcomes:

- Particular attention should be given to framing and publishing decrees for implementing the Code's provisions for establishing community forests in designated protected forests (Article 42) and granting communities forest concessions (Article 43);
- Concessions granted to communities should not be limited to the purpose of commercial timber harvesting, but to multiple purposes that accommodate conservation, including marketing of stored carbon; and
- Indigenous forest communities are disadvantaged by a narrow definition of the principle of effective occupation. Criteria for determining use rights need to be re-conceptualized to account for the ways in which Indigenous Peoples use and occupy forests.

4.4 ETHIOPIA: CHALLENGES OF RECONSTRUCTING VIABLE COMMUNITY TENURE SYSTEMS IN THE AFTERMATH OF STATE EFFORTS TO REORDER THE RURAL SOCIAL FABRIC

Efforts to support forest governance devolution in Ethiopia must take into consideration the political and social upheavals of the late 20th century that entirely replaced or substantially modified the country's customary tenure systems. Before 1974, hundreds of customary tenure systems were operational in the country. These systems were either eliminated or greatly disrupted beginning in 1974, when a military coup deposed the ruling monarch, Haile Selassie, and the new military-run Marxist government, known as the Derg, nationalized all land and forests. Shortly after taking power, the Derg instituted a periodic land redistribution system to prevent re-concentration of land ownership. Although aimed at providing more equitable access to land and resources, the resulting tenure insecurity created strong disincentives for villagers to plant or protect trees on agricultural lands (Stellmacher and Mollinga, 2009). At the same time, massive resettlement schemes, involving the displacement of hundreds of thousands of northern Ethiopians to the southern and southwestern highlands, contributed to a rapid decline during the 1980s and 1990s of the country's until-then substantial forest cover (Stellmacher and Mollinga, 2009). The influx of new inhabitants greatly increased the demand for locally harvested forest products, and many migrants turned to firewood cutting as a means to earn their livelihoods (MELCA, 2008). The newcomers did not always recognize the legitimacy of still-functional traditional forest regulatory systems. With the state lacking the capacity to enforce its new rules, open access conditions prevailed in many of Ethiopia's remaining forest-rich areas for several decades (Stellmacher and Mollinga, 2009).

After years of civil war, a stable Ethiopian government was formed in the early 1990s. Ethiopia's 1995 Constitution vests ownership of land and natural resources in the state and peoples of Ethiopia. Under the

1997 Rural Land Administration Proclamation, farmers have lifelong, inheritable, and transferable use rights to land and trees planted on their land, and peasants and pastoralists have the right to obtain free use rights over rural land for an unlimited time period (Tamrat, 2010). Federal and regional laws also provide for the possibility of the state allocating rural land to communities for common pasturage, forestry, and other social services (Tamrat, 2010). However, the rights of communities with respect to such holdings are unclear, and no mechanisms are in place to establish legal recognition of communal holdings at the federal level (Tamrat, 2010).

Ethiopia's 2007 Forest Development, Conservation and Utilisation Proclamation provides a foundation, albeit a very weak one, for participatory forest management of State forests. It specifies that local communities must be involved when State forests are demarcated (Part Three, Section 8.2); it calls for community participation in the development of forest plans, as well as the sharing of benefits from State forests (Part Three, Section 9.3). The extent to which these provisions are adhered, however, is unclear (Gebremariam et al., 2009). Harvesting of fodder, fallen wood, herbs, and fruits, as well as the keeping of beehives on State forests, can only be done within the framework of a regionally-approved forest management plan, and only under permit from the local forest governing body (Part Three, Sections 10.3, 10.4, 14, and 3). Funds for mapping and gazetting State forests or for developing management plans have been lacking (Gebremariam et al., 2009).

4.4.1 STATE GOVERNMENTS PROMOTE PARTICIPATORY FOREST MANAGEMENT IN THE ABSENCE OF FEDERAL GUIDANCE AND SUPPORT

Participatory Forest Management, a form of co-management, emerged in Ethiopia during the early 2000s as a mechanism for addressing the new state's lack of forest management capacity (Amente, 2006; Lemineh and Bekele, 2008). At the federal level, Ethiopia lacks policy guidance and legislation supportive of participatory forest management. As a result, several of the states have taken on the task of developing regional-level legal frameworks that provide a more secure environment for the development of local-level forest management entities, typically with considerable support and encouragement from international donor organizations and projects. Box 4.2 describes how PFM is organized in an area near the Bale Mountains of Ethiopia.

Box 4.2: Participatory Forest Management in Bale, Ethiopia

In 2000, the GTZ began working with local communities and the Oromiya Regional State Forest and Wildlife Enterprise to set up a pilot project to implement Participatory Forest Management in Oromiya National Regional State. The project helped organize households living near the highland forests in the Bale mountain ecosystem into community forest user groups known as WAJIB, the local acronym for Forest Dweller Association. Each community forest user group enters into a Forest Block Allocation Contract with the district forest office and the local village administration.

Under the terms of the WAJIB contracts, the group pays an annual rent for use rights to a 400-hectare forest block. They also agree to prevent further agricultural encroachment and maintain the existing forest cover. Members have the right to harvest wood and other forest resources for domestic use and sale, graze their livestock within the forest, and cultivate existing farm plots located in the forest block. In some cases, they sub-lease grazing rights to non-members.

The groups are free to set up their own internal structures, but they are required to develop and adhere to a government-approved forest management plan. The district forest office has responsibility for ensuring that an annual forest cover assessment and settlement survey is conducted and provides technical and organizational assistance to the forest user groups.

The user groups have a democratic system of governance consisting of a general assembly composed of all members, an executive committee, and various other committees. The general assembly includes women householders, as well as men, and all committees are required to have a least one woman as a member. The groups develop their own by-laws for regulating forest use by group members, as well as access by non-members.

References:

Amente, G. 2006. Integrated and participatory forest management in the Bale mountains of Ethiopia. International Symposium towards sustainable livelihoods and ecosystems in mountainous regions. 7-9 March 2006, Chiang Mai, Thailand.

Amente, G., J. Huss, and T. Tennigkeit. 2006. Forest regeneration without planting: The case of community managed forests in the Bale Mountains of Ethiopia. Journal of the Drylands 1(1):26-34.

Two international NGOs, FARM Africa and SOS Sahel Ethiopia (as well as GTZ, Germany's bilateral aid program), have provided substantial and on-going technical support and financial assistance to Ethiopia's PFM initiatives (Lemineh and Bekele, 2008). The initiatives are implemented through each of the Regional State's Bureau of Agriculture and Rural Development (Federal Democratic Republic of Ethiopia [FDRE], 2008). As of 2008, nearly 200 PFM groups had been established in Oromiya and Southern Nations, Nationalities, and People's (SNNP) regions, managing 140,857 hectares of State forest land (Movement for Ecological Learning and Community Action [MELCA], 2008). Forests managed within the framework of Participatory Forest Management programs typically are highly degraded due to extensive illegal logging, clearing for agriculture, and excessive grazing (Armente, 2006). Box 4.3 describes some of the ecological and livelihood outcomes of PFM in Ethiopia.

Community-held land and forest rights are generally considered to be very insecure in Ethiopia as federal and regional land administration laws provide that confiscated community holdings are not eligible for compensation (Tamrat, 2010). The security of tenure for PFM forest allocations is also tenuous as their continued existence is contingent on an annual assessment as to whether the user groups are meeting their management obligations. Other sources of tenure insecurity in community-held and managed forests include limited rights of exclusion, ambiguous outsiders' rights, and weak social cohesion within communities (see Ethiopia case study in Annex C.)

Box 4.3: Ecological and Livelihood Outcomes of PFM in Ethiopia

- Preliminary forest-cover assessments of land included in Ethiopia's pilot PFM projects indicate that the areas managed by community forest user groups have experienced improvements in their ecological conditions.
- The rate of illegal tree cutting has been reduced and natural regeneration has increased. The gains in natural regeneration are attributed primarily to the user groups' rules prohibiting non-members from grazing their livestock in the forest blocks and establishing grazing zones within the forest block for user group members.
- Non-members of PFM schemes began to plant trees to fill gaps in their own supply of essential forest products since they no longer had access to community forest group blocks. Satellite imagery analysis in the Dodola area showed a net increase in forest cover of three percent between 2002 and 2006 compared with an annual net deforestation rate of three percent prior to the establishment of PFM in the area.
- In the Bale Mountains, community-based ecotourism enterprises are bringing in $10,000 per year to the area; this income is distributed among a number of guides, hut keepers, horse providers, and horse handlers. Additionally, 20 percent of the lodging payments by tourists and a percentage of the forest rent goes to support local development projects, such as school construction. These gains are due in part to substantial outside investment by NGOs and bilateral donor agencies in complementary livelihood programs.
- Linking the PFM projects to livelihood diversification has also benefited women in some user groups by providing them access to modern beehives, which unlike traditional hives, can be placed around the homestead where women are better able to care for them.

References:

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Lemenih, M. and M. Bekele. 2008. Participatory Forest Management: Best practices, lessons learnt, and challenges encountered: The Ethiopian and Tanzanian experiences. FARM-Africa/SOS-Sahel.

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4.4.2 SUMMARY OBSERVATIONS: PROMISING OUTCOMES FOR ECOLOGICAL CONDITIONS AND LIVELIHOODS BUT NEED FOR STRONGER NATIONAL-LEVEL SUPPORT AND FURTHER CLARIFICATION OF COMMUNITY RIGHTS

Initiatives supporting devolution of rights to forests in Ethiopia have occurred in a limited number of regions, most notably Oromiya and SNNP regions. Programs have received considerable planning and material support from international NGOs. The national government, however, has not demonstrated much interest in these area-based initiatives, and several key tenure policy questions remain unresolved at both the national and regional levels. Communities lack the right to exclude outsiders and have little or no say in the assignment of land rights to influential outsiders. Still, considerable progress has been made in devolving forest rights to communities in Oromiya Region, particularly in the Bale Zone.

4.5 TANZANIA'S POSITIVE EXPERIENCE WITH FOREST RIGHTS DEVOLUTION

Tanzania was one of the first countries in Africa to recognize formally the role of communities in managing and owning forests. This was done through the enactment of the Forest Act in 2002, which provides the basis in law for communities to own, manage, or co-manage forests under a range of conditions and management arrangements. The Forest Act is notable in embracing the principle of subsidiarity, stating its aim as "to delegate responsibility for the management of forest resources to the lowest possible level of local management consistent with the furtherance of national policies" (United Republic of Tanzania [URT], 2002).

Decentralized forest management in Tanzania is termed Participatory Forest Management and can be grouped into two types: Community-Based Forest Management (CBFM) and Joint Forest Management (JFM). As of 2008, PFM was being established or was operational in over 2,300 villages (of a total of 10,571 registered villages) and covering over 40,000 km^2 in all parts of the country (Kilahama, 2009). Most CBFM is on forest areas designated for production in the miombo woodlands, acacia woodlands, and coastal forests. JFM arrangements are mostly located in protection forests for montane evergreen forest areas (Blomley and Iddi 2009, p. 16).

CBFM has involved a greater degree of devolution of rights; has covered a greater area, greater diversity of forest and woodland types, and more villages; and has proven more successful so far than JFM. In CBFM, rights are extensive including management and use. One reason why JFM has been less successful is that the law is silent on how the benefits of forest management should be shared. In some cases, local management is occurring with vague promises of benefit sharing in the future (Blomley and Iddi, 2009).

Under CBFM, communities should have secure expectations of long-term rights to village forest reserves. Rights include the right to bequeath. In JFM, secure rights exist for transfer and exclusion, but are short-term and restricted in terms of use and control, with use being limited to subsistence (Blomley and Iddi, 2009; Katila, 2008). However, in the majority of the country (where participatory forest management has not yet been implemented), the de facto situation is that forests and woodlands continue to be managed by traditional practices, involving supporting institutional frameworks that are not formally recognized by the government (Blomley and Iddi, 2009). This includes areas that are internationally recognized as success stories of effective forest regeneration, such as the ngitili reserve system practiced by the Sukuma people in the Shinyanga area south of Lake Victoria.

According to the Forest Act of 2002, villages that have implemented Community-Based Forest Management should rely on the power of the Village Council to enforce their rights. Actual enforcement thus depends upon the effectiveness and legitimacy of the Village Councils. The enforcement situation is less clear in JFM areas and for woodlands in the remaining public lands. A constraint on the effectiveness of CBFM and JFM is the overlap between the National Forest Policy and the National Wildlife Policy regarding ownership, management, and benefit-sharing of natural resources. While CBFM relies upon the authority of village councils, the National Wildlife Policy requires the creation of new community institutions with new membership and boundaries. Village governments would have more incentive to engage in natural resource management if they had legal rights to flows of both wildlife and forest resources (Blomley and Iddi, 2009).

Devolved management of forest resources is facilitated by the extent of devolved governance in Tanzania. As part of its socialist policies of the 1970s, the Government of Tanzania implemented villagisation, or Ujamaa. The Government passed legislation to create Village Assemblies and Village Councils, which are corporate bodies capable of owning property and entering into legal contracts. The original intent was to facilitate transmission of central development plans for collective agricultural production. Tanzania has used this historical legacy as a basis for subsequent legal developments, including the Local Government Act of 1982, the Village Land Act of 1999, and the Forest Act of 2002 (ibid.). Implementation of the Forest Act and

Village Land Act continues to be a challenge, with skewed interpretation by some government officials undermining the authority of village institutions (Rantala, 2011).

JFM schemes devolve a wide range of management rights to local communities, including exclusion and transfer rights. Katila (2008) considers the village forest reserves sanctioned by the 2002 Forest Act to be one of the most promising examples of forest rights devolution in the developing world. Both the aggregate-level data and case study evidence suggests that CBFM has achieved some successes in Tanzania. For example, Lund and Treue (2008) show that establishment of the Village Land Forest Reserves (VLFR) in Mfyome village improved the sustainability of forest use, the livelihoods of local residents, and the accountability of forest management institutions. The main negative effect that they note is that relatively poor people, who previously were most dependent on the forest resources for their livelihoods, appear to bear a disproportionate high share of the costs of participation. (See a full assessment of the Mfyome VLFR in the Tanzania case study).

The Forest Act vests responsibility for VLFRs in the hands of Village Councils, which manage them directly or through elected Forest Management Committees. Village Councils were previously empowered by the Local Government Act of 1982 and the Village Land Act of 1999. In part because of its progress with devolved forest management, and the large spatial extent of its forest resources, Tanzania has attracted more REDD+ investment than any other country in Africa. Compared to many other African countries, Tanzania has achieved relatively high levels of the quality of governance indicators, particularly for voice and accountability, rule of law, and political stability (World Bank, 2011a).

Tanzania stands out among other African countries in its embrace of actual devolution of a specific bundle of forest rights, including transfer rights and exclusion rights. This is a marked departure from the experiences of several other countries, where community enjoyment of devolved rights is highly contingent on approval and fairly intensive supervision of management plans, which often introduce high transactions costs into the devolution process. That said, a weakness of forest rights devolution in Tanzania is insufficient clarity in the Forest Act 2002 to the duration of devolved rights.

Despite evidence of early success of its VLFR and JFM initiatives, there remain concerns about the implementation of devolved forest management in Tanzania. Individual community members may be squeezed out by the interplay of powerful commercial interests (e.g., charcoal traders, logging companies, foreign agricultural corporations, etc.), Village Councils, and district-level forest officers. There remains lack of clarity over the terms of benefit sharing. The National Wildlife Policy is creating new management institutions that may confuse and contradict the authority of Village Councils over natural resource management.

Investments in REDD readiness and demonstration activities should take account of those challenges. Demonstration activities should be judged by their impacts on forest conservation, contributions to local income and livelihoods, transparency and accountability, and distributional consequences for marginalized social groups and the relatively poor. Particular attention should be given to novel approaches to benefit sharing.

4.6 THE STATUTORY RECOGNITION OF COMMUNITY TENURE: NEW OPPORTUNITIES FOR FOREST RIGHTS DEVOLUTION

During the first decades after independence, most African countries were in general retreat from the idea that customary tenure rules and institutions should serve as the tenurial foundations for assigning secure land and resource rights to communities. Fortunately, African leaders have begun to turn away from treating community tenure as informal and inferior forms of rights delivery and administration. This is evidenced by the growing trend across Africa to give statutory recognition to customary tenure institutions; extending equal legal protection to rights held under customary tenure to those held under freehold and public tenure. Donors and national and international NGOs can do positive service by helping African governments

carefully but steadily aid the process of legal development of community rights institutions as vehicles for local governance of community forests and as mechanisms for fair distribution of communal forest benefits, including forest rights.

An early pioneer of codifying customary rules into statute was Botswana. The Tribal Land Act was adopted in 1968, two years after Botswana gained independence from Great Britain. The Tribal Land Act retained many of the basic principles of customary tenure, granting land rights to members of local communities as a social right, based on criteria of birth, marriage, and residence. Significantly, the Tribal Land Act removed traditional authorities from the role of administering customary rights, replacing chiefs with civil land boards. This mix of attributes–customary rights administered by civil authorities–was illustrative of the long-evolving hybridity of land rights systems in Africa that many administrators and observers failed to recognize. "Far from being clearly delimited and mutually exclusive, the customary and the statutory are usually intertwined in complex mosaics of resource tenure systems." (Cotula and Toulmin, 2007, p. 109).

Recent years have seen a rush of land tenure reforms that give greater statutory recognition to customary tenure. New statutes in East Africa that give statutory recognition to customary tenure on par with other forms of tenure include the Land Act of 1998 in Uganda, the Land Act of 1999 and the Village Land Act of 1999 in Tanzania, and Ethiopia's Land Act of 1997. Kenya's 2010 Constitution elevates tribal trust lands, since independence a legally subordinate form of tenure, to Community Land, on par with the constitutional and legal protections accorded land rights held under freehold title. South Sudan's Land Act of 2009 gives equal legal status to three categories of land tenure: community land, private land, and public land. South Africa, Mozambique, Mali, Niger, and Namibia have in recent years passed legislation codifying and giving equal legal status to customary tenure. By placing customary tenure administration under the supervision of statutory law, communities are required by law to apply aspects of civil law that promote or prescribe gender equality, due process, and environmental protection. "Communities may continue to administer and manage their land according to custom, with the caveat that such practices should not contravene the national constitution" (Knight, 2010).

Laws governing customary tenure take a variety of approaches to assigning and delimiting common property rights, including to forests, in relation to family rights for residences and agricultural holdings (Alden Wily, 2003). For instance, Tanzania's Village Land Act 1999 disallows adjudication and entitlement of individual holdings until the community has first identified and set aside areas of common resources, such as forests and grazing land (ibid.). In other countries where community tenure has gained new recognition and protection in law, its provisions may extend principally to land rights administration for residential and cropland, while continuing to assign forest rights to the state. Local administration of forest rights (as well as grazing and water rights) requires extending community rights to forests and trees also.

A great barrier to the devolution of forest rights in sub-Saharan Africa is the continuing reluctance by states to relax their hold on rights. This is due to several historical and political factors. African leaders have long held the view that the state is the catalyst of national development and social and economic transformation. State ownership of property is seen as an important instrument through which governments mobilize and leverage resources for development. This is an idea that has long been discredited by the poor performance of states as catalytic forces in economic development. State ownership of key resources has as much stifled enterprise and economic growth as it has encouraged it. In the forest sector, it has not created positive incentives for conservation; contrary evidence suggests that in many settings it has created disincentives.

Forest agencies are structured and staffed in ways that serve a policy orientation that emphasizes direct regulation of forest use and rule enforcement. As such, they are ill equipped as presently constituted to embrace and lead forest sector reforms based upon authentic devolution of rights to communities. Arguably, many reforms promoted from outside of forest agencies, or by innovative new leaders within the agencies, get stymied in the course of implementation because staff at all levels have not been properly briefed and trained in skills supportive of the new policy orientation. Agency leadership, even when accepting the need for reform, are often more comfortable with programs that are meant to promise greater forest-based benefits to

communities without giving communities substantive new forest rights. Benefit-sharing schemes are popular examples of these half way measures.

Forest rights devolution policy in sub-Saharan Africa is in the grips of a conundrum. Effective community management requires devolution of a meaningful array of rights to communities, accompanied by a retreat by states from active, close supervision of community-level forest use through intensive forms of regulation such as permitting use of trees. Liz Alden Wily, quoted at length in Box 4.4, argues that effective community management practices are only likely to take root once rights have been devolved to communities.

Reflecting on sub-Saharan Africa as a whole, the official embrace of forest rights devolution to communities has been tentative and ambivalent at best. Tanzania has shown the greatest confidence of any country in the ability of village-level institutions to manage community forests sustainably, and has devolved a wide array of forest rights to community-level control. Other countries reviewed in this study, including DRC, Ethiopia, Zambia, Kenya, and Ghana, have adopted a variety of policy and legislation reforms in the forest sector that are tentative in character and which may not be receiving the kind of concerted official support necessary to implement them fully.

A resource rights movement of great promise is occurring outside of forest sector reform, under the rubric of the statutory recognition of community tenure. Proponents of forest tenure reform through rights devolution could very productively direct their attention to ensuring that control of forests as common property resources be made an integral part of efforts to clarify and strengthen the roles of community land rights institutions.

Box 4.4: How secure long-term community rights over forests helps create the conditions for effective local management (Alden Wiley, 2004)

First, lasting local *custodianship* may logically be expected to be more easily rooted where ownership of the resource is legally clear and secure. That is, as formally acknowledged owners, the community will be able to secure more authority over how the forest is used, regulated and protected.

Second, security of tenure…allows the community to adopt a *long-term horizon* to management decisions and therefore more cautious conservation measures. Where security of tenure has been provided, it is not uncommon for the community to close off degraded or threatened areas to all use, in order to allow the forest to recover. They may also have the luxury of limiting commercial extraction for the immediately future, providing a breathing space to acquire the skills and confidence to regulate such activities safely.

Third, once consciously and formally owned, the forest moves from being a relatively open-access resource to exploit (and particularly where it is owned by the State) to one that gains status as a primary *capital* asset, and which, as capital must be protected in order to allow a sustainable stream of benefits ("interest") to proceed. In contrast, where ownership is not assured, or is vaguely framed in law and on-the-ground, the community may be expected to focus upon the exploitation of the forest for benefit, not its security as their own asset.

Fourth, as a formally established shared community asset, the opportunity arises for majority interests to prevail over those of leaders or economic elites within the community. Whilst it does not necessarily follow that the poor are less willing than the rich to see the forest converted to agriculture, over-extracted or sold off, this formal positioning of inclusiveness does tend to force the community to make decisions that are in the interest of the whole community, not just sub-sectors, leaders or elites.

5.0 ASIA'S EXPERIENCES WITH FOREST GOVERNANCE DEVOLUTION

5.1 FOREST OWNERSHIP DISTRIBUTION PATTERN IN ASIA

Asia is moving more slowly toward devolving rights over forests than Latin America, but somewhat faster than Africa (see Figure 5.1). For the eight Asian countries[1] with tropical forest included in the 2010 RRI/ITTO study, the land area over which communities and indigenous people exercise full ownership rights increased only very slightly, from 143 Mha in 2002 to 146 Mha in 2008. The area of land in public ownership but reserved for use by communities and indigenous went from 12 Mha to 18 Mha, an increase of 45 percent. However, the overall percentage of land in this category (four percent) remains small. A substantial percentage of Asia's forest estate (25 percent) is owned by private individuals or corporations.

A caveat to interpreting RRI/ITTO's data on forest ownership in Asia is that the study likely underestimates both the amount of public land reserved for community use and the amount of land owned by communities. The study did not include the Philippines, where much forested land is either managed by communities under Community-Based Forest Management Agreements or held by Indigenous Peoples under Certificates of Ancestral Domain titles. Additionally, the study pre-dated implementation of India's 2006 Forest Rights Act, which provides a mechanism for formal acknowledgement of ownership rights for members of scheduled tribes and other traditional forest dwellers on up to four hectares of forest lands per household, and for unspecified areas of collectively held lands.

In the following sections, the authors examine the experiences of five Asian countries (India, Indonesia, Nepal, the Philippines, and Vietnam) with forest governance devolution during the past several decades. This section begins with a brief overview of the regional forest cover change context, which differs significantly from those of Africa and Asia. Trajectories that each of the case study countries have taken toward devolving management and/or ownership rights (and responsibilities) over state forest lands are described, and then compared using a "bundle of rights" analysis. Where sufficient data is available, there is a brief assessment of the record of each approach with respect to its ecological and livelihood outcomes.

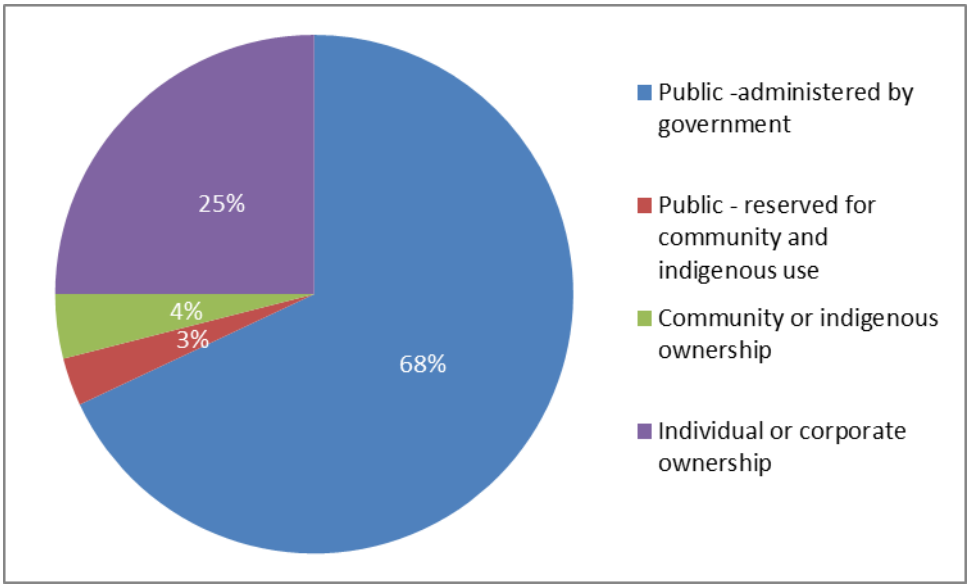
5.2 FROM NET DEFORESTATION TO NET AFFORESTATION: A REGIONAL FOREST COVER TRANSITION

Unlike Latin America and Africa, the Asia region as a whole is experiencing an expansion in forested area. According to the FAO's 2010 global forest assessment, Asia's annual rate of change in forest cover between 2000 and 2005 was estimated at +0.48 percent (FAO, 2010). Although the rate of expansion decreased to

[1] The countries are Cambodia, China, India, Indonesia, Malaysia, Myanmar, Papua New Guinea, and Thailand.

0.29 percent for 2005–2010, it remained positive. Much of the region's growth in forest cover is driven by afforestation taking place in China, which experienced a net gain in forest cover of nearly nine million hectares between 2000 and 2010. However, a number of other countries, including Bhutan, India, the Philippines, and Vietnam also experienced substantial expansion of their forested area. Additionally, although Indonesia reported a net loss in forest cover during the 2000s, its deforestation rate has fallen substantially from what it was in the 1990s.

FIGURE 5.1: DISTRIBUTION OF FOREST OWNERSHIP IN ASIA



Source: RRI/ITTO (2010)

The 2010 FAO global forest assessment indicates that Asia also differs markedly from Africa and Latin America in the extent to which its forest cover consists of planted forests. Plantation forests comprise nearly 21 percent of Asia's total area under forest cover, compared with only 2.3 percent in Africa and 4.7 percent in Central and South America. Plantations in China, Indonesia, and Thailand are primarily industrial plantations, and were generally established to produce either timber or rubber (McKenzie et al., 2004). In contrast, two-thirds of India's plantations are categorized as non-industrial plantations that were initially established as fuelwood plantations, although many are now harvested for construction wood or pulp (ibid.). Since the early 2000s, interest in developing oil palm (*Elaeis guineensis* Jacq.) plantations has expanded in countries such as Indonesia and the Philippines in response to increased demand for biofuels (ibid.). Interest in establishing plantation forests has also grown during the past decade with the implementation of the Clean Development Mechanism program (ibid,) and, more recently, projects related to REDD+.

While the FAO's data on forest cover change are indicative of a trend toward more sustainable forest management in Asia as a whole, they must be interpreted cautiously as regional statistics mask substantial differences in deforestation rates among countries. For example, forest cover change rates remained negative in Cambodia (-1.22 percent), Laos (-0.49 percent), Mongolia (-0.74 percent), and Malaysia (-0.42 percent) between 2005 and 2010 (FAO, 2010). Moreover, national-level statistics that indicate an overall expansion in forest cover can obscure substantial differences in forest cover change rates at the sub-national level. Additionally, significant declines in primary forest cover can occur under net afforestation scenarios if plantation rates are sufficiently high.

Given that the forest cover change transition in Asia coincides with widespread efforts in the region to devolve governance over state-owned forests, it is useful to explore the question of whether improved

ecological conditions in these areas are linked to the re-allocation of rights to forests. Although providing a definitive answer to this question is beyond the scope of this project, a systematic review of the major forest governance devolution approaches Asian countries have taken during the past two decades allows us to identify tentative relationships between forest conditions and forest governance attributes, as well as between forest governance attributes and livelihood outcomes.

5.3 PATHS TO FOREST GOVERNANCE DEVOLUTION IN ASIA

Two major pathways to forest governance devolution are represented among the five case study countries. India, Indonesia, Nepal, and the Philippines have focused on devolution approaches that emphasize delegating or transferring rights and responsibilities over state forest land to collectivities, and in some cases where rights' transfers are partial, sharing revenues generated from sales of forest products. A variety of approaches has been implemented in these four countries, including community-company partnerships on industrial forest concessions (Indonesia), community-based forest concessions (Indonesia), and forest leaseholds (Nepal); benefit-sharing types of co-management schemes (India, Nepal); co-management schemes where communities retain 100 percent of forest product sales revenues (Philippines); co-management schemes where communities are granted rights just short of ownership (Nepal); formal recognition and titling of Indigenous Peoples or customary forest rights (Philippines, potentially Indonesia); and titling of already-existing, but long-ignored, statutory rights to forest land (India). Vietnam has emphasized approaches to devolution that delegate or transfer rights and responsibilities over state forests to households and individuals. The two most commonly used approaches in Vietnam include long-term forest land allocations to individuals or households and long-term contracts to households or individuals permitting them to use and protect degraded forest lands. However, there has recently been pressure from ethnic minorities in highland areas of Vietnam to expand investments in communal forms of tenure on forested lands.

5.4 FROM SOCIAL FORESTRY TO CO-MANAGEMENT

India, Nepal, and the Philippines experienced rapid depletion of once-extensive forests during the mid- to late-20th century; albeit under very different demand scenarios. Deforestation in the Philippines was fueled primarily by global demand for tropical timber, and the country supported the development of a large export-oriented logging industry by providing easy access to state-owned forests (Magno, 2003). In post-independence India, the centralized government rapidly depleted state forests by selling timber at very low prices as a strategy for encouraging domestic industrial demand and fueling rapid internal economic development (Balooni, 2002). In Nepal, nationalization of the country's forests in 1957, combined with an ineffective forest enforcement system, led to widespread depletion of forest vegetation and extensive soil erosion as an expanding rural population sought to fill its livelihood needs from *de facto* open access forests (Dahal and Adhikari, 2008).

Beginning in the late 1970s and 1980s, all three countries sought to implement large-scale social forestry schemes, such as village woodlots and village afforestation programs, to restore degraded state-managed forested landscapes while addressing poverty-reduction goals (Sekhar and Jorgensen, 2003). Social forestry initiatives in India, Nepal, and the Philippines have been critiqued for their tendency to shift the costs of forest restoration from the state to poverty-stricken rural communities while providing limited economic benefits or opportunities for community members to participate meaningfully in forest management decisions (Sekhar and Jorgensen, 2003). As external funding for social forestry programs dwindled in the early 1990s, co-management schemes, in which villagers received a share of forest revenues and took on a greater role in forest management decisions, emerged in many parts of Asia (Dahal and Adhikari, 2008).

Co-management arrangements come in a variety of forms, and include JFM in India; Community Forestry (CF), pro-poor Forest Leaseholds, Collaborative Forest Management, and Buffer Zone Forest Management in Nepal; CBFM and Memoranda of Agreements in the Philippines, and *Hutan Kemasyarakatan* (Community Forests [HKm]) in Indonesia. As in Africa, co-management schemes in Asia consist of arrangements in which

the centralized forestry department (through the provincial or state-level forestry department) grants communities some forest rights. Generally the rights granted are limited to rights of access and subsistence use but occasionally commercial use rights are granted as well, particularly for NTFPs and, more rarely, for timber. Co-management schemes in Asian countries often include benefits-sharing arrangements where a percentage of revenues from the sale of commercial timber (or other nationally managed products) is shared between the national government, the community-level forest management entity, and (sometimes) local-level government entities. The granting of use rights and the sharing of benefits from forest product sales are designed to provide economic incentives for communities to take on the responsibilities of restoring and maintaining forest cover on degraded state-owned forest lands (Dahal and Adhikari, 2008).

Sections 5.5–5.7 compare the co-management scheme experiences of India, the Philippines, and Nepal. Indonesia's experience with co-management is comparatively new and is treated separately further in this chapter.

5.5 JOINT FOREST MANAGEMENT: INDIA'S EXPERIMENT WITH CO-MANAGEMENT

JFM became official policy in India in 1990 when the Ministry of Forestry issued a Circular outlining the rights of local communities to use and manage forest lands (Sarin, 2003). All of India's states have since adopted JFM and approved guidelines for its implementation (Kishwan et al., 2007). The 1996 *Panchayat* (Extension to the Scheduled Areas) Act (PESA) strengthened and broadly institutionalized the implementation of JFM by devolving some powers over forest lands to tribal community villages and councils in Scheduled Areas (Kishwan et al., 2007). Initially, JFM was applied only on degraded forest lands; it has since been expanded to include healthy forests (Sarin et al., 2003).

As of 2007, more than one million JFM groups managed roughly 22 million hectares of forest land (Kishwan et al., 2007). The rights over forests granted through JFM agreements vary by state; in general, JFM groups nominally have full rights to NTFPs except for those that are categorized as "nationalized" products (e.g., tendu leaves, sal seeds, and bamboo, among others) (Kishwan et al., 2007). In all states, JFM groups also nominally receive a share of the revenues from timber harvested within the forest they manage; the percentage varies from state to state and ranges from as little as 20 percent to as much as 100 percent (Kishwan et al., 2007).

JFM areas are managed through microplans which must conform to silvicultural prescriptions of the state Forest Department's working plan for that area (Sarin et al., 2003). The Memoranda of Understanding governing JFM areas are for five years with an option to renew (Sarin et al., 2003). The organizational forms that JFM groups take, their legal status, their autonomy relative to the Forest Department, their management conditions, and the types of land they operate on vary by state (Sarin et al., 2003). For example, in Orissa and Uttar Pradesh, JFM groups can acquire co-management rights over revenue lands (i.e., commercially valuable forests), while in other states they are only allowed to manage degraded forests (Sarin et al., 2003).

Tenure insecurity is relatively high for JFM land, as the program exists only by executive order and can be rescinded at any time (Government of India [GOI], 2010b). Moreover, the extent to which JFM is truly a "joint" endeavor is questionable, as evidenced by the following conclusion from a recent fact-finding study related to the implementation of the 2006 Forest Rights Act: "…the 'jointness' in JFM is seriously limited in the field, with day-to-day decisions being controlled by the forest official who is usually ex-officio secretary of the committee and also by larger decisions (regarding planting, harvesting, etc.) being controlled by the FD [Forestry Department]" (GOI 2010b, p. 138).

The same study also found that FD control over planting decisions continues to emphasize the planting of fast-growing exotic species, often with adverse impacts on grazing, fuelwood, and NTFP resources. Full rights to forest products are rarely given, even when promised; often, JFM committees do not receive their share of timber revenues.

Sarin et al. (2003) found that corrupt FDs in Orissa, Madhya Pradesh, and Uttarakand undermined village efforts to enforce harvesting and encroachment rules by granting use rights over JFM lands to economically more powerful users. In areas with strong traditional community management systems, village forest management committees generally have been successful at keeping out encroachers from other villages or pastoralist groups and in ensuring that their own members follow the rules (Sarin et al., 2003). In communities with weakened traditional systems, however, villagers have struggled to enforce their rights with respect to outsiders and have also experienced difficulties in getting their own members to adhere to forest use rules (Sarin et al., 2003). Relationships with state FDs are often tense, and obtaining assistance for enforcement may require villagers to pay a bribe, which deters many villagers from seeking enforcement assistance from the state (Kashwan, 2003). In some areas, villagers have formed forest village federations to enhance their ability to mount non-violent protests and hold forestry officials accountable to the law (Sarin et al., 2003).

Data on forest quantity and quality gains attributable to JFM are limited and it is difficult to disentangle the effects of other contributing factors (Véron and Fehr, 2011). However, case studies indicate a general pattern in which modest ecological gains occur in areas where community forest governance systems are still operational (Agrawal et al., 2005). In general, JFM has had a modest positive impact on rural residents in general, but marginalized groups (such as women, members of tribal groups, landless villagers, members of lower castes, and the less well-off) typically derive fewer benefits (Agrawal et al., 2005; Balooni, 2002; Paul and Chakrabarti, 2010).

The National Committee on the Forest Rights Act (GOI, 2010b, p. 138) summarizes JFM's utility in the following manner: "…these programmes were largely conceived of and implemented as tools for getting some local participation in pre-defined goals of conventional silviculture or conservation by extending some concessions or offering some wage labour benefits." The Committee concludes that JFM in India has done little to expand the rights of communities to manage and use forests. Joint Forest Management Agreements are likely to be phased out in much of India as community forest rights claims under the 2006 Forest Rights Act (discussed later in this chapter) become registered (GOI, 2010b).

5.6 COMMUNITY-BASED FOREST MANAGEMENT: THE PHILIPPINES' EXPERIMENT WITH CO-MANAGEMENTS

The Philippines' 1987 Constitution vests ownership rights to forests in the public domain, as well as all natural resources other than agricultural lands, in the state. At the national level, the agency with primary responsibility for managing forest lands is the Department of Environment and Natural Resources (DENR) (Guiang and Castillo 2006). In the 1980s and 1990s, DENR implemented several new types of forest agreements aimed at devolving a larger share of rights and responsibilities to forest communities.

In the Philippines, roughly 5,500 communities now manage 5.97 million hectares under co-management arrangements known as Community-Based Forest Management Agreements (CBFMA) (Blaser et al., 2011). By contrast, only 783,000 hectares of land are managed under Integrated Forest Management Agreements, the DENR's standard timber concession instrument (Blaser et al., 2011). DENR Administrative Order 22 of 1993 and Executive Order 263 of 1995 provide the legal basis for CBFMAs. Under CBFMAs, the DENR grants rights and responsibilities for forest management to communities for 25 years, with an option to renew for another 25 years (Pulhin and Tapia, 2009). Issuance of a CBFMA is conditional on the completion of a DENR-approved management plan.

To obtain use rights to timber, CBFMA holders must apply for a Resource Use Permit (RUP), which is a lengthy process. The permit is always potentially subject to unilateral suspension or cancellation (Pulhin and Tapia, 2009). Moreover, CBFMAs are subject to unilateral cancellation by DENR and thus are relatively insecure as a form of tenure (Pulhin and Tapia, 2009). Nonetheless, CBFMAs protect the land from being allocated to other users, providing communities a measure of tenure security that they did not previously have (Pulhin and Tapia, 2009). Moreover, CBFMA holders enjoy a number of other privileges they previously did not have, including the right to extract resources other than timber for subsistence use or sale, rights to farm, and the right to transfer use rights to the area covered under the agreement to family members (see Box 5.1).

Box 5.1: Privileges granted to CBFMA holders in the Philippines

- To occupy, possess, utilize, and develop the forestlands and its resources within a designated CBFMA area and to claim ownership of introduced improvements.
- To allocate to members and to enforce rights to use and manage forestland resources within the area in a sustainable manner.
- To be exempt from paying rent and forest charges.
- To be properly informed of and consulted on all government projects to be implemented in the area.
- To be given preferential access to assistance in the development and implementation of the CRMF (Community Resource Management Framework), RUP, and AWP (Annual Work Plan).
- To receive all income and proceeds from the sustainable utilization of forest resources within the CBFMA area.
- To enter into agreement or contracts with private entities or government agencies.

Source: Ballesteros (2001, p.17).

CBFM in the Philippines is first and foremost a biodiversity conservation strategy and is based on the assumption that "by stabilizing the livelihood of upland communities they will become partners in biodiversity conservation in the remaining natural forests" (Lasco and Pulhin, 2006, p. 51). Studies of the environmental outcomes of CBFM in the Philippines generally point to strong gains in environmental outcomes, including lower rates of illegal logging and less destructive forms of swidden clearing (Lasco and Pulhin, 2006; Pulhin and Tapia, 2009). Perhaps the strongest indication that CBFM in general is environmentally sustainable is the Philippines' recent shift from being a site of net deforestation to being a carbon sink (Blaser et al., 2011).

The livelihood gains from forest governance devolution, however, are much less apparent. Many more forest community members now have legal access to resources on lands formerly administered solely by the state (Pulhin and Tapia, 2009; Arguiza et al., 2010). This likely has the positive effect of decreasing stress for many forest users, whose daily activities are no longer criminalized. However, it is unclear whether the incomes community members earn from harvesting these products legally differ substantially from what they used to earn when harvesting products illegally (Pulhin and Tapia, 2009). Devolution projects associated with reforestation or other donor-funded conservation or forest enterprise development projects have provided community members with short-term improvements in earnings. That said, it is unclear how sustainable these gains will be once donor support disappears (Guiang et al., 2001; Pulhin and Tapia, 2009).

Difficulties with enforcement for CBFMAs are chronic and pose an as-yet-unresolved issue, in large part because the DENR and local government units lack the resources, the political will, or both to carry out their enforcement responsibilities (Guiang and Castillo, 2006). The lack of political will and general inability to manage effectively or fairly is reflected in Philippines' relatively low World Governance Indicator scores, most of which are negative (World Bank, 2011). A recent review of corruption in the Philippines' forestry

sector concludes that the "effective enforcement, regulation and monitoring of environmental policies is undermined by rent-seeking system of securing permits, licenses and concessions to exploit natural resources" (Mayo-Anda, 2011).

5.7 NEPAL: MULTIPLE APPROACHES TO CO-MANAGEMENT

The federal government in Nepal owns all forest land; however, it delegates management over a large percentage of this land to local communities through several different types of co-management schemes. The three most common co-management approaches are Community Forestry (CF), Buffer Zone Community Forestry (BZCF), and Collaborative Forest Management (CFM) (see Box 5.2). Nepal also has a pro-poor Forest Leasehold (FLH) program that provides groups of low-income rural households access to degraded forest lands. Although FLH is a lease arrangement rather than a co-management arrangement, the authors include it in the discussion below because it was designed to address the benefit distribution inequities often associated with co-management systems.

5.7.1 COMMUNITY FORESTS

As of 2009, the Nepalese Forest Department had delegated management over approximately one-fourth of Nepal's forests to local communities or groups of households in rural areas under its Community Forests program (Ojha et al., 2009). In 2009, 1.6 million households, representing 32 percent of Nepal's population, were members of Community Forest User Groups (CFUGs), and more than 14,000 CFUGs operated within the nation.

Under the CF program, the state retains ownership rights but delegates its management authorities and grants use rights to CFUGs that are formally constituted and registered. The CFUGs have legal standing and are responsible for developing their own management goals, activities, and rules governing the use of the area in their charge. The CFUGs keep 100 percent of the revenues obtained through the sale of forest products. However, they have to pay a tax on any products sold to non-members. Additionally they are required to dedicate 25 percent of their forest management revenues to community development.

Although CFUGs have considerable autonomy compared to JFM groups in India and CBFM groups in the Philippines, their management and use plans still have to fit within guidelines established by the District Forest Officer (DFO). Historically, the CFUGs have had a great deal of freedom in how they organize themselves internally, a feature that has frequently been cited as an important element in their success (Ojha, 2009). However, Community Forest Guidelines issued in 2008 have sought to standardize these structures, and it is unclear what effect this standardization will have on CFUG operations (Ojha et al., 2009). Another important factor in the success of the CF program was the early emergence of the Federation of Community Forest Users, Nepal (FECOFUN), a nation-wide NGO whose members are drawn exclusively from forest user groups (Timsina, 2003). FECOFUN seeks to raise awareness among forest users about their rights and to advocate on behalf of forest users in policy deliberations (Andersen, 2011; Timsina, 2003). As the largest civil society organization in the country, and with thousands of forest user groups behind it, FECOFUN exerts considerable influence in the nation's forest politics.

Nepal's Community Forest program is generally considered to be a highly successful co-management program. In a recent study of environmental impacts of CF in the middle hills area of Nepal, Pandit et al. (2011, p. 351) conclude that "community forestry has brought a positive change in local environment and slowed the accelerating rate of deforestation and forest degradation." Pokharel et al. (2007, p. 15) summarize the quantitative studies that have been done on the environmental impacts of CFs, noting that "All these have indicated positive changes—in regeneration status, canopy density, biodiversity, basal area, etc.—as a result of forest handover to CFUGs."

Pandit et al. (2011) also identified social and economic benefits associated with CF, including an expansion in social capacity through regular decision-making and management activities and investments in local

development such as potable water, trail and road improvements, and rural electrification. An earlier study of 2,700 households from 26 CFUGs found that 46 percent of poor members had increased their well-being in part through CFUG livelihood support and capacity-building activities, and the average household income had increased 61 percent (Ohja et al., 2009). Benefits tended to occur at the household rather than individual level (Ohja et al., 2009). Anderson (2011), however, notes that benefits from Community Forests are sometimes skewed in favor of wealthier households and against women, indigenous communities, and casteless *dalits*.

The CFUGs have also shifted over the past 20 years from being largely donor-supported to providing the majority of their operating costs through forest revenues, an indication that they are likely to prove sustainable in the long term (Ohja et al., 2009). Participation in forest management, development of a strong and widespread community forest network, clear legal standing, and independence from the government forest department have been key factors in the success of Nepal's community forestry program. As a result, "CFUGs have become durable institutions supported by an active and vibrant network of CFUG federations, all contributing to the sociopolitical sustainability of community forestry in Nepal" (Ohja et al., 2009, p. 25).

However, in 2010, the Government of Nepal drafted a bill to amend the 1993 Forest Act to return some of the powers given to the communities back to the government (Sunam et al., 2010). Proposed changes include expanding the role of the forestry department in CFUG forest planning, harvesting, and marketing activities; requiring CFUGs to contribute 50 percent of their forest revenues to the national treasury; and restrictions on tree-felling (Sunam et al., 2010). After facing strong resistance from FECOFUN and other civil society organizations in early 2011, the amendment is presently on hold.

Box 5.2: Co-Management Approaches Used in Nepal

Community Forestry: This program was authorized under the 1993 Forest Act, which allows the DFO to transfer management of portions of a national forest to CFUGs. Community forests are intended to be managed for the community's collective benefit. CFUGs develop their own management plans, which must be approved by the DFO. Once the plan is in place, CFUG members can protect and manage the forest included in their plan. They have considerable leeway in forest use activities, including rights to harvest, sell, and distribute products, including timber. However, at least 25 percent of the revenues generated through forest product sales must be invested in forest improvements and conservation.

Buffer Zone Community Forestry: This program was authorized under the Wildlife Conservation Act of 1993 which declared that parks can establish buffer zones and allow communities to manage, extract, and sell certain forest products according to guidelines established by the Park Warden. Additionally, restrictions are placed on how forest revenues are spent (for example, 40 percent must go to conservation activities), and the Park Warden has unilateral powers to restrict forest uses. Buffer zone community forests are meant to be managed so as to permit community members to use forest products while conserving biodiversity.

Collaborative Forest Management: This program began in 2000 under a cabinet decision within the Ministry of Forest and Soil Conservation and was developed to provide a mechanism for expanding co-management of national forests to the rich forests in the Terai region. Users only have access and withdrawal rights and share the profit of any products with the government. Unlike Community Forestry, CFM seeks to involve both nearby and distant forest users, and is coordinated through a District Forest Coordination Committee.

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5.7.2 COLLABORATIVE FOREST MANAGEMENT: NEPAL'S EXPERIMENT WITH BENEFITS-SHARING

Nepal's CF program is among the few co-management initiatives in developing countries to eschew a benefits-sharing model, in which a portion of forest revenues are typically shared between the community and the forestry department, and sometimes local governments. This unusual provision was linked to the condition of the forests that were the object of Community Forestry initiatives during its early years. Most Community Forests were badly degraded sites, and it was expected that communities would need to invest substantial effort and funds into re-planting, enforcing grazing and farming restrictions, and in building terraces and check dams to reduce soil erosion rates. By letting communities keep all of their forest revenues (except for 15 percent tax levied on products sold to non-members), and by granting the CFUGs considerable management powers, the Nepalese government hoped to provide sufficient incentives for

people to engage in forest protection and conservation. The strategy was successful, and as CFs spread across the country, pressure built up for the Ministry of Forests and Soil Conservation (MFSC) to include some of the country's high-value forests, which are located primarily in the Terai region (Bampton et al., 2007).

In 2000, the revised Forestry Sector Policy made provisions for allocating out blocks of high-value forests in the Terai through CFM. The MFSC approved operational guidelines for initiating CFM in the Terai in 2003. CFM differs substantially from CF and much more closely resembles JFM in India or CBFM in the Philippines. Rather than being run by user groups, the CFM areas in the Terai are managed by a committee dominated by the local forestry department. Additionally, 25 percent of the income from CFM areas is to be allocated to local government units (Village Development Committees and District Development Committees); while the remaining 75 percent is to go to the national government (Bampton et al., 2007). Although community members have use rights to firewood and fodder, income from the commercial sale of forest products is only of indirect benefit to them, and they have little voice in how CFM areas are to be managed (Brampton et al., 2007). The decision-making structure of CFM committees is laid out in an MFSC directive that leaves no room for adapting the structure to local circumstances (Bampton et al., 2007).

Bampton et al. (2007) critique CFM on a number of grounds, including that its institutional structure is too rigid, the DFO exercises too much control over decision-making and implementation, and the communities bear an unfair share of the costs of protecting and improving forests in return for limited benefits. Whereas CF has as its goal the management of forests for the collective benefit of communities, CFM is designed to provide revenues for local governments and the national treasury: "One principal aim of CFM is to ensure that local governments, bypassed by CF also receive benefits from Terai forest management for funding local development activities, while central government continues to receive significant revenues, as it has throughout history, from what is still considered a national asset for the greater benefit of all Nepalese (Brampton et al., 2007, p. 33)."

The CFUGs in the Terai have resisted the establishment of CFM in the Terai on the grounds that CFs have already proven their efficacy and that creating a new forest management structure is unnecessary (Bampton et al., 2007; Bhattarai, n.d.). However, proponents of CFM argue that CFs have historically struggled to avoid elite capture and to provide distant users equal access as proximate users (Jamarkattel et al., 2009). They assert that CFM's more inclusive multi-stakeholder committee structure is more likely to address these concerns. Because CFM has only recently begun to be implemented on the ground, data comparing the ecological and livelihood outcomes of CFM and CF are not yet readily available.

Box 5.3: Forest Leaseholds

In 1993, Nepal created the pro-poor Forest Leasehold program to address the shortcomings of CF with respect to equitable distribution of benefits. As of August 2011, approximately 6,700 groups of households with 62,745 member households managed leasehold forests (LHF) on 62,745 acres in Nepal The average LHF is 5–10 hectares. To qualify for the program, potential leaseholders must own less than 0.5 hectares of land and make an annual income of less than 2,500 rupees (about $50 US).

Leasehold forestry's aim is to "raise the incomes and improve the living conditions of poor families, while restoring degraded forests" (Singh and Chapagain 2005, p. vii). Leasehold groups are given long-term exclusive use rights to degraded forest lands under 40-year lease, renewable for an additional 40 years. All benefits from the forest go directly to the leaseholders.

International donors provide loans for householders to make conservation investments, such as planting trees or building check dams. Extension support is provided by the Department of Forests, the Department of Livestock, the Agricultural Development Bank of Nepal, and the Nepal Agricultural Research Council.

Ecological outcomes of LHFs: In some areas, LHFs have experienced increases in ground cover, species diversity, and tree density; but in others, forest cover has diminished as a result of overgrazing.

Livelihood outcomes of LHFs: Many user groups experience an improvement in their economic status and food security. Often this is not linked to an increase in income but rather to money saved by not having to buy fuelwood, fodder, and other basic household inputs. Additionally, the reduced time it takes for householders to gather firewood or forage frees them to get other tasks done.

Enforcement is a major challenge for most LHFs. Many LHFs are located on lands that have historically been de facto open access for a wide variety of users. Poor households often find it difficult to keep other users out of their leasehold, a problem that is exacerbated by the leaseholders' generally lower social status.

User groups have tackled this problem in several ways:

- In the Makwanpur district, one user group decided to parcel out their forest block to member households, with each household responsible for conserving its area. This solution reduced enforcement issues but it increased equity issues as the quality of the forest varied greatly.
- In Bhagawatisthan, eight user groups who were unable to agree on rules finally formed a federation, or inter-user group. Each group has a representative on the inter-user group. The inter-user group reached agreement on use rules and quickly put an enforcement program in place.

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5.8 THE MOVEMENT TOWARD RIGHTS RECOGNITION AND TITLING OF CLAIMS

At the same time that co-management initiatives emerged in India and the Philippines, Indigenous Peoples and tribal groups living in more heavily forested and remote areas expanded their efforts to gain recognition of the customary rights to land and resources that colonial regimes had appropriated from them a century or more earlier. In the Philippines, where indigenous rights efforts were closely bound up with the overthrow of the Marcos regime in the late 1980s and a generalized movement toward decentralization, "push-back" on the part of the nations' Indigenous Peoples resulted in the passage of the Philippines' Indigenous Peoples Rights Act in 1997. In India, which did not experience a similarly radical shift in its ruling regime, the process of recognizing customary rights took an additional decade to accomplish. Indonesia, Vietnam, and Nepal have not yet implemented similar types of rights recognition policies.

5.9 RIGHTS RECOGNITION IN THE PHILIPPINES

In the Philippines, the right of indigenous communities to possess and own the land and resources located within their demarcated ancestral domain is formally recognized under a Certificate of Ancestral Domain Title (CADT) (Walpole and Annawi, 2011). The legal basis for the recognition of these rights is the 1997 Indigenous Peoples Rights Act (IPRA). IPRA does not grant rights, but rather recognizes pre-existing claims. Importantly, IPRA also recognizes the rights of Indigenous Peoples to self-governance and cultural integrity (Asian Development Bank, 2002). Box 5.4 lists the major rights included in the Indigenous Peoples Rights Act.

Box 5.4: Rights Recognized by the 1997 Philippines' Indigenous Peoples Rights Act

- Right of ownership and possession over resources within their ancestral domains.
- Right to develop, control, and use lands and natural resources in areas they traditionally occupied.
- Right to develop their own rules governing the use and extraction of resources (but contingent on state approval).
- Right to stay in territories.
- Right to regulate entry of migrants.
- Right to resolve conflicts according to customary law.
- Right to transfer ancestral land or property to other members of the Indigenous Peoples' group associated with the CADT, with state approval (through the National Commission on Indigenous Peoples).
- Right to be informed and consulted on all government projects prior to their implementation (i.e., free prior informed consent).
- Right to clean air and water within their ancestral domain.

Source: Ballesteros (2001, p. 25–26).

The law also lists responsibilities of CADT holders. These include maintaining an ecological balance and restoring denuded areas (Asian Development Bank, 2002). Critics of the Indigenous Peoples Rights Act have observed that this language places a land management burden on Indigenous Peoples that are not placed on other holders of titled land (Walpole and Annawi, 2011). Additionally holders of CADTs are required to develop a DENR-approved Ancestral Domain Sustainable Development and Protection Plan (Arguiza et al.,

2010). This requirement is time-consuming and costly as many DENR local offices refuse to recognize the plans as permits and require that CADT holders obtain harvesting licenses (ibid.).

Certificates of Ancestral Domain Title convey permanent and exclusive use rights to the community to which it has been granted, and thus offer a relatively high degree of security to their holders (Walpole and Annawi 2011). Indigenous Peoples are further protected by a provision of the IPRA that requires free, prior and informed consent of indigenous communities whose lands are affected by outside actions, such as the allocation of mining concessions (ibid.). However, the free prior informed consent (FPIC) process written into the law is rigid, complex, and follows a time schedule that makes it difficult for many Indigenous Peoples to fully participate (ibid.). Although the process for delineating CADTs is slow, nearly 7.1 million hectares of public domain forestlands are now held by indigenous communities under certificates of ancestral domain title or are the object of such claims (Blaser et al., 2011).

The capacity of indigenous communities to enforce the rules on their own also varies greatly. On Palawan, for example, the Alangan Mangyan people's still-functional traditional "environmental police" system has enabled it to develop effective enforcement for its Certificate of Ancestral Domain Claim (CADC) area (Arguiza et al., 2010). Other Indigenous Peoples in the area have greatly weakened collective action systems and are experiencing difficulties with enforcing rules over their CADCs (ibid.). Indigenous communities increasingly have been able to enforce their rights over forests against more powerful economic actors, such as mining and timber companies, by working with well-connected international organizations or forming their own political action networks (Pulhin, 2002). Since 2009, Code-REDD, a network of Filipino civil society advocates, has taken steps to demystify REDD+ for forest community members in general (Code-REDD, 2011). Code-REDD has recently pressured the Filipino government to recognize community rights in its national REDD strategy and to engage in consultation processes at all levels of decision-making.

5.10 INDIA: STRUGGLES OVER IMPLEMENTING THE 2006 FOREST RIGHTS ACT

In 2002, the Indian Forest Department sought to strengthen its JFM program by forcibly evicting long-established forest users from areas covered under JFM agreements (Bose, 2010). The evictions catalyzed a concerted effort on the part of the dispossessed peoples to acquire formal titles affirming individual and community rights to forest land and resources, and resulted in the passage of India's Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in 2006 (ibid.). This Act does not grant new rights; instead, it provides a mechanism for members of scheduled tribes and other traditional forest dwellers to obtain individual and community titles to forest land or resources based on customary claims (ibid.). Box 5.5 provides a list of the major rights recognized in the Forest Rights Act (FRA) 2006.

Forest dwellers are defined as people who are presently primarily residing in forests or forest lands, dependent on those forests for their livelihoods, and who either have been residing in the area for 75 years or are a member of a Scheduled Tribe for which the area was set aside (GOI, 2006).

Box 5.5: Major Rights Recognized under India's 2006 Forest Rights Act

- Communal rights of forest ownership.
- Customary rights of access to collect, use, and dispose of non-timber forest products that have been gathered within or outside village boundaries.
- Customary rights to grazing lands and water bodies.
- Rights to traditional use areas by nomadic and pastoralist peoples.
- Community rights to biodiversity, intellectual property, and traditional knowledge.
- Individual and household rights to cultivate and occupy up to four hectares (for lands cultivated as of December 13, 2005); these lands can be given in inheritance but not sold or transferred.
- If there is irreconcilable conflict between human habitation and wildlife conservation, a resettlement package must be provided and holders of titles have the right to free prior informed consent regarding proposed resettlement areas.
- Management rights, including the right to protect, regenerate, and conserve traditional community resources; however, rights holders also are required to protect wildlife, forests, and biodiversity and manage such resources in a sustainable manner.

Source: GOI 2006, Forest Rights Act

The Ministry of Tribal Affairs is responsible for implementing the 2006 Forest Rights Act (Sarin and Springate-Baginsky, 2010). Exclusion rights are vested in the *Gram Sabha*, which Sarin et al. (2003, p. 6) describe as "the body of all adult voters of a self-defined community." The rights recognized under the 2006 Forest Rights Act are heritable, but cannot be alienated or transferred. Importantly, particularly given the predatory nature of India's Forest Department, the rights can only be extinguished by the State with written consent of the *Gram Sabha* and after preparation of alternatives and a resettlement package. The Act specified that an elected Village Forest Rights Committee, acting through the broader-based *Gram Sabha* (rather than the more restricted decision body, the *Gram Panchayat*), recommend to the government who has valid rights claims. However, the implementation rule enacted in 2008, gives *panchayati*, as well as Revenue and Forest Department, officials veto power over the acceptance or rejection of claims (Kothari et al., 2009).

As of September 2010, a total of 9.1 million titles (all but about 7,000 for household claims) had been issued covering a total of about 12 million hectares (GOI Ministry of Tribal Affairs, 2010). Most of the communal titles were for very small parcels of land and were claims for titles to village development rights (e.g., for school yards, cemeteries, and other infrastructure), rather than community forestry right titles. A study of the FRA's implementation progress attributed the low number of claims for community forest rights titles to ignorance of the law's provisions on communal titles and deliberate efforts on the part of forestry officials to prevent communities from acquiring such titles.

> The primary reason why very few community forest rights claims have been submitted is simply that there has been no effort on the part of the implementing agencies to spread awareness about the CFR provisions, and no willingness on the part of FD to allow the kind of transfer of control that is proposed under the FRA. In other words, the CFR provisions have simply not been given a fair trial to draw the conclusion that communities are not interested. Where there has been active facilitation or an absence of active obstruction, there are in fact very many claims (GOI, 2011, p. 1).

The process of titling customary rights to state forest land in India remains embroiled in controversy (Sarin, 2003; Kishwan et al., 2007). Forestry Department officials in 11 of India's 27 states had not even started implementing the Act in late 2010 (GOI Ministry of Tribal Affairs, 2010); and nine petitions challenging the FRA (four by retired foresters and five by conservation groups) have been filed in the courts (Kothari et al., 2009). Controversies have arisen even where the law is quite clear about customary use rights. For example,

the FRA explicitly includes bamboo among NTFPs use rights, yet many state forestry officials continue to require villagers to develop management plans and obtain licenses to harvest bamboo (Narain, 2010). To add to the confusion, the FRA includes provisions that are contradictory with other forest-related laws, such as the 1927 Indian Forest Act, the 1972 Wildlife Protection Act, and the 1980 Forest Conservation Act (Sarin et al., 2003; Véron and Fehr, 2011).

Although the 2006 FRA provides a legal basis for members of scheduled tribes and other traditional forest dwellers to exercise use, management, and exclusion rights, in practice, those rights remain precarious due to stalling on the part of the state Forest Departments in implementing the Act (Sarin and Springate-Baginsky, 2010), and due to the forest dwellers' weak economic and political position relative to outsiders, such as irrigation companies, mining concerns, and real estate developers (Dash, 2010; Alam, 2011; Choudhury, 2011). A recent report issued by a Joint Committee to evaluate India's progress with implementing the FRA concluded that "the implementation of the FRA has been poor, and therefore its potential to achieve livelihood security and changes in forest governance along with strengthening of forest conservation, has hardly been achieved" (GOI, 2010-FRA, p. 10). Key weaknesses in the implementation process are listed in Box 5.6.

Box 5.6: Key Weaknesses in India's 2006 FRA Implementation Process as Identified by the FRA Joint Committee

- Failure in some states to include women, members of scheduled tribes, and other traditional forest dwellers on Forest Rights Committee as required by the FRA.
- Failure to include nomadic pastoralists and "pre-agricultural" groups in FRA implementation activities.
- Eviction of forest dwellers prior to verification of their rights under the FRA.
- Forced relocation of forest dwellers from protected areas without following FRA procedures.
- Issuance of illegitimate deadlines for filing claims (the FRA specifies no deadlines).
- Rejection in some states of nearly all claims without sufficient grounds.
- Rejection of claims in areas earmarked for mining or plantations (FRA claims take precedence over such activities).
- Rejection of community forest rights claims overlapping with JFM lands (FRA claims take precedence over JFM rights).
- Use of remotely sensed images to measure claims without ground-truthing measurements.

Some of these weaknesses can be attributed to lack of training and misunderstandings on the part of Forestry and Revenue Department officials, but many are deliberate attempts to discourage rights claims or harass potential rights claimants. The Joint Committee was particularly critical of state officials' hesitation to encourage the filing of community forest rights claims, as members of the Commission felt that such rights represented an important step in a much-needed devolution of forest governance from the centralized state to local communities.

The Joint Committee recommended a number of measures for ensuring that forest rights claims are adequately addressed. Key recommendations included:

- The need for India to reconfigure its forest governance system, and specifically "restructuring institutions and arrangements at higher levels to ensure compatibility with lower level structures, transparency and accountability" (GOI, 2010, p. 144).

- More intensive training of forestry and revenue department officials, as well as local leaders, in the legal requirements and procedures for assessing claims and granting titles under the FRA.
- On-going monitoring of progress in implementing the FRA to ensure that its provisions are abided by and that government officials act in good faith to expedite the assessment of claims and issuance of titles.
- Intensive outreach to nomadic pastoralists and pre-agricultural groups to ensure that they have an opportunity to title their claims.
- Reconstitution of Village Rights Committees that do not include women, members of scheduled tribes, and other traditional forest dwellers as representatives.

Expediting implementation of the 2006 FRA has taken on new urgency with India's recent launch of the "Green India Mission" (GIM) under its National Climate Change Action Plan. The GIM initiative calls for restoring forests on 20 million hectares over the next 10 years, with the goal of sequestering 50–60 million tons of carbon dioxide annually by 2020 (GOI, 2010). The strategy envisions that local communities will play a pivotal role in planning, implementation, and monitoring programs undertaken under the GIM initiative.

5.11 INDONESIA: INCHING TOWARD CO-MANAGEMENT AND CUSTOMARY RIGHTS RECOGNITION

Indonesia appears to be moving along the same forest management and governance trajectory as India, Nepal, and the Philippines, albeit much more slowly. Like the Philippines, Indonesia made forest exports a key element in an export-led economic development strategy; like India, the Indonesian government maintained domestic wood prices at a level much lower than international market prices as a means to attract foreign investment. However, unlike the Philippines and India, Indonesia has a strong net deforestation rate; it also only recently has begun to experiment with forest governance devolution (Blaser et al., 2011).

Under Suharto's dictatorship, Indonesia's Basic Forestry Law of 1967 vested ownership of all forest lands in the state, legally dispossessing more than 100 million people of their land rights. The Indonesian Forestry Department lacked both the political will and the capacity to manage the country's forest resources sustainably. Instead, Forest Department officials granted concessions to forest products companies with little regard for the environmental or economic impacts of harvesting activities. Changes in forest policy did not take place until the "*Reformasi*" movement removed Suharto from power in 1997. As part of subsequent reforms, the Basic Forestry Law was revised in 1999 to allow for the creation of "customary forests" and "special purpose management areas." Forests managed under these designations provide forest dwellers with limited use and management rights but the land and resources remain the property of the state. However, neither tenure type has been widely applied.

The two major types of community-based tenure arrangements that have emerged so far in Indonesia include Community-Based Forests (*Hutan Kemasyarakatan* [HKm]) and Village Forests (*Hutan Desa*). Community-Based Forests provide groups of farmers with 35-year contracts to manage selected production or protection forests and rights to harvest forest products. Village Forests enable village-based institutions to obtain a 35-year lease to manage and protect state forestlands. Although Indonesia has many customary tenure systems operating at varying levels of functionality, the centralized government has strongly resisted efforts to implement legislation that would recognize customary ownership claims to forest resources.

The forest tenure situations depicted in Boxes 5.7 and 5.8 illustrate how perceptions of the strength of pre-existing land claims influence community members' willingness to enter into the new types of community-based forest management contracts. In Sumber Jaya (described in Box 5.7), most inhabitants had only recently settled in the area and had not yet developed strong claims to the surrounding forest. For them, the HKm agreement represented a major improvement in tenure security and access rights to resources. In contrast, the inhabitants of the Krui area in west-central Sumatra (described in Box 5.8) have long-standing

and well-established customary claims to the *damar* agroforests, which are the products of their long-term management activities. Not surprisingly, the inhabitants of Krui are reluctant to engage in a contract that fails to acknowledge them as having full ownership rights over those forests.

Box 5.7: Devolution of forest governance in the Sumber Jaya area of Indonesia

Sumber Jaya, in the Province of Lampung, covers an area of about 550 km^2, about 50 percent of which is classified as private land, 40 percent as protection forest, and 10 percent as national park. Most residents moved to the area from Java in the 1970s to grow coffee, both on private land and protection forest. Farmers create coffee gardens by burning and clearing forest, planting upland rice for a few seasons, and then planting a combination of coffee, fruit, and timber trees. Without tenure security, farmers are likely to maintain coffee monocultures.

In the early 1990s, a public hydro-power company established a hydro-power plant on a tributary of the Tulang Bawang River and claimed that deforestation reduced stream flows. Hundreds of farmers were evicted from the area between 1991 and 1996. In 1997–1998, the World Agroforestry Centre began collecting data for use in land use negotiations between villagers, NGOs, and the public power company.

In 1999, the first community forestry (HKm) agreement was established between 478 coffee farmers and the Forestry Department, covering 362 hectares of protection forest. The contract stipulated the types of trees (timber and fruit) and density of trees (at least 400 per hectare) that farmers had to plant with their coffee trees. Between 1999 and 2006, another 19 HKm contracts were negotiated, covering 130 km^2 and including 6400 farmers. The initial HKm contracts were for 5 years, with the likelihood of extension for another 25 years. The contracts allowed farmers to harvest and sell coffee and fruit, but did not give them the right to cut and sell timber trees. Farmers could transfer their land use rights only to other group members (Arifin et al., 2009).

The World Agroforestry Center's research showed that the Forestry Department's assumption that deforestation reduced water flows into the Way Besai power plant was wrong (Verbist et al. 2005). In fact, conversion of the land from forest to coffee garden increased stream flow and thus the amount of power that could be generated by the run-of-river facility. Since the HKm contracts were negotiated, fire has become less of a problem, as farmers with more secure tenure may be more likely to control their use of fire when clearing land (Suyanto et al. 2007).

Arifin et al. (2009) found that farmers strongly favored the HKm contracts over the alternative of contested tenure. They abided by the terms of the contracts, increasing the number of timber trees in coffee gardens and reducing forest clearing (Kerr et al. 2008). However, the contracts have had little impact on incomes since farmers do not have the right to cut timber trees.

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Box 5.8: Contestation of Forest Tenure in the Krui *Damar* Agroforests of Indonesia

From the air, the *damar* agroforests in the Krui area of Sumatra appear to be dense primary forests. Examined up-close, however, they prove to be highly productive and diverse forest gardens. The *damar* systems are established by clear-cutting, then planting rice for a few years, and then planting a mixture of trees that yield a range of products–coffee, timber, fruit, resin–over the next 40–50 years. Within 10 years of clear cutting, the forest gardens resemble secondary forests; within 20 years, they appear to be primary forests. The agroforests harbor an amazing amount of biological diversity while generating good returns for the local residents. The *damar* system is at least 100 years old, and local residents have strong customary rights to individual plots of land (Michon, 2000).

During the Suharto era, the *damar* agroforests were declared state forest land that should be used for timber production. In the mid-1990s, when the Forestry Department signaled its intention to grant a timber concession to a forest products company, the World Agroforestry Centre and local NGOs took steps to stop the concession from being granted. After many months of intensive negotiation and lobbying, the Indonesian Minister of Forestry issued a Historic Decree in 1998, recognizing the Krui *damar* agroforests as a special cultural preserve (KdTI). Under this designation, the government could not re-allocate timber harvesting rights to a forest products company. In all, 290 km^2 of *damar* agroforests in the Krui area were designated as a KdTI-area and the local people were acknowledged as the only beneficiaries from management of the area (Kusters et al., 2007).

While the Historic Decree was an important victory for the Krui people, they did not sign the agreement in which the government recognized the validity of the special designation given to the area. They believed that the original zoning of the area as state forest was erroneous, and they were not satisfied with the special designation, or with any other social forestry designation. For these long-term residents of the area, the only acceptable solution is that the land be rezoned from state-held forest land to private land. As far as could be ascertained, this contested situation still continues (Kusters et al, 2007).

References:

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Devolution of forest governance is still an incomplete project in Indonesia. The Worldwide Governance Indicators for Indonesia suggest that the trend from 1996–2008 was toward improved governance, but corruption and political instability continue to plague the country. There are three major challenges with devolution of forest tenure in Indonesia:

- Many areas that were designated as state forest land during the Suharto era are either devoid of tree cover or are considered to be the private property of individual landowners.
- It is a challenge to identify and implement the most appropriate system of devolved governance. In some areas, it is clear that customary systems are most appropriate, while in other places, more democratic systems may be more appropriate.
- As the cases in Sumber Jaya and Krui indicate, it is a challenge to implement social forestry in a way that is effective and efficient across such a large and diverse country as Indonesia.

The total area in Indonesia under community tenure arrangements remains very small. Contracting arrangements are cumbersome and developing a successful contract usually requires the involvement of NGOs or research organizations. As a result, most forest-dependent people still have very weak de jure rights to land and forests, and the de facto property rights situation varies greatly over time and space. Immigrants who have recently settled and cleared land in forests of Indonesia still have very uncertain land rights, facing high risk of eviction (Arifin et al., 2009).

5.12 VIETNAM: DECOLLECTIVIZATION AND MOVING TOWARD PRIVATIZATION

Vietnam's recent forest management history and approaches to forest governance devolution differ substantially from the patterns associated with India, Philippines, and Indonesia. Until the mid-20th century, the country's mountainous regions were extensively covered by forests, and sparsely populated by ethnic minority groups practicing traditional forms of agriculture. After Vietnam gained its independence in 1954, the newly independent state nationalized its forests and the State Forest Enterprises (SFE), a state entity, managed them primarily for commercial timber. Intensive bombing by U.S. forces and widespread logging by communist insurgents during the war of 1959–1975 destroyed a large portion of Vietnam's forest. In the post-war period, large-scale deforestation continued, as millions of people resettled upland areas and cleared large areas of forest to produce commercial crops such as coffee, pepper, sugar cane, rubber, and cassava. The Land Law of 1993 played an important role in reducing deforestation by providing households with secure access to state-held land through long-term lease arrangements. With more secure land rights and support from extension services, farmers have tended to intensify crop production on lands already under cultivation while planting trees on more marginal lands.

Vietnam began devolving rights to forested lands with pilot projects implemented between 1998 and 2000 (see Box 5.9). The government initiated a Forest Land Allocation (FLA) policy under a series of decrees implementing the 1991 Forest Protection and Development Law from the mid-1990s onward. The decrees categorized forests into three types (special-use/conservation, protection, and production), established forest management boards, and allocated annual contracts for forest protection and rehabilitation households and organizations. The policy allowed some intercropping with exemption from agricultural taxes on these crops, and 70 percent of the products of exotic fast-growing trees in forest plantations were owned by the contractors.

The FLA system has been revised a number of times since its inception. In 1998, the terms of contracts for forest protection and rehabilitation were extended to 50-year terms. In 2000, allowance was made for agroforestry in areas designated as production forests and greater benefit sharing from exotic trees that contract holders planted. In 2007, some forest land was reallocated to poor households for residential and agricultural use. Recipients of forest land allocations are given Red Book Certificates (RBCs) that spell out their rights and obligations. Communities and households that hold RBCs have exclusive access to land and NTFPs, selected access to agroforestry products, and partial access to timber products. Case study evidence suggests that some, but not all, communities that hold RBCs are able to enforce exclusion rights. On the other hand, some communities that lack RBCs are also able to enforce exclusion rights.

Box 5.9: Experiences with Devolution in Dak Lak, Vietnam

Vietnam's experiences with forest devolution started in Dak Lak Province (FAO, n.d.). Between 1999 and 2002, 249 hectares of forest land in Buon Diet were allocated among 3,243 individual households, 10 household groups, and 24 communes. The households received RBCs, which specified their rights and obligations. Long-term use rights included: 1) an unspecified, limited area of land for cultivation; 2) a 20-year timber quota for housing construction; 3) at maturity, a six percent share of the after-tax value of commercially logged timber for each year of protection; and 4) exclusive collection of NTFPs, with exemption from resource taxes. Holders of RBCs had to acquire prior approval from the state to clear land and harvest timber; they also had to maintain and protect the forest for which they had responsibility.

For non-RBC holders, devolution meant that in some cases villagers continued to use and make new claims to forest resources through customary tenure systems but without the legal support enjoyed by RBC holders. In other cases, villagers who depended on forest resources as their primary source of livelihood were excluded from areas they had previously used. In both cases, pre-existing social-political-economic inequalities and the potential for inter-ethnic tensions increased (Nguyen, 2006; Sikor and Nguyen, 2007).

Two divergent sets of institutions govern access to productive resources in Dak Lak: local, customary institutions and state institutions. Local, customary forest institutions tended to favor local leaders and the indigenous Jarai ethnic group at the cost of recent migrants (Nguyen 2006). Of particular importance was the reciprocal mutual relationship between local leaders and the two major state institutions, the SFE and the local Communal People's Committee (CPC). The SFE provided economic and political benefits and locally-based state officials protected the forest. State organizations placed a higher priority on forest protection than livelihoods and equity and were characterized by top-down decision-making and implementation. The commune-level CPC selected villages to participate in devolution; the local SFE official decided the specific area of forest to be allocated and the number of recipient households; and village officials selected RBC recipients. Local state officials and their relatives were the main recipients of RBCs. Thus devolution of forest rights and responsibilities continued the bias against migrants as all local state officials were of the indigenous Jarai ethnic group.

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Sikor, T. and Tran N.T. 2007 Exclusive versus inclusive devolution in forest management: Insights from forest land allocation in Vietnam's Central Highlands, forthcoming in: *Land Use Policy*, Vol. 24

Still, there are several questions about the effectiveness and equity of community forest management in Vietnam. The case study presented in Box 5.9 raises questions about the risks of elite capture of the benefits of community forests, and about the types of forests that should be maintained as state forests, devolved to individual or household-level ownership, or managed by community groups. With each revision of the Land Law and Forest Land Allocation policy undertaken since 1996, rights to land and forests have become more complete. However, each policy change has been incremental and pragmatic and there continues to be considerable uncertainty about the actual rights of community groups relative to Forest Management Boards and the State Forest Department. The 2004 Forest Protection and Development Law recognized community forest management, but there is concern that the law confers less complete rights to community groups than to individual forest managers. Additionally, in some villages lack of support from local authorities has made it difficult for them to exclude outsiders (Nguyen et al., 2009).

Studies of community forest management implementation in Vietnam suggest both limitations of the forestry law and gaps between the de jure and de facto situations. Between 2006 and 2009, Vietnam's Forest Governance Learning Group compiled information on progress with implementation of Community Forest Management (CFM) and identified a number of challenges (Nguyen et al., 2009):

- A community forest RBC may not be of any real help for communities managing forests;
- There is little guidance about the types of forests that should be brought under community management;
- More attention should be given to arrangements for sharing benefits among community group members.

They conclude that a combination of legal rights and strong local institutions are necessary for communities to be able to protect their forests (ibid.).

Phung (2011) conducted a study of local perceptions of the FLA policy in Tay Ninh's two forested districts in 2010–2011. He suggests that the weaknesses in the forest policy revisions are that they have been minor and they have focused only on establishing pragmatic, livelihood-based evaluations of legitimacy by local people. While pragmatic legitimacy may be necessary to get a forest devolution policy started, it is not a sufficient foundation for long-term local support. Specifically, if used in isolation, the pragmatic approach is likely to undermine the deeper, stronger cornerstones of legitimacy of the FLA policy: a belief that it is necessary, inevitable, plausible, predictable. Currently in Tay Ninh Province, locals believe that the FLA policy is good for the environment but not good for livelihoods. To change this belief, actions need to be taken to address more thoroughly long-term livelihood needs and include more local participation in decision-making.

5.13 FOREST GOVERNANCE DEVOLUTION LESSONS FROM ASIA

5.13.1 FORMAL RECOGNITION OF STRONG OWNERSHIP RIGHTS MAKES A DIFFERENCE

Perhaps the most important lesson to be derived from Asia's experience with forest governance devolution is that tenuous use rights and weak benefit sharing models only go so far toward providing the security and financial incentives needed to invest in forest improvements and protection at landscape-scales. Vietnam's experiences indicate that providing households with strong rights and security of tenure to agricultural holdings can yield long-term and consistent positive conservation and livelihood benefits through the creation of an enabling environment for agricultural intensification.

In contrast, the record of co-management approaches in India and the Philippines is mixed. These co-management initiatives have contributed to the growth in area under forest cover that both countries have experienced since the 1990s. However, their livelihood gains are less clear and many co-management efforts are heavily dependent on external funding for their continued functioning. Both JFM in India and CBFM in the Philippines are structured in ways that devolve only limited rights to lower levels of governance, and with the proviso that forestry officials can rescind those rights at any time. Additionally, the legal foundation of both programs is extremely weak, as both are authorized under administrative decisions or executive orders, rather than being authorized under statutory law.

Nepal's experience with Community Forestry, however, indicates that under the right conditions, co-management approaches can have positive ecological and livelihood outcomes. Key conditions for positive joint outcomes appear to include:

- Forest tenure systems that provide user group members with an adequate share of benefits relative to the costs of forest management,
- Presence of well-organized user groups with strong connections to national and international networks who can advocate on their behalf, and
- Supportive government policies and forest departments at both local and national levels.

5.13.2 BUILD ON LOCAL INSTITUTIONS, BUT RECOGNIZE THEIR WEAKNESSES

A common weakness of top-down co-management efforts is that they tend to impose organizational structures that are new and lack legitimacy, rather than working through existing institutions. It is no accident that the most successful co-management groups in India are located in areas where FDs were amenable to letting local institutions take on CBFM. Likewise, the success of Nepal's CF program in its early years was due in part to its flexibility in how communities organized themselves. Even so, evidence from the Dak Lak case in Vietnam points out some of the risks associated with building on customary institutions when those institutions include built-in biases against other ethnic groups or more recent arrivals to the areas. Local institutions also may favor wealthier households, intentionally or inadvertently. Programs such as Nepal's pro-poor Forest Leasehold system can help address such inequities by providing rights to forest resources through programs deliberately tailored toward low-income households.

5.13.3 RECOGNIZE THE LIMITATIONS OF BENEFITS-SHARING

Another common weakness of co-management efforts in the Philippines and India is that the benefits-sharing aspects tend to be dysfunctional for a variety of reasons, including: because the forests are so degraded that revenues are too limited to be of much use, because the collection and distribution of benefits lacks transparency, or because the percentage of benefits shared is insufficient relative to the costs, even when forests are in good condition. The success of Nepal's CF system (in which user groups retain 100 percent of the revenues from their forests) compared with the relatively poor performance of its CFM program (in which benefits are shared among the user groups, the state forestry service, and local governments) illustrates the importance of focusing on maximizing the benefits to communities. Co-management schemes have met with the most success in areas where the resource base is in relatively good condition (so there are benefits to be had), communities have functional local enforcement systems (so that the benefits are maximized), and the system for distributing benefits is both fair and transparent (so that benefits actually get to the people with a claim to the forest).

5.13.4 FOREST GOVERNANCE AND OVERALL GOVERNANCE GO HAND IN HAND

An on-going problem in India and the Philippines is the high transaction costs associated with obtaining management plan approval, illicit requests that holders of JFM and CBFM agreements pay for permits or permission to transport products, and chronic corruption at all levels of interaction with forestry agents. However, these costs are not unique to co-management approaches; rather, they are systemic weaknesses in both countries' overall governance systems. Without measures to increase efficiencies of market transactions and decrease the share of benefits forest users lose to bribes or unnecessary permit costs, the benefits of devolving rights will not be fully realized.

5.13.5 HAVING A RIGHT IN LAW ISN'T ENOUGH; SAFEGUARDS ARE NEEDED TO ENSURE RIGHTS CAN BE EXERCISED

Both the Philippines' and India's experiences with implementing rights recognition legislation indicates that merely having a right in law isn't enough; it is equally important to have an environment that permits the exertion of that right. In both countries, forest user group networks and alliances between forest user groups and more powerful external social actors, such as international human rights organizations, have played a key role in ensuring that the rights that forest dwellers have acquired through law can be fully exercised.

In comparing the implementation processes for India's FRA with the Philippines' IPRA, one notable difference between the two is that the FRA implementing rule effectively places the state FDs in the role of deciding which claims to approve, whereas in most areas of the Philippines the decision is made by the National Commission for Indigenous Peoples, an office created specifically to deal with ancestral domain claims. As India's Joint Committee on the FRA noted in its fact-finding report (GOI, 2010), FD officials have little incentive to approve claims as doing so diminishes their control over potentially valuable resources.

5.13.6 IMPORTANCE OF RECOGNIZING THE EXISTENCE OF PRE-EXISTING CUSTOMARY CLAIMS

A key feature of JFM (or any sustainable forest management approach) is that implementation typically involves restricting who can use forest lands and resources. In India, this often has entailed evicting forest users labeled as "encroachers," including individuals who have long-established subsistence plots or agroforestry cropping systems on protected forests. In the 1990s, the practice of evicting encroachers led to numerous incidents of armed conflict in Madhya Pradesh, a state where the FD had never had a strong presence, and where, in consequence, many members of scheduled tribes had continued to farm their customary holdings. Investigations of these conflicts indicated that the leaders of JFM projects in the area typically had not consulted with members of scheduled tribal groups when establishing forest management plans. The projects' failures to acknowledge long-standing and pre-existing customary use rights threatened the livelihoods of tribal group members, sparking violent resistance. An interesting contrast to this approach is the decision by the Agra-Dumagat people in the Aurora Province of the Philippines to invite migrant settlers and local government representatives to participate in land use planning for their titled Ancestral Domains, even though they are not obliged to do so (Amos, 2003). The Agra-Dumagat opted to be inclusive of their neighbors in order to reduce fears on the part of settlers that they would lose their access to forest resources once the Agra-Dumagat obtained a CADT to their traditional territory.

5.13.7 IMPORTANCE OF IDENTIFYING THE LEVEL TO WHICH RIGHTS SHOULD BE DEVOLVED

The cases from Indonesia and Vietnam highlight the importance of identifying the right level to which rights should be devolved. Under pressure, forest agencies may assent to devolving management rights to the community level as a way of maintaining overall control, but individuals and families may in fact expect full ownership rights. In the two case studies in Indonesia, one community has accepted social forestry contracts, while the other has resisted them. In Vietnam, existing policies favor rights allocation to individuals and households rights; but by essentially privatizing what were once forest commons, such policies may inadvertently disfavor less wealthy community members and newcomers to the area. There is need for policy makers to identify more clearly an appropriate balance among public, communal, and private interests in forest management.

6.0 TYPOLOGY OF DEVOLUTION APPROACHES

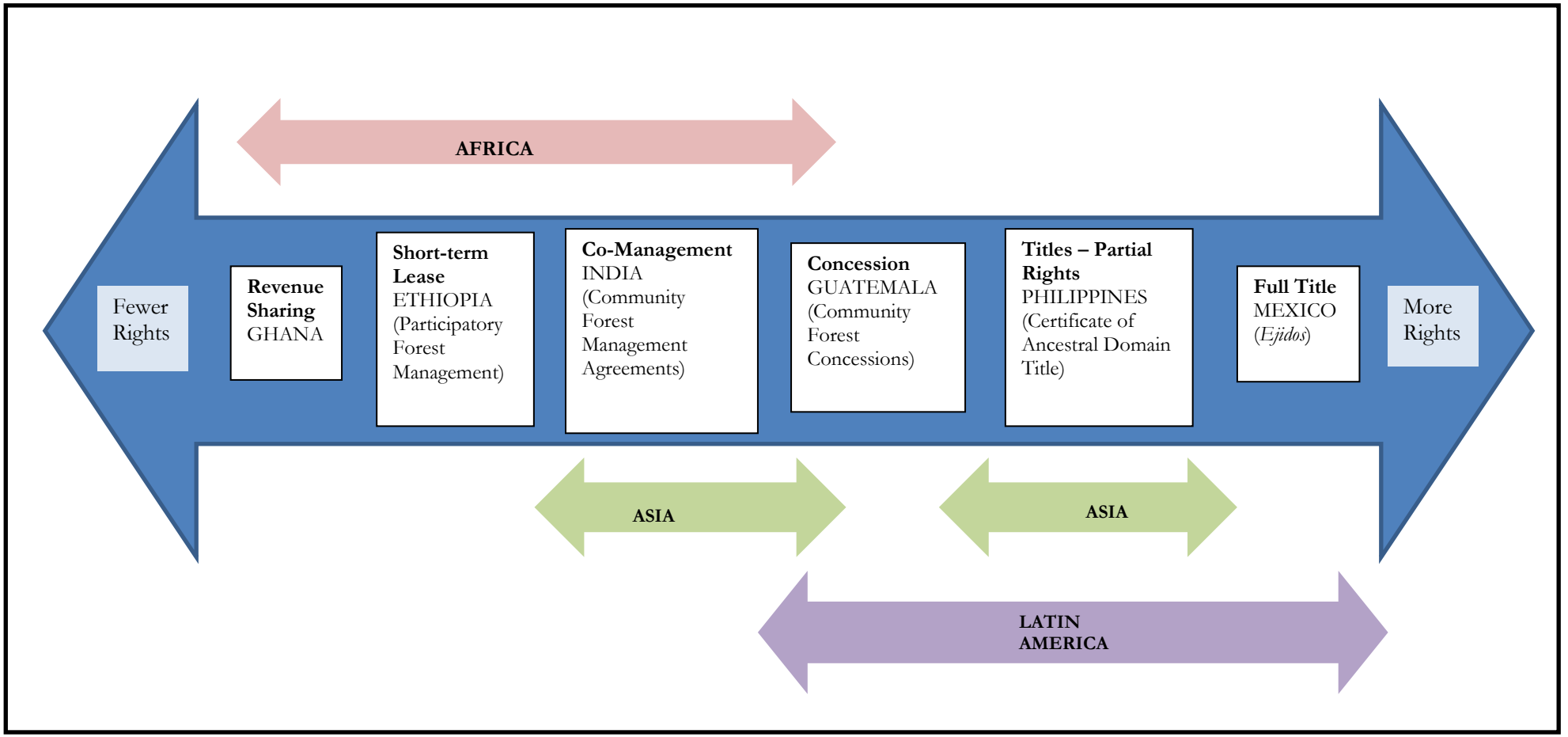
The bundle rights framework was used to develop a typology of the different devolution approaches used in the 16 case study countries. The bundle of rights is based on the notion that absolute ownership of land or resources is only rarely, if ever, vested in a single ownership entity. Rather, the concept of ownership is best understood in terms of the variety of rights–with each right constituting a "stick" in the bundle–and the distribution of those rights–or "sticks" in the bundle–among various rights holders. In the context of forest governance, property rights include rights to use, access, and manage forests, as well as rights of exclusion, withdrawal, and alienation. Property rights shape how benefits from forest resources are distributed over time, and thus have a "profound influence on the incentives for the conservation and sustainable use of forests" (Katila, 2008, p. 11).

To develop the typology, each of the major devolution approaches was used from the case study countries and the suite of property rights "sticks" that was devolved from the central government to local communities; subgroups within those communities; or, in some cases, individuals (see Annex C for a detailed and country-specific description of the rights devolved for each approach). Based on an analysis of this matrix, the authors identified six approaches to governance devolution, as seen in Figure 6.1 on the following page.

Among the approaches identified in the noted cases, purely revenue-sharing schemes, such as that which prevails in Ghana, involves the devolution of the least number of rights. Mexico's communal tenure titles and *ejido* systems lie on the opposite side of the continuum of rights devolved.

The regional patterns described in the sections above show clearly in this matrix. The Asian countries are the most diverse, with a strong emphasis on co-management arrangements (with and without benefits-sharing) and a movement toward rights recognition for communities, individuals, and households. Latin American countries tend to use both long-term community or group concessions and titling of Indigenous Peoples' domains. The African countries tend to use long-term co-management agreements but are also experimenting with a variety of other approaches, including short-term concessions, titling of customary domains, long-term concessions, industrial concessions with social responsibility contracts, and revenue sharing only.

FIGURE 6.1: APPROACHES TO GOVERNANCE DEVOLUTION



7.0 CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

A process of devolution of forest rights from state ownership to various forms of community ownership is underway globally. Sunderlin (2011) identified various factors driving devolution, including the failure of governments to provide effective stewardship, declining timber rents, decentralization and democratization, and the work of international human rights campaigners. The mix and strength of these and other factors varies from continent to continent and among countries. The research presented here has identified discernable differences among Latin America, Africa, and Asia in the character and scope of forest rights devolution. The sources of these differences help delimit opportunities and obstacles for forest right devolution going forward, and help frame principal policy recommendations.

7.1 EXTENSIVE FOREST RIGHTS DEVOLUTION IN LATIN AMERICA

The pace of devolution is greatest in Latin America, though highly variable across countries, with Brazil demonstrating significant devolution over the past decade, particularly to indigenous communities. Devolution in Guatemala, Peru, and Bolivia has been associated with a variety of agrarian reform policies which were motivated by grassroots resistance and international advocacy movements. The scope and pace in recent years of forest rights devolution across Latin America is impressive. The agrarian reforms of the 1960s have been supplanted by what some authors characterize as forest reform. Forest reforms have been given impetus by the land and political claims of indigenous communities, and embody a combination of conservation and livelihood objectives.

Despite some efforts at privatization of rural land rights in the early 1990s, Mexico has consolidated its long-term commitment to communal ownership and management of land and natural resources, in the form of *ejidos*. *Ejidos* are highly evolved ownership and management regimes, the result of decades of experimentation, development, and administrative and legal testing and refinement. Because they are mature, tested property rights arrangements, they are capable of managing effectively new resource management regimes and compensation programs, based on PES and, most likely, REDD+, in ways that less mature property rights regimes likely cannot. The lesson is that tenure change comes slowly and tenure arrangements cannot be easily or quickly reworked to accommodate new environmental programs.

The authors found that realization of many of the benefits of rights devolution were being compromised by the imposition of management planning standards appropriate to industrial-scale timber extraction, and beyond the reach of community-based users and organizations. Management planning requirements should be better calibrated to the forest uses and technical skills of community forest users.

7.2 LIMITED FOREST RIGHTS DEVOLUTION IN AFRICA

In Africa, forest ownership remains highly concentrated in governments, as it has since colonial times. State ownership has, on the whole, not been conducive to effective stewardship. Rates of loss of forests under state

ownership are high. Many African states have also asserted ownership rights over trees on farms, both naturally occurring trees and trees planted by farmers. In Ghana, state ownership of timber has facilitated direct marketing of timber rights by the Forestry Commission to the commercial timber companies, as sanctioned by the Tree and Timber Act of 1974. Farmers responded by showing strong disinterest in conserving trees occurring on their farms.

African systems of customary tenure are the de facto institutional arrangements governing access to and use of land and natural resources across sub-Saharan Africa. The powers of traditional authorities to administer land and the security of customary land rights were diminished in many Africa countries during the colonial and post-independence eras. The authority of customary authorities to manage forests and forest use was never strong, and was widely supplanted by legislation vesting ownership of forests in states. That said, customary tenure systems might be the best and most practical contexts through which to assign forest rights to communities. While chiefs and other traditional authorities are the principle administrators of customary tenure across Africa, local bodies consisting of elected or appointed members (not chiefs) can, in principle, administer customary rights. This has been the case in Botswana since 1966.

7.3 ASIA: EMERGING EVIDENCE OF LINKS BETWEEN FOREST COVER RETENTION AND EXPANSION AND FOREST GOVERNANCE DEVOLUTION

In Asia, national governments still retain ownership rights over the majority of forest lands. However, in many countries, governments have implemented co-management schemes that devolve extensive use, management, and exclusion rights to communities or user groups (i.e., India, Nepal, the Philippines, and, to a lesser extent, Indonesia) or have issued long-term land allocation contracts to individuals, households, and communities that border on inclusion of full ownership rights (i.e., Vietnam). In some countries, such as India and the Philippines, forest governance devolution also is taking place through national processes of customary rights recognition.

The shift downward in the distribution of rights over forest land and resources has been accompanied by a marked expansion in land under forest cover within the region as a whole, as well as within the four countries included in this study where devolution has been widespread. Much of the expansion in forest cover has occurred on lands that had been denuded of trees when formal management control rested exclusively with centralized national governments. The evidence from two decades of forest governance devolution in Asia thus strongly suggests that shifting control over forest land and resources to communities, user groups, and households is, in general, a viable reforestation and afforestation strategy.

However, the evidence also points to on-going and chronic issues related to distributional equity associated with devolution schemes, with the less-wealthy, women, lower castes, casteless, pastoralists, and ethnic minorities being less likely to benefit from the downward distribution of rights, and in some cases, being negatively impacted as formerly de facto open access resources fall under community or household control. Nepal's Forest Leasehold system, which targets devolution of use and management rights specifically toward low-income groups, provides one example of how to reduce such inequities. In the Philippines, the formal recognition of customary claims has proved to be an important mechanism by which Indigenous Peoples have been able to ensure a more equitable distribution of forest-related benefits. India's Forest Rights Act may also ultimately promote a more equitable distribution of forest resources, but its difficulties with implementing the law underlines the importance of including both safeguards, and monitoring to ensure that the claims of less powerful groups are adequately addressed.

A key lesson from recent efforts in Nepal by the centralized government to take back some of its management authorities as well as a portion of forest revenues from community forest groups is that rights formalized through legislative processes are likely to be much more durable than those accorded through

administrative or executive decisions. Moreover, this experience also illustrates the critical role of well-connected and broad-based forest user groups with the capacity to "push back" efforts by local and national governments to re-claim previously devolved rights and authorities.

7.4 THE LIMITS OF BENEFIT-SHARING SCHEMES

Several African and Asian governments, spurred on by the largely negative legacies of state ownership of forests and criticism of its consequences to the livelihood of communities living in or near forests, have embraced a variety of reform initiatives that fall short of devolving forest rights to communities. Most strive to encourage resource uses to conserve forests, wildlife, and watersheds by providing financial and other incentives. Community members may be expected to allow cropland to return to forest or stop hunting wild game in return for a share of benefits generated by, for instance, local ecotourism activities managed by concessionaires selected by the government, including opportunities for employment. These initiatives, under CBNRM, co-management, and benefit sharing, are relatively small in number and there is limited experience against which to assess their effectiveness.

They rarely entail devolution of rights to communities per se, but are typically conceived as "partnerships" among government resource agencies; communities; and, in many cases, private forestry or eco-tourism companies. The state usually retains ownership rights to the resources and programs are based on pro forma models developed by state agencies. They often place considerable emphasis in early phases to building community capacity to participate in the programs. They tend to require formation of associations of user groups based on state-prescribed and not locally adapted organizational principles. They tend to give insufficient attention to the distribution of benefits among partners, or more precisely, underestimate the level of benefits granted to local resource users necessary to make their participation worthwhile. In the authors' view, they have the inherent disadvantage of not devolving meaningful rights to communities, thereby severely reducing their bargaining power, including their power to withdraw from schemes when not satisfied with the benefits on offer. Evidence from India and Philippines suggests that the benefit-sharing schemes are likely to have greater positive benefits on local livelihoods and forest conditions where they are implemented in settings where communities control a significant variety of forest rights, including use, management, and exclusion rights and longer duration of rights.

7.5 THE BALANCE OF RIGHTS BETWEEN STATES AND COMMUNITIES: IMPORTANT INSIGHTS FROM LATIN AMERICA

As previously noted, devolution of forest rights is most advanced in Latin America. That said, it is important to recognize that in most Latin American countries, the state continues to hold in trust ownership, or allodial, rights to forests. By statute, communities are granted various use, management, and exclusion rights, but rarely the right to alienate (or sell) the land, as ultimate title remains with the state. The authors found that it is also typical for states to regulate how communities use and manage the land assigned to them. It is very common for states to require communities to prepare acceptable management plans as a condition for granting long-term concessions, lease, or other use rights. Community rights are also limited in duration, retaining for the state the right to refuse to renew concessions and leases, subject to legally established standards.

7.6 THE WEAKNESSES AND PERSISTENCE OF COMMUNITY MANAGEMENT INSTITUTIONS

The presumed absence, or the many weaknesses, of suitable local, legitimate, community organizations for managing forests is something that exercises the minds of many forest policy makers—supporters and opponents of rights devolution alike. It is not surprising that many structures that had been in the past

charged with managing forests locally appear not to be effective today. Their authority has been systematically undercut by centralizing policies. They have lacked the power that some once had to regulate resource use and ensure equitable access to forest-based benefits. They have been unable to defend legally community boundaries against encroachment by neighboring communities or itinerant loggers, or against harvesting of timber by commercial interests, licensed by state forest agencies. The roles of customary and informal group arrangements have been undercut also by economic changes, out-migration and forced removals.

What is perhaps most remarkable is that, despite these various depredations, in many parts of the world community organizations, embodying local norms about decision-making, membership and land use practices, persist as familiar and locally legitimate forms of land and resource governance.

7.7 EMPHASIZE GRANTING EXCLUSION RIGHTS TO COMMUNITIES

It would be better to defer to choices local communities have made about the structure and powers of resource governance arrangements, and provide incentives that make them more effective, efficient, and further catalyze local support for them. The authors believe that a rights-based approach can empower institutions at modest costs to the public. In this regard, the authors recommend that priority be given to strengthening the exclusion rights of communities. Granting of exclusion rights should be accompanied by assistance to identify, mediate, and record community boundaries. With clearer boundaries and the right to exclude non-community members, communities may focus with greater fervor on questions of sustainable management and fair distribution of benefits among bona fide community members.

7.8 THE IMPORTANCE OF TREE TENURE

Discussions about forest tenure reform tend to overlook the importance of tree tenure reform. State ownership of forests often extends to an assertion by states of ownership of trees occurring on individual farms. Regulation of farmer tree use often extends to uses farmers make of trees they've planted themselves. This has several perverse effects. In Ghana, commercial timber companies secure permits from the Forestry Commission to harvest trees occurring on individual farms. The farm owners, however, do not have rights to any portion of the value of the tree, or even to the stumpage fee paid the Forestry Commission. Farmers benefit only from compensation paid by timber operators for damage that might have been caused to cocoa trees in the course of timber removal. Compensation is paid only to about 20 percent of claimants. Left with few good choices, farmers look forward to the day when all trees have been removed from their holdings. In situations where farmers have to seek permission from forest authorities to use trees they might have planted on their farms, farmers are less inclined to plant trees. Without the full range of tenure rights to trees, farmers are not in a position to respond adroitly to opportunities to earn income through REDD+ programs for planting and protecting trees. Certainly, smallholder farmers should be encouraged to plant trees by extending to them the full range of tree rights.

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ANNEX A: AN ANALYTICAL FRAMEWORK FOR ASSESSING DEVOLUTION EFFORTS

The analytical framework of this report builds on Barsimantov et al.'s (2011) model in which forest management outcomes are conceptualized as the product of interactions between resource attributes; user group characteristics; and external factors, including tenure regimes. Barsimantov et al. argue that whether communities are able to manage communally held forests sustainably is closely linked to the costs associated with collective management, costs which depend on the characteristics of the user group as well as the attributes of the resources being managed. These collective action costs in turn help "shape the extent to which *de facto* rules are enforceable and to which communities adopt *de jure* allocations" (Barsimantov et al., 2011, p. 349).

The authors argue that for any given forest governance context, each category of ownership needs to be examined within a "bundle of rights" framework. The bundle of rights is an important concept in property rights studies. It is based on the notion that absolute ownership of land or resources is only rarely, if ever, vested in a single ownership entity. Rather, the concept of ownership is best understood in terms of the variety of rights–with each right constituting a "stick" in the bundle–and the distribution of those rights–or "sticks" in the bundle–among various rights holders. It is important to note that property rights are not just about the relationship between the person holding a right and the resource over which that right is held. They also reflect social relationships and they define "the relationship between the right holder and all others in respect to something of value" (Katila, 2008, p. 11). In the context of forest management, property rights include rights to use, access, and manage forests, as well as rights of exclusion, withdrawal, and alienation. Property rights shape how benefits from forest resources are distributed over time, and thus have a "profound influence on the incentives for the conservation and sustainable use of forests" (ibid.).

The analytical framework used here has five elements (see Figure A.1 on page 73):

- **Forest tenure system attributes** (e.g., existence of legal pluralism [and extent to which there is tension between statutory and other legal systems], distribution of bundle of rights [to forest lands *and* trees], functionality of the *de jure* and *de facto* tenure systems);
- **Policy system attributes** (e.g., laws and policies likely to influence decisions about forest management, quality of overall governance, quality of forest governance);
- **User group attributes** (e.g., degree of social heterogeneity, internal power dynamics, power relative to external social actors);
- **Economic attributes** (e.g., incentives to retain, enhance, or remove tree cover; alternative livelihood opportunities); and

- **Forest attributes** (e.g., size, value to the community, value in global markets).

These elements are described in greater detail below, along with a brief discussion the importance of each element in the context of forest governance devolution.

COMPONENT 1: FOREST TENURE ATTRIBUTES

A 2002 Forest Trends study by Andy White and Alejandra Martin categorized forest tenure by four ownership categories in 24 of the 30 countries with the largest areas of forest cover in the world.[2] These ownership categories include:

- Public land administered solely by government;
- Public land with some portion of the land reserved for community and indigenous groups to manage;
- Private land owned by community and indigenous groups; and
- Private land owned by individuals and firms.

Sunderlin et al. (2008) utilized these same categories to monitor changes in forest ownership patterns between 2002 and 2008. The authors use these four categories as a starting point from which to assess relationships between forest tenure and forest management outcomes, and specifically relationships between type of tenure and sustainable forest management.[3]

A fifth category is added to the four used by White and Martin:

- Tree tenure: the rights to individual trees, where rules governing ownership of trees operate in varying degrees separately from ownership of land.

The authors are mindful that links between tenure categories and resource management will never be a simple, direct relationship. Forests managed under public tenure can be well managed under certain circumstances and badly managed under others. Forests occurring on private land can be highly degraded or sustainably managed. Other factors apart from tenure, including agricultural policy; differences in relative prices for land under different uses (agricultural, forest, and urban development); population and settlement policies; and the social, economic, and governance characteristics of local communities are other relevant factors. These factors and other, in addition to and in interaction with tenure, must be taken into account in shaping policies that contribute to sustainable forest development.

Forest ownership as described in the discussion above is useful in helping achieve an understanding of how national forestry law and various land and forest policies and laws formally assign ownership rights. But as noted in the discussion of the bundle of rights in Section 1.0, rarely is ownership vested in a single entity, whether it is the state, individual, or corporation. The notion of ownership is best understood as ownership of particular rights in the bundle. The distribution of particular rights has, in the view of the authors, significant implications for the outcome of policies intended to contribute to sustainable management.

A recently published study of potentially considerable value to this report is Pia Katila's "Devolution of Forest-Related Rights: Comparative Analyses of Six Developing Countries" (2008). Katila's study "concentrated on the national-level legal frameworks that define the ways in which rights and responsibilities [to management and control of benefits] can be devolved." Developing case studies on devolution initiatives in Laos, Nepal, Vietnam, Kenya, Mozambique, and Tanzania, Katila developed an empirical typology that

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[2] These ownership categories are now widely used in global forest tenure inventories and analyses (FAO 2010, RRI/ITTO 2010, Sunderlin et al. 2008), making it possible to compare changes over time in the amounts and proportions of forested land held in each category.

[3] As used in this paper, sustainable forest management is assumed to have both conservation and economic livelihood components.

represented the main types of devolution and compared the cases against a theoretical ideal type to assess in what ways and to what extent the cases are similar to or differ from the theoretical construct.

The ideal type is defined as one where the following rights have been devolved to local actors:

- Comprehensive use rights;
- Extensive management rights;
- Rights to exclude others from the resource;
- Rights to transfer these rights; and
- Rights are secure and held perpetually.

Katila argues (and provides data to this end) that successful forest stewardship based on local control should entail the devolution of as many of these rights as possible to local users. She found that among the 11 cases in the six countries studied, only projects in Tanzania entailed a meaningful devolution of the entire bundle of rights.

A study by Barsimantov et. al. (2011) of the relationship between collective action and the devolution of forest tenure rights in selected community forests in Mexico and Guatemala used a bundle of rights framework developed by Schlager and Ostrom (1992).

> According to this framework, rights are allocated in bundles that result in varying degrees of control over land and resources, as bulleted below:
>
> - *Withdrawal rights* allow users to obtain resources at a rate specified by external authorities,
> - *Management rights* allow the user group to define extraction rates and other management features, implying more rights than withdrawal rights,
> - *Exclusion rights*, added to management rights, allow the user group to define who has access to resources, [and]
> - *Alienation rights* involve the right to sell or lease the other three rights to the resource.
>
> The package of all four rights defined a full property right, and when this right is shared by a group of people, a complete common property right is allocated (Barismantov et al., 2011, p. 344).

The authors adopt Basimantov et al.'s concept of the bundle of property rights consisting of these four rights. The bundle of rights framework is useful for assessing the extent to which community-based forestry management programs promoted across the developing world over the past 20 years have entailed a significant devolution of actual rights.

COMPONENT 2: POLICY ATTRIBUTES

Also important to consider under the bundle of rights framework is how those rights are affected by policies, laws, and regulations. Both formal and informal policies in a variety of domains constrain or encourage specific types of land and tree use and management practices. Policy domains likely to directly affect forest and tree tenure and management systems include forestry, agriculture, biodiversity conservation, land tenure, intellectual property rights, product safety, transportation, labor, trade, and business taxation. For example, Seymour and Forwand (2010) describe how sustainable forest management in community-based management contexts has been undermined by tax incentives for clearing land, as well as by the provision of subsidies to timber companies for harvesting trees. In the NTFP policy domain, Laird et al. (2010) identify national

requirements for complex and costly forest management plans as a major barrier to the devolution of NTFP harvesting rights in community-owned or -managed forests in the Philippines, Mexico, and Cameroon.

COMPONENT 3: USER GROUP ATTRIBUTES

User group characteristics include such things as the divisions of wealth and power within communities, the proportion of overall household income derived from forest-based enterprise (and thus the strength of economic incentives for investment in sustainable management), and the capacity locally for governing forest use. Interpreted broadly, user group characteristics also include the ways in which the group, as a whole as well as individually, interacts with other social actors, including government agencies, political and economic elites, and NGOs. Research on collective action suggests that user group characteristics are vital factors in efforts to devolve management responsibility to communities (Lawry, 1990). These characteristics are locally generated and sustained to a considerable degree, though external economic and political forces can shape user group characteristics over the long term. For example, where forest policies strongly discouraged certain forms of forest use by communities, households may have shifted their labor to other activities that were more remunerative and less punitive in character. In the process, however, the formal and informal rules and protocols for managing forests locally may have atrophied. The right mix of new incentives and policies and programs that honor forest-user rights can help foster (though never prescribe) new behaviors and revitalize local rule making and enforcement. Doing so successfully takes time and patience and a willingness by forest agencies to accommodate community priorities and practices in ways they rarely find easy to do.

COMPONENT 4: ECONOMIC ATTRIBUTES

A key concept in analyzing economic issues affecting forest tenure policy is that of the opportunity costs of alternative land uses. Opportunity cost is defined as the cost of any land use measured in terms of the value of the best alternative that is not chosen. Opportunity cost analysis is important to REDD+-related carbon pricing as carbon prices, in theory, would need to be set at a level equal to or higher than the value forest users would generate from alternative uses of forest land, including removal of trees for agriculture. Much of the forest regulatory and land use policies that establish restricted access forest reserves are driven by the assumption that uses that require removal of forest cover are nearly always more economically beneficial to forest dwellers than economic activities that conserve forests and maintain forest cover. An alternative view is that farmers and forest communities that do not have long-term, secure rights to forests lack reasonable expectations that they will be able to enjoy benefit-streams from the forest, and thus are disinclined to invest in activities that contribute to long-term stewardship of forest resources.

COMPONENT 5: FOREST ATTRIBUTES

Studies of forest devolution efforts indicate that the attributes of the resources being managed influence whether collective action is likely to occur or to be successful (Barsimantov et al., 2011; Persha et al., 2011). The kinds of resource attributes associated with successful devolution efforts, however, will vary on the context. For example, in Barsimantov et al.'s comparison of community forest management between two Mexican and two Guatemalan communities, species rich and still-largely intact "natural" forests were associated with the two more remote communities. These two communities, whose members depended heavily on forest products for their livelihood, were able to enforce rules against illegal logging and kept their communal holdings intact despite pressures to parcelize them formally to individuals. The other two communities were located closer to major roads. Their forests were heavily degraded and most community members had turned to agriculture and livestock for their livelihoods. Although marketable trees were scarce, neither community was successful at keeping illegal logging from occurring in the remaining forest nor were they able to keep their communal holdings from being permanently parceled out to individuals.

In some circumstances, resource scarcity serves as the impetus for communities to take collective action. For example, in a study of community management of mangrove swamps in Thailand, Sudtongkong and Webb

(2008) found that the threat to the communities' fishing resources prompted the communities to take action against illegal logging. Common property research indicates that resources that are "indivisible, well-bounded, small in size, and stationary" tend to be more amenable to collective action (Barsimantov et al., 2011). However, enforcement may be difficult if communities try to regulate the harvest of very-high-value resources that can be easily carried or hidden, such as ginseng or truffles.

Persha et al.'s (2011) recent analysis of a global data set comparing 84 cases of community-based forest management (30 in East Africa and 54 in Asia) provides a statistically robust assessment of whether devolution of forest governance leads to positive outcomes for both conservation and livelihoods. They found that 27 percent of the communities experienced joint positive outcomes, and that such outcomes were positively correlated with larger forests, greater commercial dependence on forests, and when local forest users take part in forest rulemaking. Additionally, they found that local participation in rule-making was particularly important when smaller forests were involved. Although the general patterns were the same for both the African and Asian cases, they noted that the strength of the associations varied between the two regions. They conclude that it is likely that there are "multiple pathways for achieving these outcomes, differentiated, for instance, across varied regional contexts and key factors that also likely operate at broader scales." (Persha et al., 2011, p. 1,608).

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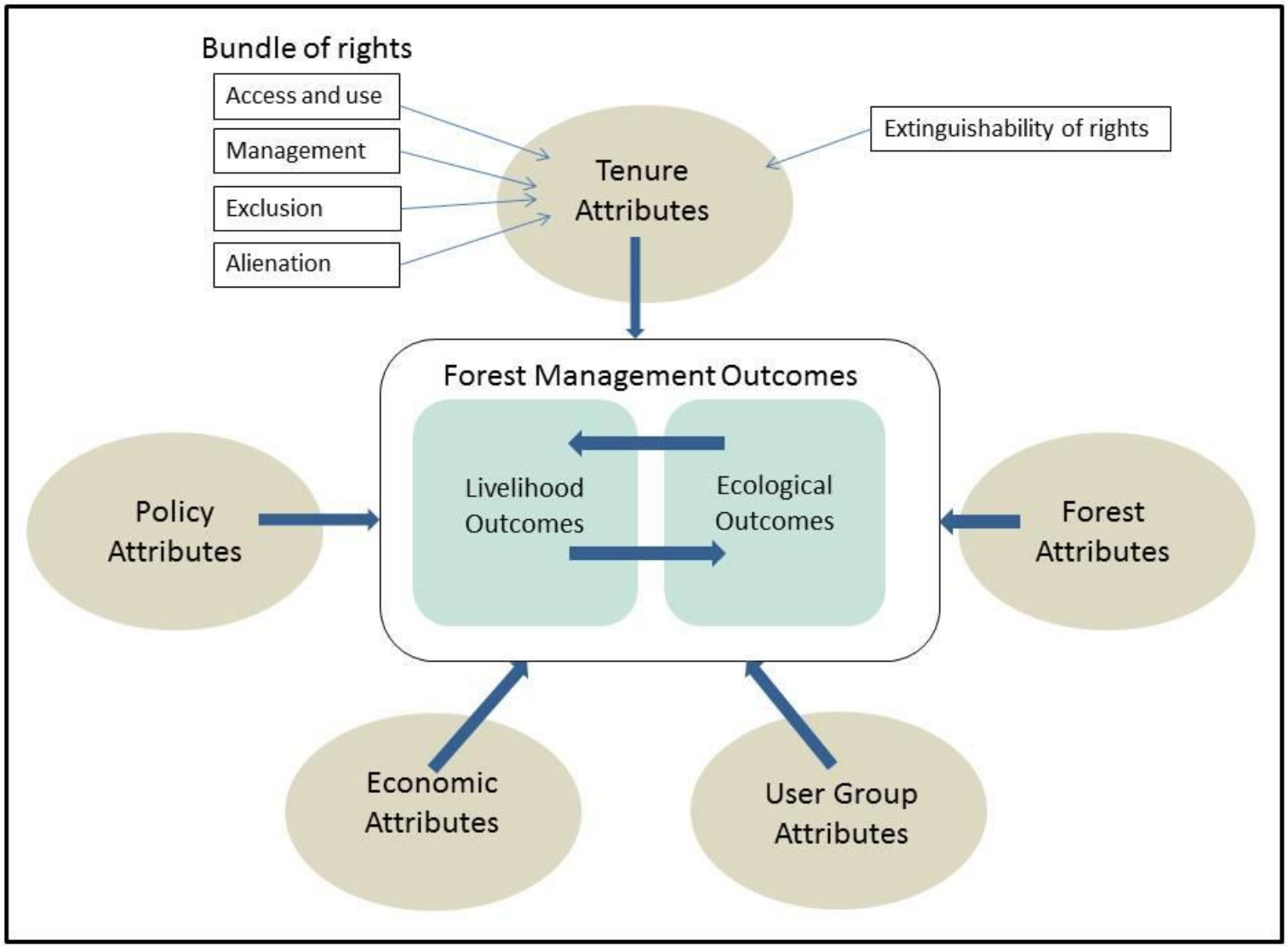
FIGURE A.1: ANALYTICAL FRAMEWORK FOR ASSESSING LINKS BETWEEN TENURE AND FOREST OUTCOMES



ANNEX B: NATIONAL POLICIES AND LAWS DEVOLVING FOREST RIGHTS AND RESPONSIBILITIES IN CASE STUDY COUNTRIES

LATIN AMERICAN COUNTRIES

Country	Key Policies, Laws, or Decrees Supporting Forest Rights Devolution	Description
Bolivia	1996 INRA Act	Accorded precedence to communities' ancestral rights over forests when those conflicted with forest concession holder rights.
	1996 Forestry Law	Allows a greater diversity of users to manage forest resources and provides new guidelines to facilitate communal forest management.
	2007 National Law 3760	The UN Declaration on the Rights of Indigenous Peoples is adopted as national law.
Brazil	1988 Constitution	Recognizes indigenous groups' ancestral rights over land as well as the rights of former slave communities to lands traditionally occupied. Provides for the demarcation of indigenous reserves on public lands and the protection of indigenous rights to land.
	2006 Forests Management Law	Authorizes the demarcation of public forests, including indigenous areas. Allows local communities to acquire concessions.
Guatemala	1985 Constitution	Recognizes communal tenure.
	1996 Peace Accords	Requires devolution of land to communities.
	2005 Cadastral Information and Registration Law	Ratifies the recognition of indigenous and non-indigenous communal lands, although it does not recognize communal rights to forests.
Mexico	1917 Constitution	Communal Land Tenure established.
	1992 Article 27	Allows greater autonomy in communal decision making and new regulations for governing *ejidos*.
Peru	1987 Law of Communities	Recognizes integrity of communal property.
	1993 Constitution	Recognized indigenous land claims and opens possibility for peasant and indigenous lands to parcelize.
	1995 Land Law	Legalizes parcelization and sale of communal land.

AFRICAN COUNTRIES

Country	Key Policies, Laws, or Decrees Supporting Forest Rights Devolution	Description
Democratic Republic of Congo	2002 Forest Code	Acknowledges customary use rights to forest products and services for meeting subsistence needs. Provides for community forest concessions and the transfer of management responsibilities for such concessions to communities. Regulations have been drafted, but no community forest concessions have been established.
	2006 Constitution	Establishes a decentralized system of national governance, including the establishment of 26 new semi-autonomous provinces. Ultimately, responsibility for forest planning and regulation will be devolved to the provincial and sub-provincial level.
Ethiopia	1995 Constitution	Vests ownership of land and natural resources in the "state and the peoples of Ethiopia." Specifies that citizens have the right to be consulted about projects and policies affecting their communities.
	1997 Rural Land Administration Proclamation No. 89/1997	Specifies that farmers have lifelong, inheritable, and transferable use rights to land and to trees planted on their land. Also specifies that private investors have the right to obtain use rights to land from the state in exchange for a fee.
	2005 Federal Rural Land Administration and Land Use Proclamation No. 456	Establishes a system of land certification with the goal of resolving conflicting claims to agricultural land and to encourage conservation investments, such as tree-planting and protection, on farm lands.
	2007 Forest Development, Conservation and Utilization Proclamation No. 542	Establishes two categories of forests, state and private. Specifies that individuals, associations, businesses, NGOs, and governmental organizations can develop private forests in accordance with regional laws. Calls for community consultation and participation in forest development and conservation, as well as the sharing of benefits from the development of state forests with local communities.
Ghana	1974 Trees and Timber Decree	Vests rights to naturally regenerated trees in the traditional authorities; however, management and commercial harvest rights to timber species belong to the State in both reserved (protected) and off-reserve areas. Specifies that farmers have a right to compensation for damages to crops resulting from commercial timber harvesting.
	1994 Forest and Wildlife Policy	Calls for government commitment to Collaborative Forestry Management.
	2009 Voluntary Partnership Agreement with EU	Binds Ghana to ensuring that all timber exported to the European Union has been harvested according to Ghanaian law.

Country	Key Policies, Laws, or Decrees Supporting Forest Rights Devolution	Description
Kenya	2009 National Land Policy	Provides that the "Government shall recognize and protect the rights of forest, water dependent or other natural resources dependent communities and facilitate their access, co-management and derivation of benefits from the resources."
	2005 Forest Act	Provides for the establishment of CFAs, with a range of subsistence and commercial forest rights, in state forests and local authority forests.
Tanzania	1998 National Forest Policy	Promotes participation in forest management through the establishment of VLFR and JFM.
	1999 Village Land Act	Grants statutory protection for customary tenure *even if not registered* and makes titles available for customary rights.
	2002 Forest Act	Authorized PFM, which specifies legal footing communities, groups, or individuals to own, manage, or co-manage forests. Two types exist: CBFM and JFM. CBFM provides stronger rights than JFM, including exclusion and transfer rights.
Zambia	1995 Land Act	Formally recognizes customary tenure, while vesting ownership of all land and resources in the President, thereby effectively limiting customary rights to use rights.
	1998 Wildlife Act	Established local communities' rights to use and co-manage Game Management Areas and Open Areas (i.e., areas not in protected or reserve status). Zambia's JFMA approach is modeled after this Act.
	1999 Forest Act (still lacking implementing regulations)	Includes provisions for establishing JFMAs and authorizes the delegation of management powers to local communities through Joint Forest Management Committees. Provides for the establishment of a Forestry Commission to replace the existing Forestry Department.
	Statutory Instrument No. 52 of 1999 (Local Forests [Control and Management] Regulations)	Authorizes the Minister of Tourism, Environment and Natural Resources to establish any Local Forest as a JFMA. Serves as a temporary measure until implementing regulations are promulgated to create a Forestry Commission.
	Statutory Instrument No. 47 of 2006 (Local Forests [Control and Management] Regulations)	Permits the establishment of JFMAs in designated Local Forests until implementing regulations are promulgated for the 1999 Forest Act.

ASIAN COUNTRIES

Country	Key Policies, Laws, or Decrees Supporting Forest Rights Devolution	Description
India	1990 Joint Forest Management Circular	Establishes rights for scheduled tribes and other traditional forest communities to forested areas. Outlined the rights of local communities to use and manage forest lands; all states have since adopted JFM and approved guidelines.
	1996 *Panchayat* (Extension to the Scheduled Areas) Act	Strengthened and broadly institutionalized the implementation of JFM by devolving some powers over forest lands to tribal community villages and councils in Scheduled Areas.
	2006 Forest Rights Act	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act provides tenure security and access rights to members of scheduled tribes and traditional forest dwellers. The Act recognizes both individual and collective rights of ownership.
Indonesia	Law 22/1999	States that villages are autonomous units rather than the smallest unit of the centralized government; the law gives villages legal authority to govern based on local customs and traditions.
	New Forestry Law 41/1999 along with the 2001 Decree of the People's Consultative Assembly IX	Recognizes customary or *adat* rights to forest resources on state forest lands; at the same time, the use of all forest resources is restricted by its functional category within the law (i.e., production, protection, or conservation forests); provides for the formal recognition of "*hutan adat*" (customary forest).
	2007 Amendment to Law 41/1999	Provides for community-based forest management of state forests for protection and production through long term leases.
	2007 Amendment to Law 51/1990	Provides for community-based forest management for conservation purposes.
Nepal	1961 Forest Act	Established the legal basis for community forests through designation of Panchayat Forests and Panchayat Protected Forests.
	1978 Panchayat Forest Regulation/1978 Panchayat Protected Forest Regulation	Implemented the community forest provisions of the 1961 Forest Act. Introduced the concept of participatory forestry and de-concentrated some management rights to local entities.
	1993 Forest Act	Outlined community forest user group formation processes and mechanisms for handing over management rights to user groups.
	1995 Forest Regulations	Set forth the processes by which community user groups could acquire a legal personality and specified how management rights could be transferred to user groups. Also established Leasehold Forestry, which provides poor households with access to forest products on degraded state forest lands.
	2000 Forestry Sector Policy	States that large forest blocks in the Terai, Churia, and Inner Terai will be collaboratively managed by the state and local communities. Calls for sharing of 25% of forest revenues generated from those areas to local governments for development projects.

Country	Key Policies, Laws, or Decrees Supporting Forest Rights Devolution	Description
	2003 Collaborative Management Directive	Specifies Collaborative Forest Management as an alternative approach to managing government forests in the Terai and Inner Terai.
	2007 Interim Constitution	Article 118 calls for local self-governance founded on decentralization and rights devolution principles.
Philippines	1987 Constitution	Protects ancestral domain rights; however, it also vests ownership of all forests in the state.
	1991 Local Government Code	Specifies that the central government will devolve some of its powers and responsibilities to local government units. These powers include the power to protect and regulate natural resources.
	DENR Administrative Order 22-1993	Provided guidelines for delineating and recognizing Ancestral Domain claims to land.
	Executive Order no. 263. July 15, 1995	Adopted community-based management as a national strategy for sustainable development of the country's forest lands.
	1997 Indigenous Peoples Rights Act	Formally recognizes the right of Indigenous Peoples to possess and own the land and resources located within their demarcated ancestral domain; sets in place a process titling those claims.
Vietnam	1991 Forest Protection and Development Law	Established a framework for allocating individuals, households, organizations, and other entities rights to use, manage, and protect forests. Also provided for the establishment of management boards for protection and special use forests. Subsequent implementing decrees provided guidelines for transferring management rights from the state (January 1994 Decree 02/CP); issuance of land allocation contracts for farming, forestry, and aquaculture (January 1995 Decree 01/CP); and leases for forestry (November 1999 Decree 163/1999/ND-CP; replaced in October 2004 by Decree 181/2004/ND-CP).
	1993 Land Law	Created system of long-term, renewable land use titles known as Red Book Certificates. These can be exchanged, transferred, given to heirs, mortgaged, and leased.
	2003 Land Law	Provides legal recognition of community land tenure.
	2004 Forest Protection and Development Law	Revises the 1991 Forest Protection and Development Law. Recognizes common property as a forest management modality; implementing guidelines issued in 2006.

ANNEX C: TYPOLOGY OF DEVOLUTION APPROACHES

LATIN AMERICAN COUNTRIES

Country	State Ownership Benefits-Sharing Only	State Ownership – Delegated Use and/or Management							Statutory Recognition of Community Tenure (includes customary and induced institutions)	
		Community Concession or lease		Industrial Concession with Social Responsibility Contract	Co-management with community	Co-management between centralized state forestry department and local government	Reserved for use or occupation by Indigenous Peoples or forest communities	Individual or household use right certificates or titles	Statutory recognition and formal titling process	Statutory recognition; no formal titling process
		Short Term (<10 years)	Long-term (10 or more years)							
Bolivia			X						X	
Brazil			X				X		X	
Guatemala			X						X	
Mexico									X	
Peru			X						X	

AFRICAN COUNTRIES

Country	State Ownership Benefits-Sharing Only	State Ownership – Delegated Use and/or Management							Statutory Recognition of Community Tenure (includes customary and induced institutions)	
		Community Concession or lease		Industrial Concession with Social Responsibility Contract	Co-management with community	Co-management between centralized state forestry department and local government	Reserved for use or occupation by Indigenous Peoples or forest communities	Individual or household use right certificates or titles	Statutory recognition and formal titling process	Statutory recognition; no formal titling process
		Short Term (<10 years)	Long-term (10 or more years)							
DRC			X (in the works)	X						X
Ethiopia		X								
Ghana	X				X (not operational)					
Kenya					X					X
Tanzania					X				X	X
Zambia					X (not fully operational)					

ASIAN COUNTRIES

Country	State Ownership Benefits-Sharing Only	State Ownership – Delegated Use and/or Management							Statutory Recognition of Community Tenure (includes customary and induced institutions)	
		Concession or lease		Industrial Concession with Social Responsibility Contract (or partnership)	Co-management with community	Co-management between centralized state forestry department and local government	Reserved for use or occupation by Indigenous Peoples or forest communities	Individual or household use right certificates or titles	Statutory recognition and formal titling process	Statutory recognition; no formal titling process
		Short Term (<10 years)	Long-term (10 or more years)							
India					JFMA			FRA Titles	FRA Title	
Indonesia				X	HtK, Hutan Desa, HTR					Adat
Nepal			Leasehold Forestry		CF, CFM, BZCF					
Philippines					CBFMA	Memorandum of Agreement			CADT	
Vietnam			X (Protection Forest Contract)					X (Red Book Certificate)		

ANNEX D: GOVERNANCE DEVOLUTION APPROACHES MATRIX FOR ALL CASE STUDIES

LATIN AMERICAN DEVOLUTION APPROACHES

Country	Devolution Approaches	De jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
Bolivia	Territorio Indigena Originario Campesino: permanent tenure	Unrestricted subsistence use	Requires state-approved management plan for commercial uses	Yes	Rights cannot be extinguished except through formal legal process	No
	Propriedades Comunitarias: permanent tenure	Unrestricted subsistence use	Requires state-approved management plan for commercial uses	Yes	Rights cannot be extinguished except through formal legal process	No
	Tituolos Comunales para Comunidades Agro-extractivas (Norte Amazonico): permanent tenure	Unrestricted subsistence use for NTFPs; unclear whether includes right to harvest timber for subsistence uses	Requires state-approved management plan for commercial uses of NTFPs; unclear if includes the right to harvest timber commercially	Yes	Rights cannot be extinguished except through formal legal process	No
	Agrupaciones Sociales del Lugar: type of forest concession; 40-year extendable term	No restrictions on NTFPs; for timber must obtain management plan	Yes, with state-approved plan for timber (no plan for NTFPs)	Yes	Subject to suspension or cancellation by the forestry department	No
Brazil	Indigenous and Quilombola Territories: (communal tenure – permanent)	Yes	Yes, with management plan approved by forestry service for commercial uses	Yes	Rights cannot be extinguished except through formal legal process	No
	Conservation Units: e.g., Sustainable Development and Agroextractive Reserves (permanent)	Yes, available to associations	Yes, with sustainable natural resource use plan	Yes	Subject to suspension or cancellation by the forestry department	No
	Private forest landowners: permanent tenure	Yes	Yes, but must maintain 80% forest cover	Yes	Rights cannot be extinguished except through formal legal process	Yes
	Concessions (within conservation areas) Duration: 40 years, renewable	Yes	Must follow federal forestry management plans	Yes	Subject to suspension or cancellation by the forestry department	No
Guatemala	(MBR) Community concessions: 25 year renewable with FSC certification	Subsistence and commercial use of all forest products	Yes, with FSC- and federally approved management plan	Yes	Subject to suspension or cancellation by the forestry department	No
	(Highlands): Community or municipal titles; individuals can purchase rights within a community or municipal title; permanent tenure	Yes	Yes, with federally approved management plans	Yes	Rights cannot be extinguished except through formal legal process	Yes, but rights remain indivisible
Peru	Concessions: fixed term, renewable	Yes, timber, NTFPs, reforestation, ecotourism, conservation, mining	Yes, subject to state regulations	Yes	Subject to suspension or cancellation by the forestry department	No

Country	Devolution Approaches	De jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
	Communal titles: coast and highlands; permanent tenure (Tierras de Comunidades Campesinas con aptitude Forestal)	Subsistence use is unrestricted; use rights to commercial forest products within guidelines of state approved plan	Yes, requires management plan for commercial timber harvest	State retains rights to lease forest lands	Rights cannot be extinguished except through formal legal process	Non-forested land can be alienated with 50% vote Forest lands cannot be alienated
	Communal titles: lowlands; permanent tenure (Tierras de Comunidades Nativas con aptitude Forestal)	Subsistence use is unrestricted; use rights to commercial forest products within guidelines of state-approved plan	Yes, requires management plan for commercial timber harvest	State retains rights to lease forest lands	Rights cannot be extinguished except through formal legal process	Non-forested land can be alienated with 50% vote Forest lands cannot be alienated
Mexico	Community tenure: permanent tenure (Comunidades)	Yes	Yes, must have 10-year management plans approved by federal government to harvest commercial timber	Yes	Rights cannot be extinguished except through formal legal process	No – can be leased but not sold; must remain in community tenure
	Ejidos: permanent tenure	Yes	Yes, must have 10-year management plans approved by federal government to harvest commercial timber	Yes	Rights cannot be extinguished except through formal legal process	Farm land and house lots can be sold with two-thirds majority of *ejido* members. Forests cannot be divided or sold

AFRICAN FOREST GOVERNANCE DEVOLUTION APPROACHES

Country	Devolution Approaches	De Jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
Ghana	CFM provided for in 1994 Forest and Wildlife Policy	CFM program has not been implemented on community basis	n/a	n/a	n/a	n/a
	Timber Resources Management Amendment Act of 2002	Provides that trees planted by farmers on their individual holdings are owned by landholder; they must register ownership of trees planted	Have free management authority, as long as rights to individual trees are registered; many farmers appear not to be aware of tree ownership right or of the requirement that tree rights be registered	Yes	Rights appear to be contingent on registration of trees planted; farmers cannot own naturally sewn trees existing on their farms	Farmers, including owners of small plantation, have the right to market mature trees to commercial timber operators, though subject to permitting
Democratic Republic of the Congo	Local Community Forest Concession Duration: 25 years, renewable Note: no legal mechanism exists for communities to acquire legal personalities so this option is not yet available	Yes, subsistence use and commercial use for all forest products, rights to farm Applies only to protected (economic development) forests	Yes, but under a management plan approved by the local forestry office	Unclear	Subject to suspension or cancellation by the forestry department	Can enter into agreements with third parties to harvest products with approval of local forestry administration
	Industrial concessions with social responsibility agreement requirement	Yes, but negotiated with concession holder	Yes, but through negotiations with concession holder	Limited ability to exclude	Variable – in general, communities are in a weak bargaining position and lack the capacity to enforce the agreements	No
Ethiopia	Participatory Forest Management: annual lease on State or Regional Forest land; renewable subject to satisfactory forest assessment	Yes, rights to harvest wood and NTFPs for domestic use and sale, rights to graze livestock, rights to cultivate existing plots	Yes, but management plan must be approved by forest agents	Yes	Subject to suspension or cancellation by the forestry department	No
Kenya	CFAs, which can established only within State Forests or Local Authority Forests	Yes, exclusive use by CFA of trees and forests for customary uses and for "forest-based enterprises"	Yes, management plan must be approved by Forestry Dept.; communities must also be registered as non-profit organizations under the Societies Act	Yes	Yes, by suspension of the Forestry Dept.	No

Country	Devolution Approaches	De Jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
Tanzania	Community-Based Forest Management: permanent tenure, production forests	NTFP use rights, but does not provide rights to timber	Yes, but must follow a village forest management plan developed in consultation with forestry department	Yes	Rights cannot be extinguished except through formal legal process	Rights are heritable
	Joint Forest Management: short-term (variable), protection forest	Subsistence use only; benefit sharing arrangements (in theory) for sales of timber	Yes, but strong forest department role in development of management plan	Yes	Subject to suspension or cancellation by the forestry department	No
Zambia	Joint Forest Management Duration: unclear	Yes, but must obtain a permit to harvest products; subsistence licenses are free but a fee is charged for commercial products; revenues are to be shared with communities but no guidelines have been developed	Yes, but only according to guidelines established by the forestry department; a management plan approved by the forestry department must be developed	Yes	Subject to suspension or cancellation by the forestry department	No

ASIAN FOREST GOVERNANCE DEVOLUTION APPROACHES

Country	Devolution Approach	De jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
India	Joint Forest Management Agreement Duration is variable by state or local context	Rights granted vary by state. Share of revenues from sales of timber (and other "nationalized") products goes to communities	Yes, but in conjunction with forestry department, which has final approval authority Plans must conform to forestry department's working plan for the area	Yes	JFM agreements are subject to unilateral suspension or cancellation by state forestry departments	No rights of alienation
	Household and communal titles based on claims under the Forest Rights Act 2006. Duration is permanent	Rights to NTFPs, fodder, fishing, grazing, access to biodiversity, community rights to intellectual property	Yes, but rights can be restricted in critical wildlife habitat	Yes	Rights cannot be extinguished by the government (state or federal) except through FPIC process	Rights are heritable but cannot be alienated or transferred
Indonesia	Adat Forest (Customary Law Forest) Duration: (tenuously) in perpetuity	Subsistence use rights in State Forest Areas	Yes, within constraints of the national forest law and regulations; cannot enter into contracts with third-party forest users (commercial users) without government approval	No	Unclear; customary rights are acknowledged in Indonesia's constitution	No
	Community Forests (*Hutan Kemasyarakatan*) Duration: 35 years (issued to groups of farmers)	Varies according to forest status, i.e., conservation, protection, or production forest; in general, use is restricted to NTFPs in protection forests while timber can be harvested in production forests	Through participation in management board	Yes	Subject to suspension or cancellation by Ministry of Forestry	No
	Village Forests (*Hutan Desa*) Duration: 35 years, renewable (for village-based institutions)	Subsistence use rights to NTFPs; use of timber subject to approval in production forest zone	Yes, but heavy-handed participation of forest authorities in guiding and controlling village forest; annual work plan required	n/a	Subject to suspension or cancellation by Ministry of Forestry	No
	Hutan Tanaman Rakyat (People Plantation Forest) Duration: variable, up to 100 years	Yes, requires license to sell commercial timber	Yes	Yes	n/a	No

Country	Devolution Approach	De jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
	Kemitraan: community/company partnerships Duration: variable	Varies by case	Varies by case	No	n/a	Not applicable
Nepal	Community Forestry Duration: in perpetuity, as long as meet state standards	Subsistence and commercial use as permitted within approved plan; clearing land and building dwellings is prohibited; percentage of revenues must go toward conservation; products sold outside user group are taxed	Managed by Community Forest User Groups with management plan approved by the District Forest Office	Yes	Subject to suspension or cancellation by the DFO; in practice, this is unlikely to happen due to the political activism of community forest user groups	No
	Buffer Zone Community Forestry: in perpetuity, but subject to cancellation by Park Warden	Very restricted use rights; activities permitted are determined by Park Warden; percentage of revenues must go toward conservation	Managed by Buffer Zone User Groups under management plan developed by Park Warden	Limited	Subject to suspension or cancellation by Park Warden	No
	Collaborative Forest Management	Subsistence use and commercial use; revenues from sales of products do not go to forest user groups, but rather are split between the district forest office (25%) and the central treasury (75%) Key timber species are taxed (15%) if sold outside the user group	Management rights are shared between community members, local government, and the central government; however responsibilities are disproportionately borne by local forest users Critiqued for being dominated by DFOs	Yes	Subject to suspension or cancellation by the District Forest Office	No
	Leasehold Forestry Duration: 40 years, renewable	Rights to grow and harvest NTFPs and fodder; open grazing and farming prohibited	DFOs prepare operational plans prior to issuing the leasehold	Yes	Subject to suspension or cancellation by the District Forest Office	No
Philippines	Community-Based Forest Management Agreement Duration: 25 years, renewable	Yes, with management plan; includes rights to NTFPs, rights to farm; to harvest timber, holder must obtain a Resource Use Permit	Yes, with DENR approved management plan	Yes	Subject to suspension or cancellation by DENR	Can transfer use rights to family members

Country	Devolution Approach	De jure Rights				
		Access/Use	Management	Exclusion	Extinguishability	Alienation
	CADT Duration is permanent	Yes, all resources plus rights to farm	Yes, but must develop a DENR-approved Ancestral Domain Sustainable Development and Protection Plan. CADT holders also have a responsibility to maintain an ecological balance and restore denuded areas	Yes	Rights cannot be extinguished by the government (state or federal levels) except through FPIC process	Can transfer rights to land and resources to other members of the indigenous group with a claim to that Ancestral Domain
	Memorandum of Agreement (Co-management between local government units, communities, and DENR) Duration: no data	Variable but can include rights to clear land for subsistence farming, rights to harvest NTFPs; local government units have regulatory and taxing authority	Yes, but need forestry department approved management plan	Yes	Subject to suspension or cancellation by DENR	Can transfer land rights to family members or other holders of the Memorandum of Agreement
Vietnam	Forest Land Allocations (Red Book Certificate) Duration: 50 years, renewable	Yes, unrestricted NTFP harvesting; timber harvest and small-scale clearing with permission from forestry department; holder is entitled to keep a percentage of after-tax value of timber sold based on number of years the land has been protected	Yes, but commercial logging and land clearing subject to permission from the forestry department	Yes	State required to provide fair compensation if it reclaims the land for other uses	Yes, rights to exchange, transfer, leave as inheritance, mortgage, or lease forest land
	Protection Forest Contract Duration: 50 years, renewable	Yes, right to collect fuelwood and non-timber products; right to a % of after-tax value of product sales Right to farm, but cannot clear additional land Timber harvest requires permission from forestry department; holder is paid a small fee for protection responsibilities	Must follow conditions specified in contracts issued by forest management boards	Yes	Subject to suspension or cancellation by the forestry department	No

ANNEX E: REDD+ AND DEVOLUTION OF FOREST RIGHTS

Reduced Emissions from Deforestation and Forest Degradation (REDD+) has become a key part of the post-Kyoto global climate policy architecture. The objective of REDD+ is to mitigate global climate change through actions in developing countries that reduce deforestation and forest degradation, improve forest conservation, make forest management more sustainable, and enhance forest carbon stocks. In exchange, more developed countries are expected to provide fair compensation for the costs of these actions and the opportunities that are foregone by maintaining land in forests instead of converting it to some type of land use. In order to invest in REDD+, developing countries need assurance that gains in forest carbon are real and sustainable.

REDD+ can thus be decomposed into two major changes: changes in the ways that forest users and forest management agencies are connected to international sources of finance and accountability; and changes in forest use and management in ways that enhance forest carbon. Devolution of rights and responsibility for forest management can affect both of these changes. This annex presents a summary of information on these linkages between REDD+ and devolution, drawing on the review of devolution and forest management wherever appropriate.

1. REDD+, DEVOLUTION AND CONNECTIONS TO INTERNATIONAL SOURCES OF FINANCE AND ACCOUNTABILITY

One of the key points of discussion and contention in negotiations over REDD+ has been the extent to which REDD+ accountability and finance should be centralized in state forest agencies or devolved to local authorities, groups of forest users and individual land managers. Many of the forest carbon projects that have been implemented in developing countries contain mechanisms that transfer carbon payments directly from international investors to individual farmers and community groups who plant trees or undertake other improved forest management practices. This decentralized market-based approach underlies the afforestation / reforestation component of the Kyoto Protocol's Clean Development Mechanism as well as all forest management activities undertaken through the voluntary carbon market. Such small-scale forest carbon projects have been undertaken in many of the countries covered by this review. Unfortunately, however, experience shows that this fully devolved approach is fraught with challenges. There are challenges related to leakage from the project area to nearby areas outside of the project, non-permanence of carbon stored in trees, and the costs and technical challenge of accurate accounting for baseline forest carbon stocks and changes in those stocks. Until recently, almost all forest carbon projects have thus been small-scale and financed through the less-demanding voluntary offset market. The transaction costs associated with monitoring, reporting and verification of these small-scale offsets have also been high.

To overcome these and other challenges, one of the general principles of REDD+ is that national governments should ultimately be accountable for period-to-period changes in forest carbon stocks in their countries, and that international transfer payments should be made on the basis of changes in national stocks. Such an approach is taken, for example, in recent transfers from the Government of Norway to the Brazil Forest Fund. Proponents of the fund approach argue that national-level accounting and finance mechanisms allow national governments to adjust REDD+ strategies to specific circumstances, to deal with non-permanence through aggregation across all forest resources in the country, and to implement sampling and measurement schemes that generate relatively accurate and cost-effective estimates of period-to-period changes in forest carbon. Further, resources from funds could legitimately be used to finance some of the fixed costs associated with the devolution of forest tenure, including accounting, boundary adjudication, information dissemination, training and enforcement. Funds could also help with the up-front loading of costs associated with tree planting schemes.

Critics of the national fund approach indicate concern that REDD+ will provide national governments with a rationale for re-centralizing forest rights. Forest user groups and indigenous people's groups in Latin America have been particularly vocal in opposing REDD+ on these grounds. They worry about centralization of forest rights, and sale of those rights to foreign governments that provide finance. Some groups also oppose market-based approaches to REDD+ because of concerns about the loss of sovereignty to foreign firms.

On the other hand, however, it is generally recognized that the forest carbon objectives of REDD+ can be met most effectively through devolution of accountability and carbon finance incentives away from national forest agencies. Individuals and small groups of landusers are best placed to bear the costs and benefits of improved forest management; thus they should be the ones provided with forest carbon incentives and given responsibility to maintain forest carbon stocks.

To capture the clear benefits of centralized accountability and decentralized action, some type of hierarchical nested arrangement may be most viable way to implement REDD+. That is, finance is provided to national-level funds, which are accountable to maintaining national-level targets, by transferring payments to user groups, cooperatives or intermediary groups on the basis of performance indicators that are downscaled to the operational level. The Congo Basin Forest Fund represents a hybrid approach; the Governments of the UK and Norway provide money to the fund that is allocated directly to non-governmental organizations that undertake action with community groups in particular areas. Tropical forest countries other than Brazil have established similar funds, usually for the main purpose of promoting conservation of biological diversity. For example, it has been proposed the Eastern Arc Conservation Trust Fund of Tanzania could be used to channel REDD+ funds to communities that conserve forests, often through non-governmental organizations.

2. REDD+, DEVOLUTION AND SUSTAINABLE FOREST MANAGEMENT

One result of the tension between centralized accounting and the need for decentralized action is that the Subsidiary Body for Scientific and Technological Advise (SBSTA) of the UN Framework Convention on Climate Change (UNFCCC) has focused a great deal of effort on devising appropriate "safeguards" for REDD+. Expanding REDD to include forest conservation, sustainable forest management and afforestation activities has also helped to appease concerns that REDD+ would lead to the re-centralization of forest management.

The Cancun Agreement of the UNFCCC (FCCC/CP/2010/7/Add.1) encourages Parties to undertake a variety of actions on REDD+, including actions to be taken by both developed and developing countries. Item 72 of the Cancun Agreement requests developing countries to develop and implement national action plans that address, inter alia, the "*drivers of drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia Indigenous Peoples and local communities*."

As described in this report, devolution of forest rights has direct and indirect linkages with almost all of the issues listed in Item 72 of the Cancun Agreement. Here we offer a brief summary and analysis of those linkages, relying on our analytical framework and the results of the 20-country review.

The analytical framework used in this paper considers the following:

- Forest characteristics
- User group characteristics
- Forest tenure system characteristics
- Incentives to retain/enhance tree cover Policy system characteristics

FOREST CHARACTERISTICS

The prevalence of different types of forest and the character and level of deforestation pressure affect the credibility and expected returns that can be generated by REDD+ investment in a country. Everything else equal, the greater the carbon intensity and extent of forest resources, the greater the international interest will be for investing in REDD+. There is likely to be an inverse relationship between deforestation threat and international interest in investing in REDD+: forests with high deforestation pressure will attract less investment than forest lower threat. Governments that formulate national strategies for

REDD+ should be realistic about the opportunities for attracting REDD+ finance and consider how to address factors that inadvertently drive deforestation (eg construction and improvement of roads).

USER GROUP CHARACTERISTICS

Everything else equal, devolution will be most consistent with the objectives of REDD+ where forest-dependent people exert greater influence over governance processes, and where forest-dependent people rely relatively heavily on non-timber forest products. Such situations hold, for example, in the case of Brazil-nut extraction from reserves in parts of the Amazon basin. Indigenous people's groups in Latin America have been particularly vocal in opposing REDD+ when they have been concerned that it would lead to a re-centralization of rights toward the state. The Safeguards referred to in the annex to the Cancun Agreement were developed largely in response to those concerns. Where non-timber forest products are important, effective devolution is likely to be the most important element of REDD+ strategies.

One possible tension in the implementation of REDD+ at the decentralized level is that influential conservation groups may see REDD+ primarily as a way to achieve biodiversity conservation objectives, while user groups may see REDD+ as a means of obtaining state recognition for their ownership rights. International conservation organizations have been influential in shaping REDD+ negotiations and in investing in REDD+ demonstration activities in developing countries with high biodiversity value. National governments and community organizations should recognize these interests and harness the interests of conservation organizations in areas of highest conservation value. International support to REDD+ projects should acknowledge the potential for external project proponents to have different interests from local residents.

FOREST TENURE SYSTEM CHARACTERISTICS

If REDD+ is implemented through some type of financial payment or compensation for maintaining forest carbon, then one of its effects is to create a new benefit stream. Rights and duties related to this benefit stream thus become fundamental. Wherever the state claims ultimate ownership of forests, as in most of Africa, it can be argued that the state has rights to forest carbon benefits until it explicitly transfers those rights to other owners. In Kenya, for example, the World Bank BioCarbon Fund agreed to support a forest restoration project when the Kenyan government agreed to transfer forest carbon rights to the Greenbelt Movement that was the non-governmental organization implementing the project. Systematic approaches to the devolution of forest carbon rights, along with other forest rights should be developed as part of REDD+ readiness.

Another important interaction between REDD+ and devolution concerns the granting of conditional land rights as an incentive for maintaining or enhancing tree cover. Many social or community forestry arrangements in Africa and Asia are based on the premise that community groups can be granted temporary rights to harvest non-timber forest products in exchange for protecting or enhancing tree cover. In that context, REDD+ funds may be seen as a means of financing contracting costs or compensating community groups for forest protection activities. As is evident from the African case studies presented in this review, there are limits on the effectiveness of such benefit-sharing mechanisms. The two Indonesian cases presented show that conditional social forestry contracts can be viable in places where immigrants to an area perceive a strong threat of dispossession by the government, but not in places where long-term residents of an area perceive that the state forest designation is a historical injustice. Community groups in such instances may only be satisfied with unconditional private rights, or a return to indigenous forms of governance. There is thus an important distinction between devolution as a means of achieving REDD+ and conditional devolution as a REDD+ incentive itself.

INCENTIVES TO REDUCE / RETAIN / ENHANCE TREE COVER

Since the spike in world prices for food and energy that occurred in 2007-8, there has been increasing concern over the possibility of a new "scramble for Africa" as foreign governments and companies vie for the right to use large tracts of land for food and biofuel production. At least one government, in Madagascar, has been ousted due to negative public reaction to a deal that would have given the Daewoo Company long-term leasehold rights to large tracts of land for food production. In some African countries, long periods of civil conflict and low investment in physical capital, have had the de facto effect of reducing pressure on forest resources. This characterizes parts of the Congo Basin. In international REDD+ negotiations, the Congo Basin countries have argued for some type of development allowance: that is, that REDD+ mechanisms should allow for deforestation rates that are greater than recent historical rates. An advantage of a large-scale approach to REDD+ is that planned deforestation in some areas can be offset by planned conservation and afforestation in other areas.

While devolution is expected to advance the forest carbon objectives of REDD+ in most circumstances, it could have the opposite effect where there are high and growing economic pressures to convert forestland to alternative uses. This situation has been seen in parts of Tanzania, where implementation of a community forestry law has involved a transfer of timber harvesting rights from state to local governments. The best alternative in such situations may be to provide information and training to forest committees, to make those committees accountable to local residents, and to assist communities and regional governments to implement devolution within more integrated "high carbon stock" rural development strategies. The high carbon stock approach to rural development seeks to enhance forest and soil carbon stocks across the full suite of land uses occurring in a landscape. An example of a high carbon stock rural development strategy is seen in parts of Southeast Asia where farmers are moving from swidden agriculture systems to permanent agroforestry systems. Tracts of pristine conservation forests, as well as plantation forests, would be part of overall land use plans implemented at the community and regional levels.

POLICY SYSTEM CHARACTERISTICS

Poor governance has been and will continue to be a strong disincentive for international REDD+ investment. This assertion is backed by a recent international analysis which shows that the most statistically significant factor affecting the number of REDD+ demonstration projects is the quality of governance as measured by the World Bank Governance Indicators. Those indicators suggest that some tropical forest countries rate very low for all governance indicators (eg Democratic Republic of Congo), while other countries are relatively high for some indicators and low for others (eg Vietnam). The links to REDD+ are quite obvious. For example, rule of law is important for ensuring that contracts are honored and property rights respected. Voice and accountability are important for ensuring that local and indigenous people have adequate opportunity to influence the way that REDD+ is implemented at the local level. Political stability helps to ensure that national governments adhere to agreements and forest carbon targets. And control of corruption is important for ensuring that REDD+ funds are used for the desired purposes. Support to improved governance thus may be one of the most effective investments for making REDD+ functional.

Everything else being equal, the nested hierarchical approach to REDD+, discussed under point 1 above, will be more viable in situations where there has been effective devolution of governance functions from central to more local institutions. For example, the devolution of governance that has occurred in Indonesia since the Reformasi era began has had the result of making state-level REDD+ strategies a reality. Recent work on REDD+ in Indonesia shows that the policy system is very conducive to REDD+ in some states, and a considerable obstacle in other states. In countries as large and important to REDD+ as Indonesia and Brazil, efforts should be made to match support to REDD+ to state-level circumstances.

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