

Reforming forest tenure

Issues, principles and process



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Foreword

In the past decade many countries have initiated efforts to reform their tenure arrangements for forests and forest land, moving towards the devolution of access and management rights to non-State stakeholders, mainly households, private companies and communities. It is now widely recognized that secure tenure arrangements are one important prerequisite for achieving sustainable forest management – albeit not the only one. Tenure of forest, land and carbon has also become an important issue in efforts to reduce emissions from deforestation and forest degradation.

In recent years, FAO has carried out extensive assessments of the forest tenure situation in the four regions of Africa, Southeast Asia, Latin America and Central Asia, including its impact on sustainable forest management and poverty reduction. The experiences and lessons learned from these assessments, complemented by numerous studies carried out by other organizations, provide a rich information base on different tenure systems and on the successes and challenges of tenure reform processes.

Based on analysis of this information, this publication is intended to provide practical guidance for people involved in forest policy reforms associated with tenure and for those reflecting on the effectiveness of existing tenure systems. The main target audience is government policy-makers and others concerned with addressing forest tenure reform in ways that achieve desired forest management objectives, which generally encompass sustainable forest management and improved rural livelihoods. The publication identifies key issues that need to be addressed when approaching tenure reform, formulates a set of principles to be followed, and proposes a deliberative, adaptive process for undertaking tenure reform.

A key lesson from experience is that tenure reform should be seen in the context of a wider national development agenda. Associated regulatory frameworks and governance arrangements also need to be reformed to achieve the desired outcomes.

We hope that those interested in reforming forest tenure will find inspiration here when considering possible approaches, processes and outcomes.



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Executive summary

FAO's Global Forest Resources Assessment 2010 (FRA 2010) shows that 80 percent of the world's forests are publicly owned, but forest ownership and management by communities, individuals and private companies are increasing (FAO, 2010c). Globally, State ownership and management dominate forest tenure, but transitions are under way – more in some countries than in others. A more diversified tenure system could provide a basis for improving forest management and local livelihoods, particularly where State capacities to manage forests are weak.

An analysis of experiences in tenure and tenure reform suggests that the interactions among tenure, regulatory frameworks and governance are critical in determining the extent to which forest management objectives are achieved. The results of studies carried out over a wide geographical area highlight several key findings:

- Secure forest tenure is a fundamental element in achieving improved livelihoods and sustainable forest management.
- Forest tenure reform should be implemented as part of a holistic and integrated reform agenda supported by related forest policy, legislation and institutional arrangements (and should not be limited to recognizing or granting title and/or usufruct rights). In particular, tenure reform should be embedded within the overall development agenda of the country or region.
- Improved governance systems are critical for ensuring that the regulatory framework for defining and legitimizing the reformed tenure arrangements can be translated into meaningful outcomes.
- Sufficient room should be allowed for players to develop their own forest management systems to suit their own particular circumstances, needs and objectives.
- Traditional/customary forest management arrangements of cultural and religious value should be supported.
- When pre-existing customary rights are recognized or new rights are formally granted, supportive measures should be in place to ensure that all forest users, especially smallholders and local and indigenous communities, know their rights and responsibilities and have the capacities to obtain the benefits provided by access to forest resources. Intensive capacity building, social mobilization and debate are often required.
- The reform of forest tenure is a learning process and requires the adoption of action learning approaches.
- The continuing demand for land, weak governance in many countries, and emerging global problems such as climate change increase the urgency of addressing forest tenure reform.

Much of the argument in favour of tenure reform is based on pragmatic concerns about increasing tenure's contribution to sustainable forest management

and improved livelihoods. However, another argument for tenure reform is based on human rights. Some indigenous peoples – including those in the Amazon, the Dayaks in Borneo and Australian Aborigines – have claims based on customary tenure that are supported by international human rights conventions.

It has been noted that radical changes to tenure are often associated with major political events; once a major shift has occurred, significant positive changes can take place through the application of a deliberative, adaptive, reflective approach that engages a wide range of stakeholders and applies feedback loops from field experience. Analysis of experiences in tenure and tenure reform has led to the identification of several key issues associated with reforming forest tenure. From these, the following principles have been derived, to be applied when embarking on tenure reform:

- ***Principle 1: Adaptive and multi-stakeholder approach.*** Effective tenure reform requires an adaptive, deliberative, reflective and multi-stakeholder approach.
- ***Principle 2: Tenure as part of a wider reform agenda.*** Forest tenure reform should be implemented as part of a holistic and integrated reform agenda.
- ***Principle 3: Social equity.*** All aspects of tenure reform should give attention to the empowerment of marginalized groups, particularly women and the poor.
- ***Principle 4: Customary rights and systems.*** Relevant customary tenure systems should be identified, recognized and incorporated into regulatory frameworks.
- ***Principle 5: Regulatory framework.*** The regulatory framework to support policy changes associated with tenure reform should be enabling as well as enforcing.
- ***Principle 6: Tenure security.*** The regulatory framework should include mechanisms for making forest tenure as secure as possible.
- ***Principle 7: Compliance procedures.*** Compliance procedures should be as simple as possible to minimize transaction costs and maximize the regulatory framework's enabling effects.
- ***Principle 8: Minimum standards for forest management.*** A minimum standards approach should be applied when developing management plans for smallholder or community use.
- ***Principle 9: Good governance.*** Forest governance systems should be transparent, accountable and participatory, including multi-stakeholder decision-making processes.
- ***Principle 10: Capacity building.*** Supportive measures should be in place to ensure that all stakeholders know their rights and responsibilities and have the capacity to exercise them effectively.

Acronyms

ADB	Asian Development Bank
CIS	Commonwealth of Independent States
EU	European Union
FECOFUN	Federation of Community Forestry Users
FLEGT	forest law enforcement, governance and trade
FRA	Global Forest Resources Assessment
FSC	Forest Stewardship Council
IIED	International Institute for Environment and Development
ILO	International Labour Organization
IUCN	International Union for Conservation of Nature
NGO	non-governmental organization
NWFP	non-wood forest product
PES	payments for environmental services
PROFOR	Programme on Forests
RBA	rights-based approach
REDD	Reducing Emissions from Deforestation and Degradation
RRI	Rights and Resources Initiative
Sida	Swedish International Development Cooperation Agency
SVBC	Strengthening Voices for Better Choices
TOC	community land of origin
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
USAID	United States Agency for International Development
UWA	Uganda Wildlife Authority
VPA	Voluntary Partnership Agreement



1. Introduction

ORGANIZATION AND STRUCTURE OF THE PUBLICATION

Following a discussion of key concepts related to tenure, the publication provides a summary of the current situation of forest tenure globally, drawing primarily on the forest tenure assessments carried out by FAO (2006, 2008, 2009a, 2010a), and informed by several other sources. Based partly on the documents produced by the forest tenure assessment and partly on experiences described in the wider literature, the publication then reviews specific experiences of forest tenure and tenure reform, drawing lessons about what has worked and why, and identifying potential risks associated with particular approaches. This analysis is used to identify key issues that are relevant in undertaking tenure reform.

These first parts are essentially analytical, aimed at understanding tenure and tenure reform. The rest of the publication suggests ways of moving ahead, using the key issues to derive principles to be followed in the reform process. These principles are demonstrated through case studies of forest tenure reform illustrating the links between forest tenure reform processes and the outcomes. They are not necessarily intended as examples of “how to do it”; some illustrate the relevance of the principles by showing what can go wrong. In essence, the publication advocates an adaptive process for diversifying forest tenure, leading to a variety of context-appropriate arrangements. The focus is on how to carry out forest tenure reform, not on a particular set of outcomes.

SUSTAINABLE FOREST MANAGEMENT AND TENURE

FAO’s Global Forest Resources Assessment 2010 (FRA 2010) shows that 80 percent of the world’s forests are publicly owned, but forest ownership and management by communities, individuals and private companies are increasing (FAO, 2010c). Although many factors influence a government’s decision to embark on tenure reform, it is increasingly recognized that a shift towards more diverse tenure arrangements is necessary for creating better conditions for the achievement of forest management objectives. In most countries, these objectives refer to SFM and enhanced economic outcomes, particularly improved livelihoods.

In contemporary forest management discussions, sustainable forest management¹ is widely considered to be a desirable overall policy goal for achieving both biophysical and socio-economic objectives. Improving rural livelihoods is frequently

¹ Sustainable forest management refers to the stewardship and use of forests and forest lands in ways and at rates that maintain their biodiversity, productivity, regeneration capacity, vitality and potential to fulfil – now and in the future – relevant ecological, economic and social functions at the local, national, and global levels, and that do not cause damage to other ecosystems (UNFF, no date).

given prominence as an explicit socio-economic objective, particularly in developing countries. In this publication, it is taken to mean income generation as well as targeted poverty reduction. The underlying rationale for linking tenure with SFM is the common assumption that secure tenure provides incentives for people to invest time and resources in forest management. Underlying this is the idea that people will look after forest resources if they can benefit from them.

Arguments in support of tenure reform are often presented in biophysical or economic terms. However, tenure often also has a human rights aspect, such as the fundamental rights of indigenous and other local people to exercise control over traditional resources. Non-discrimination is a central human rights principle with relevance for tenure reform, and is clearly expressed in, for instance, the Convention on the Elimination of All Forms of Discrimination against Women. Human rights are mandated under a number of human rights instruments and conventions that obligate signatory States to respect the specified rights and work to implement them. Two particularly relevant conventions are the Universal Declaration of Human Rights, which specifies the right to own property and not to be arbitrarily deprived of property (Article 17); and the Convention on Rights of Indigenous Peoples.

This implies that tenure reform must address human rights issues. Rights-based approaches (RBAs) have been developed to ensure that programmes, policies and interventions are consistent with and promote human rights as recognized in international law. RBAs are discussed more fully in Chapter 2.

There are risks in presenting tenure types as a series of options for achieving particular objectives. These risks include the assumptions that common property arrangements are always best for poverty reduction or that private ownership is most beneficial to national economies or most efficient. Each situation is unique and there is no single correct answer about what is the best tenure policy. In summarizing a major study on forest policies that work for forest and people, Mayers and Bass (1999) stress that policy development is a political rather than a technical process, involving stakeholders with different interests, and requiring adaptation and learning.

When embarking on tenure reform it should not be assumed that there is a single ideal tenure form such as private/individual or community ownership that is appropriate to all circumstances. This publication argues that an adaptive organic process should be applied to the particular situation at a particular time to determine appropriate tenure arrangements for achieving the objectives. It is necessary first to determine how forest policy objectives relate to particular forests and their social and economic settings, and then to identify the most appropriate forms of tenure, regulation and governance for achieving these objectives – form follows function.

TRIGGERS FOR FOREST TENURE REFORM

In recent years, reform of forest tenure has become an increasingly important focus in forest policy circles, in many countries and at the international level. There are a variety of reasons for this. Perhaps the most important is that the dominant forest tenure regimes have not been very successful in delivering key forest management

objectives such as SFM, poverty reduction, improved livelihoods or improved rights for indigenous peoples. Other factors that have influenced governments' decision to embark on tenure reforms include:

- an overall national policy review in the face of globalization, particularly the increasing role of market forces and the associated expansion of the private sector;
- increasing pressure on forests from rapid population growth and a consequent increase in demand for forest products (and often land for non-forest uses);
- growing power and influence of stakeholders such as indigenous people and other marginalized groups seeking to assert their rights and claims over resources.

A brief review of recent history suggests that the really big drivers of fundamental changes to tenure result from political events (including revolutions and wars) rather than a deliberative process of reform by technocrats and/or civil society. Examples include the radical nationalization reforms in Russia associated with the 1917 revolution, and the later changes that followed the fall of the Berlin Wall in 1989. In Asia, the changes in China and Viet Nam that led first to centralized control and collectivization and then to subsequent decollectivization, decentralization and devolution were associated with major political events. The more recent changes in Indonesia leading to decentralization of forest management also followed major political upheavals. Major political events can provide opportunities for policy reform, including tenure reform. Once a major political shift has occurred, significant positive changes can take place through the application of a deliberative, adaptable, reflective, organic approach applying feedback loops from field experience. This publication elaborates the major elements of such a process.

There are also several emerging issues that are likely to lead to tenure reform. Perhaps the most important of these relates to the role of forests in carbon capture and storage, particularly the concept of Reducing Emissions from Deforestation and Degradation (REDD) in developing countries, which is set to be applied in the post-2012 Kyoto Protocol. This is leading to a lively debate and rethink of the objectives of forest management and the tenure consequences.

It is important to remember that forest tenure reform involves competition for resources. The many stakeholders in tenure reform have strong interests in tenure outcomes that favour their own objectives. The debate does not occur in a power vacuum, and some stakeholders have far greater influence and power than others. Fair tenure reform that honours and recognizes the rights of less powerful actors frequently faces strong opposition. As with all policy change, tenure reform is not just a dialogue about ideas; it also involves conflicting goals and interests. This publication does not cover the political economy of tenure reform in detail, except in advocating for the recognition of human rights and the use of multi-stakeholder platforms. However, the political-economic nature of tenure reform remains a basic reality.

All these factors raise questions about the objectives of forest management in a rapidly changing world, and the best ways of achieving these objectives in a pluralist society.



2. Key terms and concepts

Tenure is a complex field and the tenure reform process requires a good understanding of the experiences, assumptions and key concepts involved. This chapter explains some of these key concepts.

TENURE

“Tenure” is a commonly misunderstood term. It is often equated with ownership, but this is misleading. Tenure is a generic term referring to a variety of arrangements that allocate rights to, and often set conditions on, those who hold land. Tenure regulates access to and use of resources. “Ownership” refers to a particular type of tenure in which strong rights are allocated to the landholder. Tenure arrangements may involve exclusive access (when only one person or group has access), or different types of access for different groups of people at different times.

In addition to inalienable title, there are many other forms of tenure. Tenure theorists describe tenure as a “bundle of rights”. Different tenure arrangements allocate different combinations of rights to the bundle, such as rights to use, manage, control, market products, inherit, sell, transfer, dispose of, lease or mortgage. Some tenure systems include rights described as “usufructs”, which give people the right to use lands or forests but not the right to own or transfer them. Leases define the length of time for which rights may be enjoyed before being relinquished or renewed. Globally there is a bewildering array of such combinations of rights, and summaries are inevitably imprecise.

Along with rights come responsibilities, as the rights to use resources rarely come without restrictions. For example, the right to use forests may bring the responsibility to ensure that the forests are used sustainably or that conservation values are protected.

Tenure systems also vary in terms of which individuals or groups may enjoy some or a number of the bundled rights. For example, there are cases where:

- certain groups of people have rights of access to certain forest products from an area of forest, but not to other products; in some cases individual trees in a common property forest are the exclusive property of an individual;
- certain groups have access during specific seasons;
- local people have legal rights to certain products from government forests;
- legal owners of forest land have no legal rights to utilize their forest without separate approval.

An important practical implication of this notion of tenure as a bundle of rights is that tenure related to forest land is not necessarily the same as tenure related to particular trees. In many countries, individual trees or groves within a common or national forest may be regarded locally as belonging to a particular individual.

Ownership usually implies more or less exclusive and permanent rights, and commonly includes the right to sell the property. However other arrangements are also common. In Viet Nam, a forest land allocation process provides for State land to be allocated to individual households with a bundle of rights that include the right to transfer the land title. Strictly speaking, however, the land remains State land. In many countries – notably in Latin America, the Pacific and the Philippines – individuals or groups may have legal rights to use or sell particular forest products, or even permanent rights to all products, without the right to sell the land itself. “Inalienable freeholds” secure strong permanent rights to land and forests for communities or peoples. For example, in Mexico, local communities (*ejidos*) legally own forest land, but are not able to sell it.

Tenure can be formal or informal. Formal tenure is recognized by statutory law, by precedent (in English law) or by regulation. Informal tenure refers to locally recognized rights without formal State recognition. Customary or traditional tenure systems are often informal, although they can be legally recognized, as in most of Melanesia and Ghana. Informal tenure systems often operate in parallel with legal tenure. In such cases local people regard forests and forest products as belonging to specific people or groups, regardless of whether the rights have been recognized by the government or not. It is important to recognize that many forests worldwide have been informally used, managed and even owned under custom. Although informal tenure can be effective, there are risks of conflict and instable tenure if the system remains unrecognized by law. Where customary tenure is unrecognized, tenure reform must include its recognition.

Many countries have plural legal systems in which several bodies of law operate in parallel and each may be a source of rights. Countries may have customary laws that regulate the affairs of indigenous peoples, ethnic minorities and other local residents; these laws may allocate rights to customary rights-holders according to often unwritten norms, which are well understood within the group but unclear to outsiders. Such customary laws may be recognized in constitutions and often operate in parallel with the statutory laws of the country’s legislature and the ordinances of its executive. Contradictions among these bodies of laws, and disputes resulting from overlapping jurisdictions, may be resolved by appeal to specialist courts.

Another layer of law is often introduced by countries’ ratification of international human rights treaties that protect the inherent rights of all individuals and specific groups of people. Recent years have seen the emergence of a range of international agreements and conventions that recognize the rights of indigenous peoples to own and control the lands, territories and other resources that they traditionally own, occupy or otherwise use. These agreements affirm that indigenous peoples derive rights from custom and not from any act of the State; they have recently been consolidated in the United Nations Declaration on the Rights of Indigenous Peoples.

The State's rights in forests

Another common misperception is that crown or State lands and forests are owned by the government. Instead most assets referred to in this way are public lands and forests over which the government exercises jurisdiction on behalf of the nation. Forestry departments are empowered to exercise this jurisdiction over forests, based on legislative acts that give them defined powers to regulate what corporations, citizens and other entities do in such areas. However, the forest areas within the departments' jurisdiction may be held under a great many types of tenure.

In many countries it is common practice for forest lands to be "gazetted" to determine whether any specific areas are already encumbered with rights. Such areas may be treated in a variety of ways: they may be excluded from the gazetted forests; included in gazetted forests but subject to limited application of forest laws; or incorporated into gazetted forests after the rights have been extinguished through compensation of the prior rights-holders. States' assertion of control over forests without due recognition of prior rights-holders is a major cause of the impoverishment of forest-dependent people and subsequent conflicts. In Indonesia, for example, law recognizes two types of forests – State forest areas and forests with rights attached – but only about 12 percent of forests have yet been gazetted and the Forestry Department treats all forests as State forest areas, which by definition are areas with no rights (Contreras-Hermosilla and Fay, 2005). The rights of the 60 to 90 million people inhabiting Indonesia's forests are therefore effectively denied (Colchester *et al.*, 2005) and the ungazetted lands remain in a legal limbo.

Public, private and communal tenure

The term "private" is used inconsistently in relation to forests. Some definitions of "private forest" include forests controlled by groups as well as individuals. Common property can therefore be viewed as a type of private property. This publication uses the term "private" to refer only to forests under the control of individuals or corporations/companies. Where forests are controlled by groups (communities, clans, etc.) the terms "community" or "communal" tenure (common property) are used. In such cases individuals have rights by virtue of their membership of a group, but there are clear differences between these rights and private rights. It is useful to maintain the distinction.

Recently a great deal of attention has been paid to the form of tenure known as "common property". The debate has continued ever since Hardin (1968) described the "tragedy of the commons" as a situation where resources with common access would inevitably degrade through overuse because individuals would have no incentive to reduce their own off-takes while others continued without limit. Since then a clear distinction has been made between resources that are under an open-access regime (where there are no restrictions on who can use the resource) and common property (where specific groups of people have specific rights). Scholars

BOX 1

Ostrom's design principles

- Group boundaries are clearly defined.
- Rules governing the use of collective goods are well matched to local needs and conditions.
- Most individuals affected by these rules can participate in modifying them.
- Community members' rights to devise their own rules are respected by external authorities.
- There is a system for monitoring members' behaviour, which is applied by the community members themselves.
- A graduated system of sanctions is used.
- Community members have access to low-cost conflict resolution mechanisms.
- In common property regimes that are parts of larger systems, appropriation, provision, monitoring, enforcement, conflict resolution and governance activities are organized in multiple layers of nested enterprises.

Source: Adapted from Ostrom, 1990.

have developed a detailed understanding of the institutional arrangements under which common property regimes can be effective. Ostrom (1990) has developed a set of design principles and argues that these are present in many common property natural resource management systems (Box 1).

Rights-based approaches to tenure reform

RBAs are an essential basis for tenure reform. As defined by Campese (2009):

RBAs can be understood as integrating rights, norms, standards, and principles into policy, planning, implementation, and outcomes assessment to help ensure that conservation [or tenure reform] practice respects rights in all cases, and supports their further realisation where possible.

Campese points out that RBAs involve respecting, protecting and fulfilling rights. This implies that tenure reform must begin by acknowledging the rights that exist under international human rights law and recognizing customary tenure systems. Respecting human rights is a sort of filter for assessing the human rights aspects of a policy or programme. An active RBA goes further in actively pursuing those rights.

Given the ethical and legal imperatives arising from human rights instruments and laws, tenure reform efforts must take human rights and customary tenure seriously. This is a challenge, as tenure issues tend to be highly contested and involve competition over valuable resources among various stakeholders.

LIVELIHOODS AND POVERTY

The term “livelihood” refers to “the ways in which people make a living” (Fisher *et al.*, 2008). Although it is often used as if it refers only or mainly to subsistence livelihoods, it also involves people’s links to markets and various sources of cash income. Improving livelihoods thus involves improving access to subsistence resources and to ways of increasing income.

Poverty “can be thought of as a state of reduced or limited livelihood opportunities” (Fisher *et al.*, 2008). It is sometimes measured in income terms, such as falling below the threshold of US\$2 per day, but it can also be thought of in more qualitative terms. The World Bank (2001) has described poverty as involving lack of assets, powerlessness and vulnerability.

Income generation is an important aspect of livelihood improvement and poverty reduction. Tenure reform that enables people to gain income from forest products is obviously relevant to improved livelihoods. However, income generation is not the same as poverty reduction, and it should not be assumed that income generation automatically leads to poverty reduction. Achieving poverty reduction generally requires a targeted set of arrangements and activities directed towards identified poor people. It is not achieved by increasing a population’s total income from forests, unless the poor receive a significant portion of the income. Targeted support may be especially important for securing poverty reduction for women and children.

GENDER DIMENSIONS OF FOREST TENURE

Rural women and men often have disparate knowledge of forest resources and different roles in tree and forest management. Women practise traditional agroforestry production systems such as home gardening, and harvest and sell wood and tree products as part of small-scale enterprises. They have the main responsibility for collecting fuelwood for the household, and wild plants used as food and medicines. Men tend to be more involved in high-value activities such as cutting and hauling timber. Gender roles vary, however: in parts of Nepal, men weave bamboo baskets, while in the Lao People’s Democratic Republic, women are more active in this craft; and women are the sole collectors of fuelwood in Bhutan, while men help in Sri Lanka.

Research suggests that trees and forests are more important to rural women’s livelihoods than to those of men. Poor women in one Madagascar community earned 37 percent of their income from forest products, compared with 22 percent earned by men. In some areas of Andhra Pradesh, 77 percent of women’s income was derived from forests (FAO, 2010b).

Restrictions on access affect men and women in different ways. Forests can be crucial to the survival strategies of farming women. In sub-Saharan Africa, responsibility for caring for household members afflicted by HIV/AIDS falls mainly on women, leaving them with less time for agricultural production. As a result, they become more reliant on forest foods and income from fuelwood. During conflicts and natural disasters, displaced rural people also become more reliant on forest products and services.

Given women's responsibility for meeting household food and fuel needs, depletion of forest resources increases the burdens on women especially. A study in Malawi found that deforestation was forcing elderly women to walk more than 10 km a day to collect fuelwood. Women spend averages of 800 hours a year in Zambia and 300 hours in the United Republic of Tanzania on the same task. In East Africa, fuelwood scarcity has led to a reduction in the number of meals cooked in poor households.

One of FAO's gender targets for 2008 to 2013 is to: "Promote equitable forest tenure systems through policies and laws that improve access to, and use and management of, forest resources for the benefit of men and women" (FAO, 2010b).

DECENTRALIZATION AND DEVOLUTION

Tenure reform is linked to the decentralization and devolution of forest resource management. Community forestry programmes, forest restitution and privatization are essentially about passing responsibility and/or rights over forests or forest resources to a local community, individuals or the corporate sector.

The terms "decentralization" and "devolution" are often used interchangeably, and different authors use them in different ways. In this publication, the following definitions are used (Fisher, 1999):

Decentralization can be defined as the relocation of administrative functions away from a central location, and devolution as the relocation of power away from a central location. In this sense, power can be equated with the capacity or authority to contribute to decision-making. While decentralization and devolution may occur at the same time, it is quite possible to decentralize administrative functions without devolving the power to make meaningful decisions.

The distinction between these two concepts is important in any discussion of tenure reform. Effective tenure involves "the power to make decisions and set objectives [for forest use and management]" (Fisher, 1999), so meaningful tenure reform involves a realignment of that power.

3. Forest tenure, governance and regulatory frameworks

As emphasized later in this publication, tenure reform is not a single stand-alone process, but part of a wider more holistic approach that must be embedded within the country's development agenda. National policy reforms take place in the context of obligations flowing from the international and regional instruments to which countries are signatories. These provide reference points for the focus and direction of relevant aspects of the reforms, particularly those addressing the issue of access to land and forests. Forest tenure reforms should be consistent with these instruments.

The reforms should also be linked to the management of other natural resources such as land and water. In an analysis of forest tenure reform in Viet Nam, Nguyen *et al.* (2008) note that "such reforms encompass cultural, economic and political aspects". This chapter identifies the key domains that should be considered in such a holistic approach.

Most countries adopt some sort of goals and objectives for the management of their forests, although these are sometimes implicit rather than explicit. The adoption of a formal forest policy is one way of making implicit objectives explicit, and thus easier to discuss and debate. Forest management objectives frequently encompass a focus on SFM and income generation, particularly income for the nation State, but increasingly also for rural people living in or close to forests, especially in developing countries. In most countries, the social objectives of forest management change considerably over time and should be reviewed regularly to ensure that forest management continues to reflect society's demands (Box 2). For Europe, Schmithüsen and Hirsch (2009) note that:

Public forest policy goals have become more ambitious, complex and interrelated, as they address the economic potential of forests for industrial wood production and processing, as well as their availability as multifunctional social resources in urban and rural areas, their importance as varied and complex ecosystems, and their essential role in maintaining biodiversity of flora and fauna.

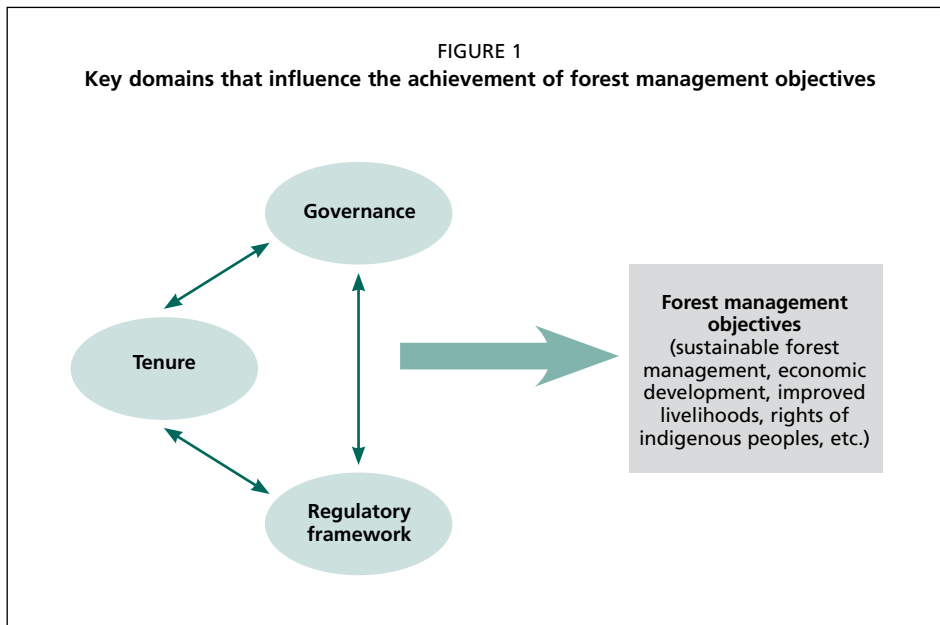
The extent to which forest management objectives are achieved depends on a multitude of factors grouped in three broad domains: governance, tenure and regulatory frameworks (Figure 1). This conceptual model is referred to throughout the publication and envisions tenure as part of a broader system; the interaction among all of these domains determines the ultimate success in achieving forest management objectives. Reviewing the impact of tenure reforms in Asia, Dahal and Adhikari (2008) note that secure tenure alone is not sufficient to achieve desired outcomes. Any attempts to reform tenure must be linked with parallel reforms

BOX 2

Contemporary changes to forest management objectives in West and Central Asia, the Caucasus and the Russian Federation

In the current context of social, political and economic transformations in most Central Asian countries, forestry sectors are reforming their tenure arrangements starting with a review of forest management objectives. The previous emphasis on timber production or complete preservation is giving way to a more multifunctional vision of forest management, which encompasses conservation of biodiversity along with multiple forest uses.

Source: Adapted from FAO, 2010a.



of governance arrangements and the regulatory framework, if there is to be any chance of achieving defined management objectives. For Latin America, Larson *et al.* (2008) note that, to date, policy frameworks:

...have generally failed to establish an enabling environment for the development of these management opportunities... [they have] not been accompanied by institutional reforms that demonstrate an understanding of forest-based peoples, cultures or livelihoods; nor has it led to a shift in priorities regarding the forest management model or to a redefinition of which actors should be the primary beneficiaries from forests.

Tenure reform generally occurs within the context of a wider forest policy reform. Tenure was defined and discussed extensively in Chapter 2. The key characteristics of regulatory frameworks and governance are defined in this chapter.

REGULATORY FRAMEWORKS

Regulatory frameworks are the formal arrangements that define how and for what purpose(s) forests are used and who is mandated by law to carry out particular functions. They include legislation, policy, rules and regulations for applying legislation, and operational guidelines for implementation. Many countries do not have all these components. Some may have only a decree, with no formal policy or subordinate instruments such as rules and regulations to define how that decree is to be applied. In general, the more complete the regulatory framework, the less room there is for bureaucratic discretion and the greater the potential for openness, transparency and certainty.

Based on lessons learned from the development and application of regulatory frameworks in many countries, several general principles have been identified for ensuring that policy can be implemented successfully (Gilmour *et al.*, 2005):

- Ensure that regulatory frameworks are enabling as well as enforcing. They should enable key stakeholders to improve their own livelihoods and the condition of forests by removing any constraints that inhibit them from doing so.
- Avoid overregulation (particularly in the early stages) so that the partners in implementation are capable of implementing the policies.
- Provide secure and long-term access or ownership rights to forest resources.
- When implementing initiatives, start simply and add complexity based on partners' ability to adopt increasingly complex tasks.
- Make every effort to minimize transaction costs for all partners.
- Partnership- and confidence-building for effective compliance with a regulatory framework takes time and requires the support of local governance institutions and processes. However, having a complete and progressive regulatory framework is no guarantee that forests will be managed to achieve the stated objectives. By and large, good governance is one of the most critical factors in determining the achievement of forest management objectives, but without an enabling policy environment, forest reforms are unlikely to deliver the beneficial biophysical and socio-economic outcomes that it promises.

Regulatory frameworks for non-forest sectors are not necessarily explicitly related to forest management or policy, but they may have direct impacts. For example, people may have formal rights under the forest law to collect non-wood forest products (NWFPs) but be prevented from getting these products to market and selling them because of transport or market regulations. Their ability to operate within one law is therefore constrained by another law (see Box 3 for an example). The aspects of regulatory frameworks from non-forest sectors that impinge on the achievement of forest management objectives must therefore be considered within the overall reform process. Further examples of counterproductive regulations are presented in Chapter 5.

BOX 3

**Example of conflicting intents of different regulations
and their effects on local livelihoods**

The Uganda Wildlife Authority (UWA) was forced to accept that it had to allow access to resources for local communities, as attempts to prevent the communities living around the protected areas from collecting certain traditional resources (e.g. bamboo shoots on Mount Elgon) would result in protest and resistance. UWA understood that it could not prevent community access, because it had insufficient staff to enforce the law. The UWA statute states that extraction of resources from national parks is illegal, but a clause was added allowing UWA to permit “otherwise illegal activities” if they were demonstrated to be beneficial to conservation. This allows collaborative management of resources in protected areas, without making it either explicit or required, and gives UWA the opportunity to leave its informal policy on resource access unimplemented.

Source: Barrow *et al.*, 2002.

GOVERNANCE

Governance refers to the process by which decisions are made and implemented. Governance can be defined as “the manner in which power is exercised in the management of a country’s economic, environmental and social resources for development” (USAID, 2000). Governance is influenced by the set of all formal and informal (including cultural) rules and practices that govern the way in which society addresses a particular issue, such as forest management (Box 4). It is about how decisions are made in practice rather than how they are defined as formal procedures, and it needs to take power relationships into account. It is more about processes than procedures. By its nature, governance involves the use of power to make and enforce decisions. Decisions concerning access to and use of resources invariably affect a large number of stakeholders with different and often conflicting interests.

Tenure reforms often require a significant shift in the locus of power for major decision-making. In effect, they change the social dynamics surrounding forest management, altering the traditional roles of forestry officials and other stakeholders. Such a major social change cannot come about by direction alone, but must be accompanied by associated changes in overall governance to make it supportive of the new arrangements.

The concept of good governance came to prominence in development fields in the late 1980s, when a World Bank-sponsored comprehensive study identified weak governance in the States concerned as being a cause of development aid’s poor performance in sub-Saharan Africa. Since then, good governance has been considered a necessary condition for overall economic advancement. Building

BOX 4

Changing notions of governance

...the term “governance” was originally understood as synonymous with government (or the way that the government was ruling). A core issue in the new interpretation of “governance” is the altered role of the State, in view of the new roles of the private sector and civil society organisations. Governance is about the changing vision of the roles and responsibilities of the government from the “old” style of governance – with the government steering – to a new situation with more actors co-steering. Important aspects of this new situation are its multi-actor, multi-level (national, international and local) and multi-meaning nature: different stakeholders may embrace different values, interests and world views.

At the conceptual level, it is noticeable that governance aims at steering – at improving societal situations. It therefore needs to deal with complexity and is based on soft systems thinking that implies multi-stakeholder processes and social learning aimed at making improvements at the level of all the orders of governance, including discussions about effectiveness, norms and values.

Source: van Bodegom et al., 2008.

on the approaches of the World Bank, USAID and the Asian Development Bank (ADB) have identified four principles of good governance: transparency, accountability, participation, and predictability (Sharma and Acharya, 2004). To these could be added empowerment, inclusiveness, equity and benefit sharing. Good governance refers to the quality of the process that addresses these principles explicitly.

CONCLUSIONS

This conceptual outline of the interactions among regulatory frameworks, governance and tenure in delivering forest management objectives is key to understanding the tenure reform process discussed in later chapters, which emphasize that each of these domains needs to be addressed holistically. However, the determination of forest management objectives is a critical and fundamental starting point and its importance cannot be overemphasized. The management axiom that “form follows function” is particularly relevant, as all of the structures, arrangements or forms associated with regulatory frameworks, tenure and governance flow from the determination of this primary function of forest management, i.e. the objectives.

Many aspects of the overall reform agenda, including reforms to the regulatory framework and governance system, generally require substantial capacity building for key stakeholders before changes can be operationalized. This aspect is addressed in more detail in later chapters.



4. Status of forest tenure

During the past two decades, transitions have been taking place in the formal tenure arrangements that apply to forests in many parts of the world. Among these transitions are the de-collectivization of forests (and agricultural land) in the former Soviet republics, China and Viet Nam; the legitimization and formalization of indigenous and local community claims to land and forests in Latin America; the increasing adoption of community forestry, with its attendant changes in access and use rights, in many parts of the developing world; and the privatization of national forest assets in some countries, including New Zealand, Australia and South Africa. These transitions reflect changes to two important tenure characteristics – who has ownership rights, and who has management rights (access and usage) to forests – and to how these rights are operationalized. Bull and White (2002) claim that 11 percent of the world's forests are managed by communities, which is a far greater area than that managed by the forest industry, and about the same as that held by all private landholders combined. They postulate that this figure is expected to rise from 378 million hectares of community-owned and -managed land in 2001 to 740 million hectares by 2015 – representing 45 percent of the world's forest estate. White and Martin (2002) analysed forest tenure in 24 of the 30 most forested countries and note that:

There is a major, unprecedented transition in forest ownership underway... The recognition of indigenous rights and community ownership – and the broader rationalization of forest tenure – present an historic opportunity for countries to dramatically improve the livelihoods of millions of forest inhabitants.

White and Martin also call for better knowledge of forest tenure claims, particularly of who owns and who has access to (management rights over) the world's forests.

Questions have been raised about the validity of these claims and about the exact nature and impact of the associated changes. The global interest prompted by these and other discussions has led several agencies to increase their global data collection efforts, to gain a more comprehensive picture of the tenure arrangements that apply nationally and regionally, the pressures for change, and what might be done to ensure that transitions contribute to SFM and improved socio-economic outcomes. The most thorough of these assessments, by FAO and partners, carried out a large number of country case studies and collated the results into regional summaries: FAO (2006) for South and Southeast Asia, FAO (2008) for Africa, FAO (2009a) for Latin America, FAO (2009b) for China, FAO (2010a) for Central Asia and Schmithüsen and Hirsch (2009) for Europe. Parallel

work by the Rights and Resources Initiative (RRI) has contributed to the growing volume of material and analysis on tenure and related issues (RRI, 2008; Sunderlin, Hatcher and Liddle, 2008; RRI, 2009 [for tropical regions]).

The FAO studies used a uniform set of categories and definitions to record forest tenure at the national level in each major region. The classification adopted by the FAO Forestry Department considered forest tenure rather than land tenure, on the basis that forest tenure is more important for achieving SFM and improved livelihoods in forest areas. Although the collation of data into regional and global figures tends to obscure national and subnational variations, it gives an idea of the macro picture and the variations among regions, at least from an official, government perspective. However, it should be kept in mind that official government data on forest tenure frequently do not reflect the rich variety of tenure arrangements that may be present in particular locations.

OWNERSHIP OF THE WORLD'S FORESTS

Of the 233 countries covered by FRA 2010 (FAO, 2010c), 187 reported forest ownership as it was in 2005, using the ownership categories of public, private and other. The responses accounted for 98 percent of the total forest area (compared with 77 percent in FRA 2005). See Annex 1 for definitions of the categories used in FRA 2010.

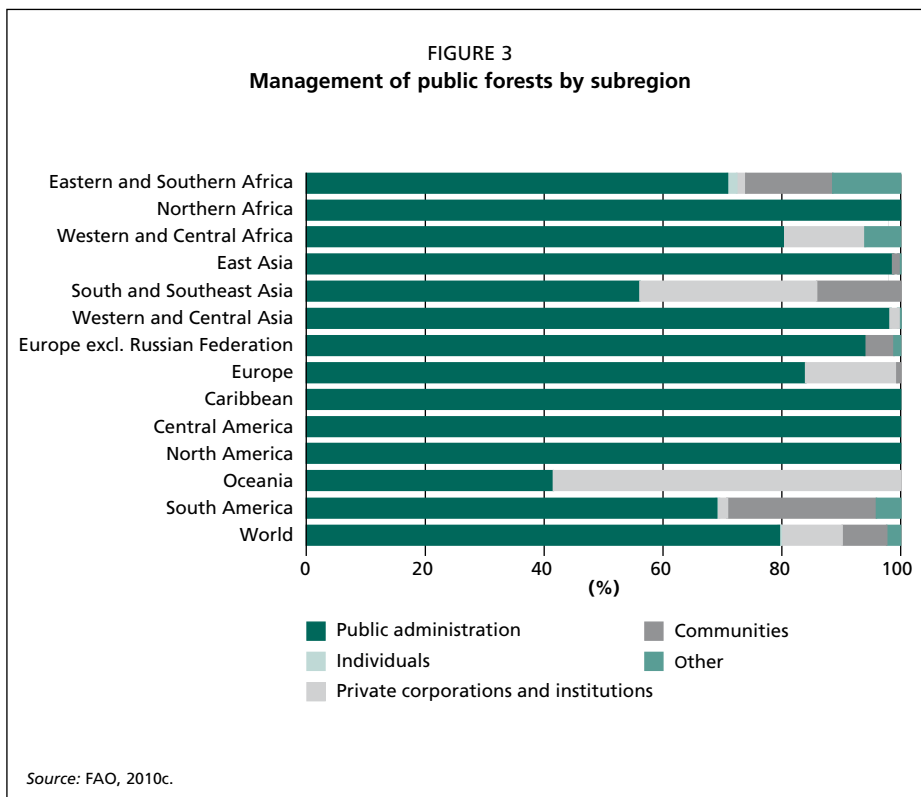
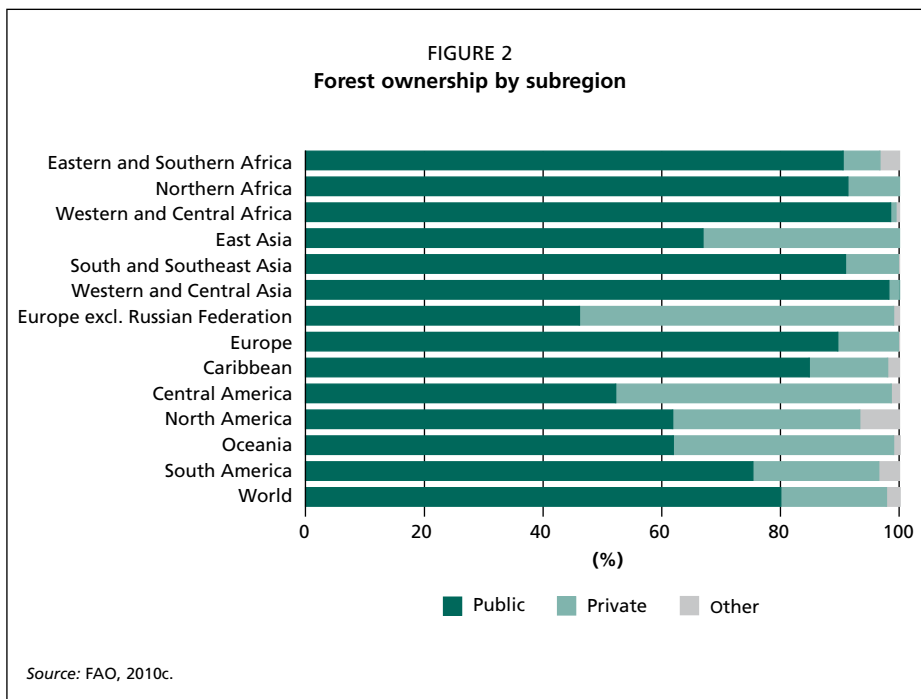
The assessment indicated that in 2005, 80 percent of the global forest area was publicly owned, and public ownership was predominant in all regions and subregions apart from Europe (excluding the Russian Federation), where it was the ownership type for 48 percent of the forest area² (Figure 2). Public ownership was also the most common form of ownership in many of the countries with high forest cover, including the Russian Federation, the Democratic Republic of the Congo, Indonesia and Brazil. Private ownership was more common in North America (31 percent), Central America (46 percent) and Oceania (37 percent).

However, as already noted, regional macro figures tend to hide wide variations among the countries in a region, as shown clearly from individual country data from Latin America. For example, Venezuela and French Guiana have almost all of their forests under public ownership, whereas Paraguay, Honduras, Guatemala, Costa Rica and Chile each have more than 30 percent under private ownership. Peru, Guyana and Costa Rica have significant percentages of their forests (more than 10 percent) under the ownership of indigenous people (FAO, 2009a).

MANAGEMENT OF THE WORLD'S PUBLIC FORESTS

A critical aspect for how forests are managed and who benefits, is who has rights to use and manage the forests, as these are not necessarily the same as ownership rights. Figure 3 shows the pattern of public forest management rights by region. Some 152 countries (accounting for 92 percent of the world's total forest area)

² When the Russian Federation is included in Europe, public ownership is almost 90 percent, because all forest in the Russian Federation is publicly owned.



reported this information for 2005, with 130 (80 percent of total forest area) reporting the entire time series, so these figures give a fairly good, if partial, picture of who manages public forests across the world.

At the global level, the State retains management responsibilities in about 80 percent of public forests, followed by the corporate sector with 11 percent, and communities with 8 percent. The corporate sector (which includes the private sector in the FRA data) is particularly important in South and Southeast Asia and West and Central Africa, owing to countries such as Indonesia and those of the Congo Basin, where private companies are responsible for forest management in 30 and 15 percent, respectively, of public forests. In South America, private companies do not manage much public forest, although they are expected to manage more in the future (Brazil signed its first forest concession agreement in 2008).

An important point from Figure 3 is the substantial area of forest with some degree of local or customary use rights in each region. In South and Southeast Asia, the area managed by local users is about 18 percent of the total, when all the forest that is either owned or managed by local forest holders, communities, user groups or individuals is included (FAO, 2006). In most cases however, local people's access to and use of forests are heavily constrained by governments, which retain most power by granting limited user rights, generally only to satisfy subsistence needs. For example, villagers involved in joint forest management in India have very few rights, and their involvement is limited to being paid for their services in managing the forests, which remain under the control of forest departments.

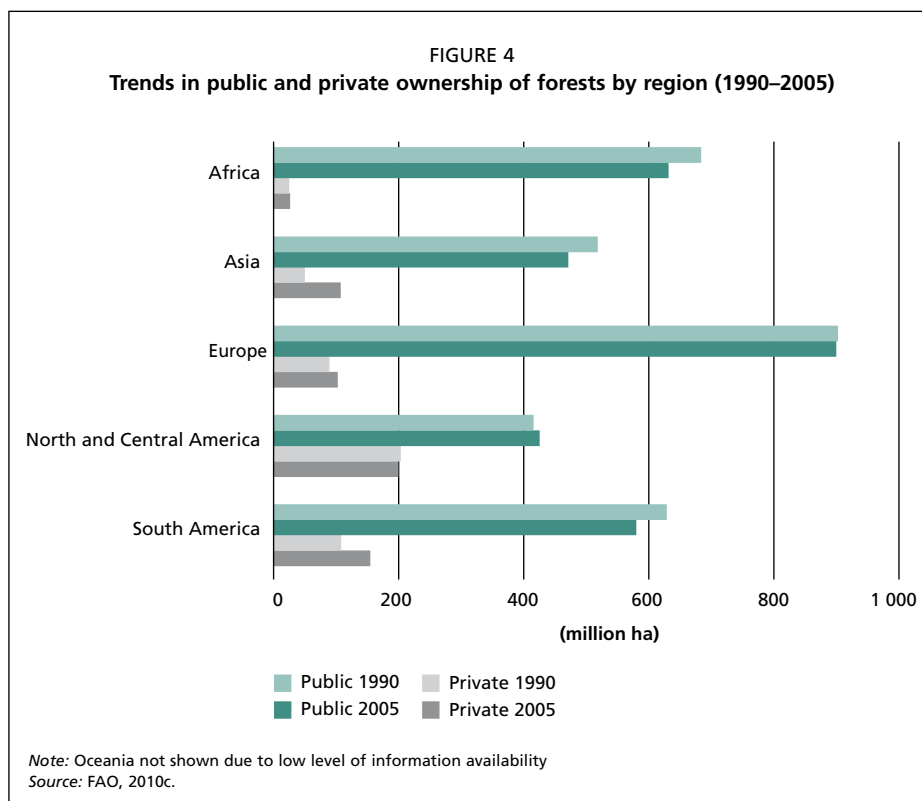
TRENDS IN TENURE CHANGE

The previous section outlined the tenure arrangements that applied at the time of the surveys in 2005. This section considers the directions of the changes that are taking place. Figure 4 shows the changes in ownership structure, by region, between 1990 and 2005.

Regional data tend to mask what is happening in individual countries. For example, FAO (2010c) notes that between 2000 and 2005 private ownership increased by 12 percent in China and 20 percent in Colombia, while the regional figures indicate a far smaller change.

RRI (2009) reports similar trends for 30 tropical forest countries, with the area administered by government decreasing by 11 percentage points (from 76 to 65 percent of the total) between 2002 and 2008. This decrease was countered by increases of 1 percentage point (from 3 to 4 percent) in the area designated for use by communities and indigenous people, 3 percentage points (from 15 to 18 percent) in the area owned by communities and indigenous peoples, and 7 percentage points (from 6 to 13 percent)³ in the area owned by individuals and

³ These data differ from FAO data because different countries were sampled and different definitions of community ownership versus community management were used.



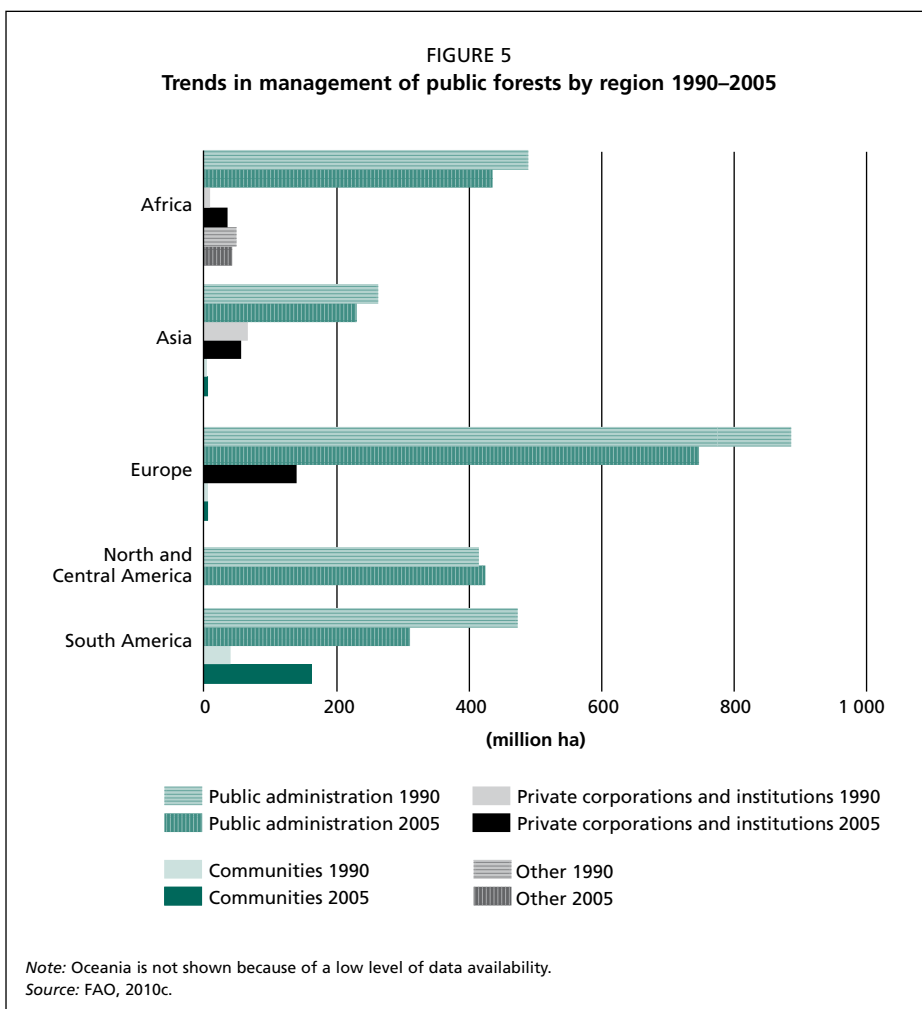
firms. Again, these gross figures hide significant differences among and within countries. In China and Viet Nam, FAO (2006) notes a major trend for allocating forest land to private households, in a process that is similar to privatization. Sunderlin, Hatcher and Liddle (2008) also note that most of the detected change in tenure occurred in only a handful of countries; in many others, reforms were non-existent.

The data collected by FAO also indicate a change in the access and use rights to public forests between 1990 and 2005 (Figure 5 illustrates this for major regions).

The data indicate a shift from State to corporate sector management in Europe (largely due to changes in the Russian Federation, where private sector management increased from zero in 1990 to 137 million hectares in 2005) and from State to community management in Latin America. In Asia both State and corporate management have decreased.

CONCLUSIONS

Globally, State ownership and management dominates forest tenure, but transitions are under way – more in some countries than in others. A more diversified tenure system could provide a basis for improving forest management and local livelihoods, particularly where the State has weak capacities for managing forests.



The data presented and discussed in this chapter provide an overall picture of the macro situation and trends, but can be misleading if used as a basis for decision-making in the design and implementation of national or subnational tenure reform processes. They frequently mask local variations, reflecting the local contexts that should be the starting point for tenure reforms.

5. Analysis of experiences in forest tenure and tenure reform

The previous chapter discussed key global patterns and trends in forest tenure derived primarily from FRA 2010 (FAO, 2010c), supplemented by studies produced through the FAO forest tenure assessment and related reports (FAO, 2006; 2008; 2009a; 2010a). This chapter examines aspects of tenure and tenure reform in more detail, based largely on the wider literature, but also drawing on the country case studies in the forest tenure assessment. The aim of the chapter is to identify key issues that need to be considered in tenure reform and some notes of caution regarding how the reform process should be approached.

CUSTOMARY TENURE

An important issue in addressing forest tenure is the need to take account of existing (“traditional” or “customary”) tenure. In many countries customary forms of forest tenure exist and function outside formal legal tenure. In some cases, formal legal ownership by the State has little or no effect on the ways in which the people living in and around forests regulate access to and use of forests. In other cases, formal and local tenure operate in parallel, with the policing of government regulations affecting the way local tenure operates. In Nepal, for example, prior to the passing of formal legislation allowing the hand-over of community forests to forest user groups, indigenous forest management systems provided identified groups of people with locally recognized rights to forests. These management systems and use rights were often very conservative regarding what forest products could be extracted. Fisher (1989) suggests that part of the reason for this conservative use was the potential for more extensive use to clash with formal State control.

The Swedish International Development Cooperation Agency (Sida, 2007) notes that although many local tenure systems draw their legitimacy from tradition and are commonly referred to as “customary”, they are not static, but continually adapt to social, economic, political and cultural changes. They are also extremely diverse, owing to differences in geographic context, resources (land, forests and water) and forms of resource use (e.g. farming and herding). They often entail a complex of group and individual rights while emphasizing the collective dimension of resource tenure. They may also grant individuals and families within the group various types of resource rights. Besides customary rules, local tenure systems may also be based on negotiated arrangements among local resource users. In parts of Western Africa, for example, local conventions – arrangements negotiated among all local resource users – regulate access to and use of natural resources such as forests, rangelands and fisheries.

Sida (2007) also notes that important equity concerns have been raised in relation to many customary systems, particularly regarding gender and more marginalized groups. The position of women under customary tenure varies considerably, but many systems contain norms and practices that are gender-discriminatory.

An underlying issue arising from the intersection of customary and formal forest tenure systems is that of overlapping rights. Not only can there be different and sometimes conflicting views of ownership and tenure between local people and government agencies (Box 5), but traditional systems themselves also frequently accommodate overlapping use rights.

Many customary forest tenure systems involve combinations of primary and secondary rights, often on a seasonal basis. The following are some examples:

- In Ban That Mouan village in Oudomxay Province of the Lao People's Democratic Republic, in the mid-1990s, an area locally regarded as a village forest had a mixture of rights to various products. Within the essentially communal forest, individual rights to various products were clearly recognized. For example, bamboo shoots and cardamom were recognized as individual property, while mushrooms were effectively available for open access (Fisher, personal communication and field notes).
- In the Mahankal Ban forest of Sindhu Palchok District, central Nepal, a study in the late 1980s described how residents of Achale village had primary use rights (Fisher, 1994). Other people living in seasonal shelters had the same use rights during their periods of residence, and some people living in

BOX 5

Overlapping tenure arrangements in Cameroon

Colonization had a profound impact on customary or traditional tenure by imposing a modern tenure system characterized mainly by the expropriation of community lands and forest lands and the enforcement of State/public ownership. However, although customary systems were disqualified or annexed, they did not disappear and have continued to operate. The post-colonial government instituted reforms in the 1990s, but these did little to alter the colonial tenure strategy. Instead, this period was marked by the reproduction of pre-independence tenure conditions, with the addition of commercial and industrial logging and the increased marginalization of local communities.

The forest tenure issue is still governed by this duality – the cohabitation of customary systems with the modern system – giving rise to a deep conflict in the discourse about rights to forests and forest ownership as a whole.

Source: Adapted from Oyono, 2009.

nearby villagers had specific secondary rights. These allowed the collection of grass and some types of fruits, but secondary rights-holders were never able to collect fuelwood.

- Overlapping rights often arise where nomadic or migratory pastoralists have seasonal rights of access to pastures, including in forest areas. These rights often overlap with the rights of year-round residents. Pasture tenure is often very difficult to separate from forest tenure. In many countries, traditional pastures are in areas that are legally forests.

Recent work in five forested countries in Africa – Burundi, Cameroon, Democratic Republic of the Congo, Rwanda and Uganda – analysed the main legal developments that have affected indigenous property rights and access to land since the pre-colonial period (Couillard *et al.*, 2009). This study found that indigenous people lost resources and land to colonists, commercial enterprises and conservation initiatives, and pays specific attention to whether or not customary law was incorporated into contemporary formal law. The analysis shows that legislative change has had, and continues to have, tremendous discriminatory consequences for indigenous peoples. It explains how tenure regimes implemented since the pre-colonial era have ignored customary ownership, and how new conditions for land acquisition were imposed after the land was unilaterally declared State property. The findings common to all five countries are outlined in Box 6.

This issue of conflicting and overlapping tenure rights is very common, particularly in situations where areas have been colonized and/or nationalization has occurred. FAO (2006) notes that long-standing lack of clarity over ownership and rights in Indonesia, “...particularly the traditional rights of local communities over land and natural resources, has caused the escalation of conflicts... particularly since decentralization”.

Key issue

Communities living adjacent to forests, particularly those that depend on forests for livelihood support, have frequently developed customary institutional arrangements that define locally relevant access and use rights. These arrangements often overlap and conflict with State-defined legal tenure.

These are only a few examples selected from many existing complex tenure arrangements involving secondary rights, seasonal rights or a mixture of communal and individual rights. An important implication for tenure reform is that trying to “fix” tenure too quickly can lead to the exclusion of people with previously recognized rights of access and use and can limit the opportunities for negotiated outcomes covering the rights of all right-holders. This may be a particular threat in the preparations for REDD. It is increasingly recognized that the successful implementation of REDD requires clear tenure. This may put undue pressure on authorities to fix and document tenure quickly, with the serious risk of making mistakes. It is imperative that any tenure reform process be allowed sufficient time for underlying tenure claims to be brought to the surface and dealt with equitably and according to human rights principles.

BOX 6

Summary of findings from an analysis of forest people's land rights in five African countries

Colonial and post-independence laws have slowly dispossessed indigenous peoples of their customary rights. There is long-standing denial of customary tenure rights, coupled with the enactment of official (written) law transferring property to States, notably through imported legal concepts such as "*terra nullius*" ("nobody's land").

- Indigenous peoples have been displaced for the creation of protected areas and environmental norms. They have been evicted without compensation and without being given alternative land.
- The landlessness of indigenous communities is reported as a common denominator throughout the region. Many families squat on land to which they have no legal right, suffering permanent risk of eviction. In some cases, indigenous people are allowed to remain on land owned by non-indigenous communities, in exchange for agricultural work; in other cases they are allowed to stay on land owned by charitable organizations.
- Indigenous peoples have no or very restricted access to ancestral lands that have become protected areas and/or national parks.
- Marginalization and exclusion of indigenous peoples from ownership and administration of forest resources is widely reported.
- Processes for acquiring land titles are very seldom available to indigenous peoples because the procedures and costs are not accessible to them.
- Governments of the five countries are committed to international and regional treaties guaranteeing the rights of indigenous peoples, and some have also been extensively guided by treaty bodies on the implications of international and regional standards. However, human rights treaties are rarely implemented.
- The content and structure of colonial, post-independence and contemporary laws pertaining to tenure and forests clash with pre-existing customary laws and practices.
- The mixture of codified and customary systems has led to contradictory and conflicting legal norms.

Overall, the five country studies illustrate that historical tenure regimes have not been acknowledged in the development of contemporary tenure arrangements, resulting in violations of indigenous peoples' right to equality and non-discrimination.

PRIVATIZATION

In recent years, privatization of national forests has become an increasingly common type of tenure reform, particularly in countries where large-scale appropriations of forests occurred in association with political events, such as the establishment of the Soviet Union after 1917 and its expansion after the Second World War. In Eastern Europe, current reforms frequently have two aspects: restitution and privatization. Schmithüsen and Hirsch (2009) distinguish between the two as: “Restitution of forests acknowledges the continuity of private ownership rights on forestland in rendering them to the former owners or their heirs and/or to local communities and institutions. The term privatization refers in the present context mainly to the process of creating new private property rights on forest land.” Citing Lengyel (1999; 2002) they note that:

... privatization in more general terms has a broader meaning and addresses the transfer of productive assets or economic rights and privileges from the State to individuals or to the private sector as a whole. Privatization increases competition and commercialisation among individuals and private stakeholders by reducing the role of the public sector and is concerned, for instance, with transferring tenure and management rights to private individuals and corporate bodies.

Much of the restitution reform in Central and Eastern European countries has been driven by special restitution legislation since the 1990s, and privatization has involved land that was not claimed by its former owners and other State land.

Restitution and privatization have resulted in the establishment of a large number of smallholdings in many countries, which has been exacerbated by the division of holdings through inheritance. The large number of forest owners presents a challenge for efficient forest management, including access to markets. This has given rise to the emergence of local and regional associations that establish contacts among owners with similar interests and concerns and provide them with information on SFM practices. Associations basically facilitate market access and the professional management of forests (Schmithüsen and Hirsch, 2009). A similar situation in Norway resulted in the development of forest owners’ cooperatives that assist the efficient management of the smallholdings. In Sweden, approximately 104 000 private owners are members of four private forest owners’ associations, representing about 50 percent of privately owned forests (Schmithüsen and Hirsch, 2009). These cooperatives employ full-time staff providing technical services, and assist with timber marketing. It should be emphasized that these cooperatives involve collective action regarding privately owned forest resources. Clear tenure is important, but the governance arrangements for the private forests also contribute to effective management.

There is an interesting contrast between the approaches taken by the Central and Eastern European countries and the countries in the Commonwealth of

Independent States (CIS). The former have preferred to establish rights through the transfer of ownership entitlements to forest land. CIS countries have preferred to maintain public ownership of forests and forest land while allocating use rights, such as for cutting timber, through leasing agreements or by reserving certain forest areas for the exclusive use of communes, agricultural cooperatives or farms. The forest law may grant private rights on public forest estates for haymaking, grazing of cattle and collection of NWFPs. Depending on the situation, felling and forest permits may be issued to private or collective holders as an entitlement to practise specific forest uses, on either a long-term (concession) or a short-term basis (Schmithüsen and Hirsch, 2009).

Privatization is always a complex procedure in which the many actual or potential rights-holders need to be identified. There are many ways of privatizing national forest assets, including selling (or allocating) the land or selling (or allocating) only the forest use rights to one or multiple private owners. The process can separate carbon from trees or hunting rights from trees. Rights can be sold (or allocated) for fixed terms or in perpetuity. Conditions of sale or licence can include exclusive use or limit the private owner's rights by granting less than exclusive use. Box 7 gives a recent example.

Viet Nam has implemented one of the most widespread programmes of privatization attempted anywhere. Since the 1990s, there has been an increasing shift towards various forms of private rights to forests, with forest being allocated to households and various enterprises (Nguyen, 2006). According to 2004 figures, 24.3 percent of the total forested area was private forest held by individual households and 24.6 percent was held by State enterprises. Under the forest land allocation process, forest areas are allocated for 50 years, and most owners "are entitled to a legal land use certificate", called a Red Book Certificate (Nguyen, 2006). These reforms have resulted in impressive impacts on forest cover and income generation, but the impacts on poverty reduction have been questioned (Sikor and Nguyen, 2006; Nguyen *et al.*, 2008). According to Nguyen *et al.* (2008), one issue is that forest land allocation does not specifically target the poor.

Since the late 1970s, China has also been involved in dramatic changes in the way that natural resources are managed, with de-collectivization and decentralization predominating. Collective forests account for approximately 58 percent of China's total forest area and 32 percent of total timber volume. Collective forest tenure reform started in the early 1980s, when agricultural land tenure reform was being implemented. It has since undergone many changes and is still ongoing. The current wave started in 2003 with the decentralization of collective forest tenure systems in favour of individual households in Fujian Province. Different provinces have started the reform process at different times, and reform has taken different shapes, although generally it provides more tenure security to farmers. The reform is based on the principle that land-use rights can be separated from landownership; rights to forest resources can be privately owned while forest land remains under public ownership. It devolves use rights

BOX 7

Privatization of public forest assets in Queensland, Australia

In 2010, the state government of Queensland, Australia completed the process for issuing a plantation forestry “licence” for the right to control access to and take trees from the publicly owned forest plantation estate. The ownership of the land remains with the state, but a company has been given the power to harvest existing plantations and grow new plantations to which it has the harvest and sale rights. The sale’s main purpose is to raise money for the government, but there is also an ideological and pragmatic reason reflecting the view that the private sector is better placed than the public sector to manage commercial businesses.

The licence covers about 300 000 ha of land: 180 000 ha of plantations plus additional land allocated for use as buffer zones, roads, etc. It does not provide for exclusive use, but contains conditions that define non-exclusive use, such as third-party access for conservation, recreation, etc.

Residual native title rights (the legal rights of Aboriginal people) to publicly owned forest land may also be granted for customary purposes. The licence term is for at least 99 years, to provide long-term security of access for plantation management, reflecting the long-term investment horizon of up to 45 years between planting and harvesting. It also reflects the state’s decision to retain ownership of the crown land underpinning most of the estate. Failure to comply with the right to manage the land for plantation forestry purposes could lead to land being excised from the licence and returned to state management.

An additional area of about 30 000 ha of publicly owned forest plantations is on freehold land, which has not been included in the licence, but has been sold with exclusive rights.

Sources: Based on observations by Gilmour, and Queensland Government, 2010.

to individuals/families but – to reduce fragmentation – it also encourages the establishment of cooperatives, often at the village level. An interesting feature is that the ownership of forests and use rights to forest land can be bought or sold freely, which allows individuals or companies to acquire larger portions of land while forest farmers who do not have the interest or capacity to manage their forest can sell their rights. By 2007 more than 60 million hectares of collective forest had been transferred to individual households, accounting for more than 35 percent of total collective forests. Although it is difficult to produce a single assessment of the impact of forest tenure reform processes in China, a few generalizations are possible and provide a cautionary background to tenure reform agendas elsewhere (Box 8).

BOX 8

Key issues identified from an analysis of China's recent tenure reforms

- Many reports show positive influences from forest tenure reform, including increased revenue for village collectives and local authorities, greater transparency, fair and open handling of rural affairs, and improved village governance.
- Tenure reform provides space for different players to establish rational forest management schemes that suit local economic, social and cultural conditions.
- The de-collectivization process has resulted in diversification of management forms, including individual households with small areas, progressive farmers with larger areas, collective forest farms, communes, national private enterprises and international enterprises.
- Land tenure arrangements reflect local power structures, and changes in forest tenure may provide opportunities for powerful and richer groups to deprive poorer or marginalized people of forest benefits. Social differentiation, inequality and opportunities for misappropriation may be increased, and customary rights to resources and management schemes may be lost.

Source: Adapted from FAO, 2009b.

CONCESSIONS AND CONTRACTS

This section discusses concessions and other forms of private harvesting contract as examples of tenure with prescribed access and use rights. Gray (2002) defines a concession as: “a contract between a forest owner and another party permitting the harvesting (forest utilization contracts) and/or managing (forest management services contracts) of specified resources from a given forest area.” Forest concessions can involve both types of contract, granting concessionaires harvesting or use rights, while requiring them to undertake forest management activities, reforestation and/or environmental protection. Forest concessions may thus include both rights and obligations.

Various forms of concessions and contracts have been the primary form of forest tenure and management (by allocating forest harvesting rights), especially in forest-rich tropical developing countries, but also in some temperate developed countries (Gray, 2002). Forest concessions have stimulated commercial timber harvesting and industrial forestry, but often at considerable cost in terms of lost forest values, economic benefits and revenues, as noted by Gray (2000). The economic and financial benefits from rich tropical forests have often been less than expected. Gray (summarizing work by Repetto and Gillis, 1988; Grut, Gray and Egli, 1991; Gray, 1997) goes on to note that forest utilization and processing have not been efficient, economic values have been dissipated, revenues have

been less than the potential, and exploitation of the forests has been too rapid. Concession agreements have often ignored forest use by forest dwellers, who have generally been completely excluded from the process. Johnson and Cabarle (1993) describe the past situation as inviting the wasteful use of forest resources, with concessionaires making huge windfall profits. Clearly, the system needs to be reformed if it is to be a viable part of the mix of tenure systems for serious consideration in the future.

Karsenty *et al.* (2008) note that in many countries, “questions are raised on whether tropical forests should be publicly, commonly or privately owned and managed in order to enhance sustainability”. Other debates focus on whether small-scale enterprises are better positioned than large-scale industrial concessions to reduce poverty and attain sustainable management. In countries where large tracts of forest are publicly owned, concessions are viewed as a means of delivering services of public and collective interest through the association of private investment and public regulation. Karsenty *et al.* (2008) argue that:

... the success of an industrial concession model in countries with large forest resource endowment in achieving multiple goals such as sustainable forest management and local/regional development depends on two critical assumptions. First, forest functions and services should be managed and maintained as public goods. In many cases, additional uses – and corresponding rights – can take place alongside logging activities. Industrial concessions can be more efficient than other tenure models (such as community-based forest management and small-scale enterprises) in achieving SFM, add value to raw material and comply with growing environmental norms. This is especially the case in market-remote areas with low population density and poor infrastructure. Secondly, to achieve these different outcomes, any concession system needs to be monitored and regulated, especially in contexts dominated by asymmetrical information between regulating authorities and concessionaires. New institutional responses have recently been put forward in several countries, providing valuable materials to design a renewed policy mix which associates public and private incentives.

Experience has shown that concessions can help promote SFM if specific measures are taken to strengthen compliance with contract terms, supervision and monitoring. These measures include the following:

- Competition can be applied to concession allocation as a means of selecting among forest enterprises. It can be a powerful tool for economic rent capture and can also act as a strong incentive for enterprises to improve their efficiency.
- An independent observer of both the allocation process and the field operations can assist in improving governance and public accountability and promoting the rule of law, particularly in areas that are generally hard to govern.
- An appropriate legal framework and effective governance at the local level are essential components of a successful system.

The concession system that Brazil has recently established for its national forests aims to comply with these measures (Box 9).

Indonesia is attempting to reform its concession management system. A recent innovation is the promulgation of regulations for issuing timber utilization permits aimed at restoring ecosystems in production forests (Ministry of Forestry, Indonesia, 2008). These permits contain requirements for regular monitoring of performance.

Regarding concessions as a tenure system, Karsenty *et al.* (2008) conclude that:

... in a situation characterized by unclear land rights and subsequent risks of forest conversion to create de facto individual land rights, a concession regime can fill a vacuum created by a confusing land tenure situation in order to contribute to forest protection against conversion.”

BOX 9

Brazil's concession system for national forest

In 2006, Brazil adopted a new law that regulates the use of public national forests with the aim of achieving sustainable management through:

- the establishment of conservation units;
- dedicated areas for forest management by local communities;
- forest concession contracts with Brazilian enterprises.

The Brazilian Forest Service, created in 2007 within the Ministry of Environment, has legal responsibility for managing the forest concession process under the new law. The first two federal forest concessions were granted in October 2010: one covering 96 000 ha in the National Forest of Jamari in the state of Rondonia; and the other covering 49 000 ha in the National Forest of Saraca-Taquera in the state of Para.

Production in both of these areas will be implemented through a rotational system to guarantee continued forest use and proper forest regeneration. Every year, only one-thirtieth of the total concession area will be exploited, assuming a rotation of at least 30 years.

The Brazilian Forest Service, the Brazilian Institute for the Environment and the Institute Chico Mendes (responsible for biodiversity conservation) will monitor the logging process. A chain of custody will certify the timber's origin. The environmental, social and economic criteria on which the concessions are granted will be monitored by independent forest auditors, to ensure compliance.

The new legislation states that the tender process for concessions should consider a series of technical criteria, such as environmental impact, direct social benefits, efficient use of forest resources, and value added to the region.

It is the concession-holder's responsibility to develop indicators for each of these criteria, which must be discussed and approved in public consultations and by the Commission for Sustainable Management of Public Forests. The criteria and indicators constitute an important part of the bidding and tender process and will be used in the evaluation of the offers.

Source: Paveri, personal communication, 2010.

COMMUNITY FORESTRY

“Community forestry” is often used as a generic term to cover a variety of participatory approaches, such as participatory forest management, community-based forest management and joint forest management. All of these have specific meanings in specific contexts and there is no overall agreement as to the differing connotations of each term. Several types of community forestry are discussed in the following section (on various Latin American countries, Nepal, the United Republic of Tanzania and Thailand), so the discussion here will give only a broad overview and identify some key issues.

Community forestry programmes and initiatives are generally promoted and discussed in the language of devolution and forest policy reform. The many types of community forestry all involve local people in aspects of forest protection and management, frequently through some sort of formal agreement between forestry administrations and local communities or their representatives. The degree to which access, usufruct and/or management rights are devolved to communities varies widely, from the forest *ejidos* in Mexico, where the communities are the owners of the land and forest resources and manage them independently for timber production and/or non-timber forest products extraction, to cases where communities only receive benefits from government for protecting or assisting the management of State-owned forests. Several countries have developed specific legislation regulating community forestry. In Nepal, for example, the forestry legislation allows permanent use rights, subject to specific conditions, to all communities that are willing and able to undertake community forestry (Pokharel *et al.*, 2008). Many Latin American countries grant communities access and management rights to their forest resources following procedures defined in the forestry regulations (Larson *et al.*, 2008).

In many cases, communities already use or manage forest resources according to traditional systems, and tenure reform consists of the formal recognition of existing informal rights. In other cases, community forestry is developed as a way of solving problems with the government’s management of State-owned forests, and constitutes a new tenure arrangement with new roles for both government agencies and the communities (Cronkleton *et al.*, 2010). This requires building mutual trust, capacity development and – above all – time. If these conditions are not met, community forestry programmes are bound to fail.

The success or failure of community forestry programmes depends on many factors beyond tenure rights. Communities often receive ownership or management rights for low-quality or degraded forests, which require large investments of resources and time to make them profitable, although they sometimes provide important safety net functions for the rural poor. Even with clear and secure tenure arrangements in forested lands, as in many Latin American countries, communities may be burdened with excessive administrative requirements to obtain harvesting permits, including the design of detailed and complex management plans, which constitute a disincentive to pursue formal forest management (Pacheco *et al.*, 2008; Pokorny *et al.*, 2010). In Nepal, community organization has proved to be of utmost importance in enabling

communities to negotiate and safeguard tenure rights against possible distortions of legal rights (Ojha, 2009). The following chapters provide many examples of different community forestry programmes that illustrate these general points.

SELECTED EXAMPLES OF TENURE REFORM

This section analyses some specific experiences in forest tenure reform – some more successful than others – and identifies key lessons and issues.

Latin America: Bolivia, Brazil, Nicaragua and Guatemala

Significant diversification of forest tenure systems has taken place in a number of Latin American countries, especially since the mid-1980s. This transition has brought legitimate access and ownership rights to a larger segment of society, and benefits to a wider range of forest stakeholders. Pacheco and Barry (2009) provide an overview and analysis of experiences in forest tenure reform through the recognition of forest rights in four countries: Bolivia, Brazil, Nicaragua and Guatemala. The authors identify a variety of different tenure models: individual private holdings, indigenous territories, extractive reserves, agro-extractive and forestry settlements, and social or community concessions. Table 1 provides a comparison of the key characteristics of each model.

Although these models involve diverse rights, the authors identify three characteristics as common across the models and countries (Pacheco and Barry, 2009):

First, titles or rights are granted with the understanding that the forest resource will be maintained, including a conservation objective in the reform itself. Second, alienation rights to the land are mostly withheld by the State, in one form or another, which implies a continued role for the State in its administration, while at the same time restricting forestland from being sold as a market commodity or mortgaged for credit. This is more evident in the case of community forestry concessions where usufruct rights are limited to, for example, 25 years in Guatemala and 40 years in Bolivia. In turn, indigenous people have benefited from rights which are likely more difficult to be reversed back to the State. Third, most of the forest lands are demarcated and allocated as collective or communal “properties”.

Pacheco and Barry (2009) go on to point out that: “In practice, only limited and conditioned rights are devolved to smallholders and communities”.

An important lesson from these cases is that, even where forest tenure reform has been undertaken at a significant scale and is based on formal arrangements, rights can be limited by a focus on conservation objectives, restrictions on the alienation of rights and other factors. As Larson *et al.* (2008) point out with reference to the same countries:

... new statutory rights do not automatically turn into rights in practice. Virtually all of these cases – even those in which benefits have been significant – encountered substantial challenges along the road from rights to benefits:

TABLE 1
Forest-related land tenure models in four Latin American countries^a

Characteristic	Communal forests	Indigenous territories	Extractive reserves	Agro-extractive and forestry settlements	Social or community concessions
Access	Collective, mediated by community organizations	Collective, mediated by indigenous community organizations	Collective, mediated by extractive reserve council	Collective, mediated by existing community social organization	Collective, mediated by the productive organization created to manage the concession
Withdrawal/ domestic use	No/few restrictions for NWFPs; fuelwood/ timber permitted with local approval and permit from State forest agency	No restrictions for NWFPs or fuelwood; may require local approval for other timber products	No restrictions for NWFPs or timber products for domestic use	No restrictions for NWFPs or timber products for domestic use	No restrictions for NWFPs or timber products for domestic use
Management/ commercial use	Commercial use of timber sometimes prohibited; where permitted requires approved management plans	Commercial logging requires approved management plans	Commercial logging permitted if it complements other economic activities based on approved management plans	Commercial logging requires approved management plans	Commercial logging (and NWFPs in Petén) requires approved management plans
Exclusion	Members have right to exclude outsiders	Members have right to exclude outsiders	Members have right to exclude outsiders	Members have right to exclude outsiders	Members have right to exclude outsiders, but not always for NWFPs
Alienation	Land transactions not allowed	Land transactions not allowed	Land transactions not allowed	Land transactions not allowed	Land transactions not allowed; concession cannot be transferred to third parties
Authority representing the collective	Traditional community authority	Elected territorial authority or organization; or indigenous organization	Elected extractive reserve council for concession organization	Community representative organization (e.g. agrarian syndicates)	Elected directors of concession organization

Source: Larson *et al.*, 2008.

^a Communal forests in the Guatemalan highlands; indigenous territories in Nicaragua, Bolivia and Brazil; extractive reserves in Brazil; different types of extractive, agro-extractive and forest settlements, mainly in Brazil and Bolivia; community concessions in Petén, Guatemala; and local forest users' associations in Bolivia.

conflicts with other resource claimants; the failure of the State to define the tenure rights appropriately or defend it effectively; problems with local authorities and governance institutions: the superposition of new models over existing institutions; obstacles to community engagement with markets; and the lack of systems to support forest resource management.

Further analysis of the changes in these four Latin American countries emphasizes the importance of viewing forest tenure reform in the context of governance and regulatory frameworks. Table 2 shows the changes made to the countries' regulatory frameworks to make them more enabling for the reformed tenure arrangements.

TABLE 2
Statutory changes to provide an enabling regulatory framework for forest tenure reform in four Latin American countries

Case study	Model	Summary of statutory change	Comments
Nicaragua: North Atlantic Autonomous Region	Indigenous territory	Recognition of indigenous historic rights to traditional use areas: 1987 Constitution and 2003 Communal Lands Law for implementation	Demarcation and titling has progressed very slowly, but with new impetus under the government that took office in January 2007
Guatemala: Petén	Community concession	25-year renewable concession contracts to about 450 000 ha of forest granted to 12 formal community organizations, beginning in 1994	Concessions located in the multiple-use zone of the Mayan Biosphere Reserve
Guatemala: highlands	Communal forest	Recognition of indigenous land rights in 1985 Constitution, 1995 Peace Accords; 1996 signing of International Labour Organization (ILO) Convention 169; 2005 Law of Cadastre recognizes communal lands	Statutory right not fully implemented in law; other policies and projects undermine indigenous collective rights
Bolivia: community lands of origin (TOCs)	Indigenous lands/TCOs	1996 Law of the National Service of Agrarian Reform recognizes TCOs as a new type of communal property for indigenous peoples; 1996 Forest Law grants forest subsistence use based on use and custom, and the right to commercialize forest products with approved management plans	Although titling of TCOs was to be prioritized, for most TCOs it remains incomplete
Bolivia: northern Amazon	Agro-extractive community	2004 decrees modifying the 1996 law allow agro-extractive communities to establish 500 ha per family as standard for defining community lands	Titling has advanced substantially
Brazil: Porto de Moz	Extractive reserve	2004 Presidential Decree based on 2000 Law of the National System of Conservation Units grants land rights to local people as long-term usufruct rights	Often used to legitimize traditional populations' extraction rights; granted by federal government over both federal and State lands
Brazil: Trans-Amazon	Agro-extractive settlement (sustainable development project)	1999 <i>Portaria</i> INCRA No. 477 grants land rights to local people as long-term usufruct rights; mixes individual and community land access rights	Used to settle smallholders in forest lands; not exclusive to the Trans-Amazon
	Settlement project	2004 <i>Instrução Normativa</i> No. 15 grants definitive title to individual smallholder members of the colonist settlement	Most common modality for titling land to agrarian reform settlements

Source: Larson *et al.*, 2008.

Nepal

Community forestry in Nepal provides an example of largely successful forest tenure reform. After a long period of evolution, the current basis for community forestry was legalized under the Forest Act of 1993. Forests remain formally government-owned, but permanent use rights can be provided to communities,

subject to agreement over management arrangements. Under the community forestry programme very large areas of forest have been handed over to forest user groups for management and utilization. Table 3 shows the programme's achievements.

The community forestry programme is generally recognized as having made a significant contribution to improved forest cover and quality in the middle hills, where it is most widely implemented. Communities' enthusiastic adoption of the programme indicates that they see it as beneficial, although it is not clear how broadly the benefits are shared. For example, Malla (2000) shows that community dynamics can result in some groups or individuals being left worse off under community forestry. It is also clear that community forestry management plans tend to be very conservative regarding the types and quantities of forest products that people are able to harvest.

As community forestry has matured, a range of civil society networks has emerged to advocate, sponsor and support the devolved forest management arrangements. Box 10 gives an example.

Forest tenure reform in Nepal has been real and impressive. The rights transferred are formal and legal, although there is no change in formal ownership; the forest land remains under public ownership and communities are not able to sell or otherwise alienate it. Nevertheless, the experience shows that formal tenure change alone is not always enough to lead to the achievement of forest management objectives. Even when formal rights are transferred, bureaucratic controls can severely limit effective access and use. The agreements between communities and the Department of Forests frequently allow only limited use, and significant restrictions result from bureaucratic interventions. This demonstrates how the effectiveness of tenure reform depends on wider governance issues and the influence of regulatory frameworks.

The by-products of forest tenure reform in Nepal include a substantial increase in trees on private farmland and the rehabilitation of community forests. Here too, the importance of regulatory frameworks is emphasized. In 1987, regulations were approved that aimed at conserving trees on private land by requiring farmers to

TABLE 3
Key statistics related to Nepal's community forestry programme (at March 2009)

Attribute	Indicator
Number of community forest user groups	14 400
Area of forest formally handed over to community forest user groups	1.25 million ha (30% of total national forest)
Number of households involved as members of community forest user groups	1.66 million (39% of the national population)

Source: Bala Ram Kandal, personal communication, from the community forestry database of the Department of Forest of Nepal.

BOX 10

Example of civil society influence on the policy and governance practices associated with forest tenure reform, Nepal

The Federation of Community Forestry Users (FECOFUN) emerged in Nepal in 1995 and has since evolved through several stages. The first stage was a series of locally initiated small informal networks made up of user groups located close to one another. In the second stage, projects and district forest officers started to use these networks for planning and information extraction. The third stage saw user groups starting to cluster around specific themes or issues (such as resin networks). The final stage of federation building started with the formation of an ad hoc committee, which extended membership and facilitated the formation of district chapters.

Since its establishment, FECOFUN has been a key player in forestry sector policy development and governance practices. Together with non-governmental organization (NGO) alliances, it has brought civic perspectives to policy-making processes that were previously dominated by government. Overall, FECOFUN actions have sought to:

- promote a civil rights agenda in forestry;
- create civic resistance to top-down government decisions;
- augment service delivery;
- influence policy development processes;
- influence national and international discourses on forest governance.

FECOFUN is now an important civil society platform for augmenting citizens' voices in governance discourses. The federation is able to resist and challenge undemocratic approaches, policies and practices, and bring people's visions, images and ideas to bear on considerations of the future of forestry in Nepal.

Source: Adapted from Ojha *et al.*, 2008.

obtain permits to harvest and/or transport trees from their private land. However, these regulations acted as a disincentive to plant or protect trees on private land; in fact, their announcement before they came into effect encouraged tree cutting while it remained acceptable. When the regulations were removed during efforts to create a more enabling regulatory framework for community forestry, farmers responded by allowing naturally occurring tree seedlings to survive and planting commercially desirable seedlings on their private land. Many parts of the central hill region in Nepal are now covered by a mosaic of community forests and trees on private land. The increase in commercial timber from communal and private lands has spawned a network of private sawmills processing the timber purchased from forest user groups and private farmers.

United Republic of Tanzania

This country provides an example of considerable success in forest tenure reform. The two main programmes relevant to communities' involvement in participatory forest management are joint forest management on national forest reserves, and community-based forest management of village land in which "villagers take full ownership and management responsibility for an area of forest within their jurisdiction" (Blomley *et al.*, 2007).

Shinyanga near Lake Victoria provides a very positive example of how tenure reform through changing the regulations facilitated by law can provide opportunities for livelihoods and improved forest management. (For a description and analysis of the Shinyanga case, see Barrow and Mlengi, 2008.) The Shinyanga region had been very severely deforested by cash cropping, which started in the early 1900s, and other factors such as the Tanzanian Government's villagization policy, which essentially nationalized landownership from the mid-1970s. Subsequently, a soil conservation programme re-established the customary practice of setting aside areas as forest reserves, while recognizing people's rights to the products of these reserves. There have since been spectacular improvements in forest and soil conditions, and annual income of about US\$1 000 per family has been derived from the reserves (Monela *et al.*, 2004).

Thailand

In Thailand, a movement aimed at legalizing community forestry in protected areas started in the early 1990s. Since then, successive drafts of a community forestry bill have alternated between restrictive or liberal approaches to the rights of people living inside protected areas. The liberal versions have been promoted by coalitions of farmers, especially members of ethnic minorities living in the hilly areas of northern Thailand, academics and NGOs. This movement is opposed by a coalition of mainly urban-based conservationists and the leadership of the Royal Forest Department. The debate has been framed in terms of contrasting narratives about the people living in forests as either forest destroyers or friends of nature whose practices are essentially non-destructive.

In late 2007, after extensive debate and rewriting, a very restrictive version of the bill (allowing very limited rights to a relatively small number of people with claims) was passed by Parliament. However, it was not signed into law as it was challenged on constitutional grounds and is currently before the Constitutional Court.

The debate in Thailand highlights some of the complexities involved in forest tenure reform. In this case, there is a clear-cut difference in the world views of the parties in favour of serious reform and those in opposition, with one side holding a very strong notion of conservation as being the preservation of wilderness etc., and the other taking a more humanist approach. The NGOs in favour of and opposing the bill have been characterized respectively as "soft-green" and "dark-green" NGOs.

The Royal Forest Department's opposition is more complex. Concerns that the community forestry movement challenges the forestry profession partly explain the department's alliance with the urban middle-class conservation movement. However, there are differing views within the department, and many foresters, especially at the local level, regularly facilitate community forestry activities.

As highlighted in the Thailand case, the reform of forest tenure involves more than finding the correct or appropriate form of tenure. It also requires decisions about the objectives of both forest policy and forest tenure, and this brings competing world views and interests into play, sometimes including individual economic interests. The clear lesson from this is that tenure reform is essentially a matter of negotiation among different interest groups and stakeholders. As is the case for any policy reform, tenure reform cannot be resolved as a purely technical issue.

Uganda

Two international NGOs facilitated a negotiated conflict mitigation process to re-establish rights of access to and use of key biodiversity products and services for resource users living around two protected areas in the Mgahinga National Park. This was followed by observation of the degree to which the initiatives had addressed both livelihood and conservation priorities, and thereby diffused conflict between local communities and protected area managers. The study concluded that although attitudes seemed to have changed substantially after the negotiation process, women continued to view parks more negatively than men did, with more than half of respondents still feeling that conservation costs exceeded any positive conservation benefits. Further analysis of wealth-ranked data revealed that poorer households had more negative attitudes towards the parks than richer households. One explanation for these findings could be that the conflict resolution initiatives had inadvertently been subject to gender bias, or had favoured richer members of the community. An alternative explanation is that poorer or female members of the community were more reliant on the parks as a source of livelihood or subsistence, so they felt the restrictions on use more severely than other community members did (FAO, 2003).

LESSONS LEARNED FROM EXPERIENCES OF TENURE REFORM

As noted earlier, it is generally argued that secure tenure leads to greater willingness to invest time and resources in forest management on the part of the stakeholders with access and use rights. It is also argued that it leads to more sustainable use. Although these generalizations are useful in providing the rationale for reform, good governance and an enabling regulatory framework are equally important for achieving forest management objectives. The following discussion highlights some of the major lessons that emerge from an analysis of experiences in tenure reform.

Key issue

Women's tenure security requires focused attention to addressing gender equity within communities.

Importance of secure tenure

Forest tenure reform is often implemented when State management has failed to prevent forest degradation. It tends to focus on increasing the direct participation of a wider range of stakeholders, such as smallholders, the private sector or local/indigenous communities, in forest management. In addition, customary law and practices may or may not be recognized. An important aspect of the reform process is to ensure that the rights being devolved are as secure as possible. This means that the basic rights incorporated in the regulatory framework should be “hard” rather than “soft” (Box 11). In practice, this requires that the basic rights are incorporated in higher levels of the regulatory framework, such as the constitution or law, for which changes require high-level political decisions and a complicated process, rather than in the lower levels, such as implementation guidelines, which can be modified relatively easily by bureaucratic discretion.

It is sometimes argued that hard rights are essential (“a minimum if not sufficient condition”) on the grounds that soft rights (and informal arrangements) can easily be reversed. However, it is worth remembering that hard rights can also be reversed by governments, thereby leading to uncertainty about investment. Box 12 outlines the characteristics of tenure security that need to be taken into account.

One version of the secure tenure argument is the view that private ownership – individual tenure – provides the strongest incentive and is therefore the ideal form of tenure. However, various types of common property and joint tenure arrangements have also all been demonstrated to work in various situations. Context is critically important in deciding what may or may not work.

Key issue

Secure forest tenure is a desirable aim for policy reform because it can enhance the achievement of forest management objectives by encouraging key stakeholders to invest time and other resources in forest management.

BOX 11

Soft and hard rights

Soft rights are rights that cannot be defended, such as those that can be withdrawn at the discretion of the forest department. In contrast, hard rights can be defended, such as the inalienable right to own land. Communities that receive only soft rights are unlikely to invest substantial human and financial resources in developing forest assets that can easily be taken away from them by the government.

Source: Gilmour, O'Brien and Nurse, 2005.

BOX 12

Characteristics of tenure security

- The rights must be clearly defined.
- There must be certainty that rights cannot be taken away or changed unilaterally and unfairly.
- Security is enhanced if the rights are granted either in perpetuity or for a period that is clearly spelled out and long enough for the participants to realize their benefits in full.
- The rights must be enforceable.
- The rights must be exclusive.
- There must be certainty about the boundaries of the resources to which the rights apply and about who is entitled to claim membership in the group.
- The government entity entering into the (co-management) agreement must have clear authority to do so.
- The law must recognize the holder of the rights.
- There must be accessible, affordable and fair avenues for protecting the rights, solving disputes and appealing the decisions of government officers.

Source: Adapted from Ellsworth and White, 2004.

Unintended consequences of tenure reform

Tenure reform can have undesirable effects for some people. The privatization of State forest assets (in Central Asia, Viet Nam, China and elsewhere) has often led to inequities and the disempowerment or increased impoverishment of people, partly by removing tolerated use rights from the people living near and within forests in favour of the new owners. This is particularly problematic where customary local tenure is communal. The move from State forest assets with customary communal tenure to privatization sometimes bypasses the interests of most users.

In Romania, the restitution of land seems to have had some unintended consequences in terms of illegal cutting (WWF, 2005). Prior to 1989, all forests in Romania belonged to the State; an extensive restitution process started in 1991. It seems that some titles were distributed to owners who were not present, leading to forests effectively belonging to “nobody” (WWF, 2005). Box 13 gives another example of unintended consequences, from China.

Although the formalization of tenure arrangements will often create a more secure environment (encouraging investment of time and other resources), there are attendant risks. For example, certain people or groups, often women or children, who depend on a resource may be excluded from future access because of overlapping/parallel tenure arrangements such as overlapping customary and formal legal tenure, or because the reform ignores secondary users such as seasonal

BOX 13

Unintended consequences associated with a World Bank afforestation project in China

The project's objectives included improving local livelihoods through afforestation, but the implementation procedures were complicated. The project had several unintended consequences, including the following:

- Most villagers' participation was limited to contributing their labour and land.
- During project implementation, farmers lost their use rights to forest land because nothing had been done to secure these rights; they had no security of forest tenure.
- Farmers had so little say during the transformation stage that they were unable to protect their own rights to forest land. In the share allocation, former use rights seemed to have been given less value than the administrative support of the township authority.
- Project loans were made mainly to local governments, State forest farms or wealthy people with strong links to the local government, partly because the forest land to which poor farmers had use rights was undervalued. Outwardly, the project looks successful: shareholding forests have been established and idle assets have been revitalized. In reality, however, poor farmers have lost their use rights to forest land, including for grazing and fuelwood collection, while richer and more powerful shareholders have gained.

Source: Adapted from FAO, 2009b.

pastoralists. As mentioned earlier, another risk is that change may establish inappropriate arrangements if it is carried out too quickly.

Where resource rights are complex and overlapping, particular attention must be paid to recording all existing rights, including the secondary rights held by women, pastoralists and other vulnerable groups. For poorer and more marginalized groups, economic, geographic, linguistic and procedural access to processes for the formalization of rights is key to achieving equitable outcomes.

The unintended consequences that tenure changes may have make it essential that there is careful impact monitoring. This reinforces the idea that tenure reform needs to be an adaptive process, in which reforms are modified in the light of both expected and unintended outcomes.

Key issue

The implementation of tenure reforms is fraught with many risks and uncertainties, and frequently leads to unintended consequences, particularly in terms of socio-economic outcomes.

Another risk is that change (if too quick) can lead to inappropriate arrangements.

An adaptive process that emphasizes action learning (Figure 6 in Chapter 7) is necessary.

Tenure reform as an adaptive process

In addition to correcting unintended consequences, an adaptive process also implies that small incremental and experiential changes can be useful.

As noted earlier, attempts at formal forest tenure reform in Thailand have been unsuccessful, but at least one example suggests that it may be possible to improve tenure without achieving fundamental tenure reform. Attempts to achieve forest tenure reform through the community forestry movement have foundered against concerted opposition from a variety of interest groups, but significant outcomes have been achieved by improving institutional decision-making arrangements. Doi Mae Salong in northern Thailand is a military-controlled protected area near the border with Myanmar. Its mixed population includes several ethnic groups. The forests have been severely degraded over many years. Several years ago, the Royal Thai Armed Forces (RTAF) commenced a major reforestation campaign. An early attempt to reforest land used for agriculture led to protests from local people. With assistance from the International Union for Conservation of Nature (IUCN), RTAF and partners initiated a process of participatory land-use planning across the landscape that has gradually gained the confidence of local people (R.J. Fisher, personal communication).

In this case, the granting of formal tenure to local people is not an option, as it is against government policy, but improved relationships and decision-making processes (governance) have improved access to forest and other resources. It appears that the negotiated approach to land use involving forestry, agroforestry and agriculture is improving forest condition and that the key elements are in place for improved livelihoods. This case also brings out the importance of seeing forests as part of larger landscapes.

Regardless of the lack of political will to reform forest tenure, the Doi Mae Salong case can be seen as a policy experiment. The learning approach taken in this landscape, and the gradual accrual of evidence of the benefits of improved governance support the idea that an adaptive process is an important approach to tenure reform.

Other examples demonstrate the value of taking an adaptive incremental approach to tenure reform by testing different tenure arrangements in what is essentially a policy experiment. In the Gambia, tenure options were field-tested from 1991 to 1995, leading to the introduction of a new forest policy in 1995 and new legislation in 1998. In Mongolia, piloting took place from 2008, and a new forest policy process was launched in 2010. As reported elsewhere in this publication, the adoption of community forestry in Nepal evolved over more than a decade, with the results of policy experiments in the field from 1978 to the late 1980s contributing to the development of a new forest policy in 1989, followed by new legislation in 1993.

Securing tenure does not always lead to sustainable forest management or improved local livelihoods

In most Melanesian countries in the Pacific, land tenure (including forests) is almost entirely in the form of customary tenure (Box 14). Customary ownership of land is generally held by clans. Nevertheless, customarily owned forest land remains very susceptible to large-scale and often unsustainable logging. The processes by which this happens are complex and variable. Although land may be

BOX 14

Logging and landownership in the Pacific

Although most land in the Pacific is legally under some form of communal ownership, logging – mainly by Southeast Asian companies – presents a major threat to forests in the four Melanesian countries of Papua New Guinea, the Solomon Islands, Vanuatu and New Caledonia, which are the most substantially forested in the Pacific (McGrath, 1997).

Logging is sometimes carried out in spite of opposition from many members of the landholding groups. McGrath (1997) explains how this can occur:

Ownership often rests with a “landholding group” rather than with the village as a whole. The right to speak on behalf of the landholding group may belong to heads of households, or to one or more hereditary or elected chiefs....

On an island in Vanuatu:

The village people appreciated the importance of retaining the land in its natural state and, standing to gain nothing from the logging of the area, were quite opposed to a proposed commercial timber harvesting operation. One of the two customary landholders had a similar opinion.

However, the value of the royalties from the logging of the forest over an 80-year period was estimated at some US\$9.4 to 16.7 million. Even if only a fraction of these were captured locally, the two landholders [each] stood to gain far more personally from the logging of the area than he would lose. One landholder could not resist this temptation, and signed an agreement with a logging company. The views of the village were of no consequence, and strenuous efforts over a lengthy period were necessary to develop a solution that provided the landholder with sufficient monetary compensation for him to agree to protect the area. I mention this example simply to illustrate that local control and ownership of land ... may sometimes be a two-edged sword for forest conservation.

Source: FAO, 1997.

held by clans, negotiations with logging companies are frequently mediated by government agencies, supposedly on behalf of the clans. However, these agencies do not always negotiate in the interests of the clans or with sustainability as a first priority, so royalty benefits to government and sustainable management are seldom realized together. As a further complication, individual clan leaders may formally represent the clans, but in practice pursue their own interests.

Key issue

Good governance is critical to achieving forest management objectives, and can frequently overcome deficiencies in the regulatory framework and tenure security.

For livelihoods and resource sustainability in the Pacific, it is clear therefore that improved outcomes require greater attention to governance rather than tenure reform itself. Even when tenure arrangements are built into the regulatory framework as hard rights (i.e. very secure), they do not necessarily lead to the desired outcomes.

Importance of an enabling regulatory framework in achieving management objectives

Many of the reforms of recent decades have moved towards recognizing the forest management rights of a wider range of stakeholders (see the examples from Latin America in Table 1). Implicit to these transformations is a change in the role

Key issue

An enabling regulatory framework is essential for supporting tenure reform and achieving forest management objectives.

of governments in managing forests. In pre-reformed situations, the government's role often emphasized enforcement, which translated into keeping people out of forests and preventing them from harvesting forest products. The regulatory frameworks of the time reflected this emphasis. Although government agencies must retain the

mandate for appropriate law enforcement, in devolved forest management they also need to adopt a supportive and facilitative role to assist the efforts of forest managers. The regulatory framework should reflect this change. Governments tend to be slow to revise regulatory frameworks so that they reflect societal shifts, which results in many of the enforcement attributes of the old agenda being retained. Box 15 describes a situation where the regulatory framework for forests has not caught up with the wider societal changes reflected in national development planning.

Table 4 traces legislative changes that have supported major tenure reforms in selected Latin American countries (other examples are given in Table 2).

Table 5 shows how the regulatory framework in Viet Nam evolved over three decades as the political focus shifted from centralized control, to the

BOX 15

Example of a regulatory framework failing to support national forest management objectives

The regulatory framework for forest management in the Islamic Republic of Iran focuses on technical issues such as inventory, cutting rates and utilization methods, and neglects important social aspects such as forest tenure rights, livelihoods, income generation potential, migration and public participation. As such, it is not supportive of the forest management policies outlined in the current National Development Plan, which emphasize, among other elements, strengthening stakeholder participation in SFM.

Source: Adapted from FAO, 2010a.

TABLE 4
Changes in the legal frameworks to support forest tenure reforms in selected Latin American countries

Country and year	Change in the legal framework
Costa Rica, 1977	Indigenous law establishes regulation and special protection of indigenous areas as collective property.
Brazil, 1988	Constitution recognizes the rights of indigenous and tribal Quilombo people to their ancestral lands.
Colombia, 1991	Constitution paves the way for laws recognizing the rights of Afro-Caribbean tribal communities in 1993, and for defining the rights of indigenous people in 1995.
Bolivia, 1996	New Forestry Law grants access to forest through concessionary rights for private companies and some small-scale loggers. Indigenous communities and other landholders gain exclusive rights over their forest for subsistence use, and the right to apply for permits to use the forest on their lands commercially, conditional on having an approved management plan.
Peru, 2000 and 2008	Modifications to the law on flora and fauna create the concept of local forests, facilitating local people's access for the sustainable use of adjacent forests.
Honduras, 1974, 2007 and 2008	Forest Law established in 1974, in 2007 confirms the social forestry system allowing local groups access to forest resources in public forests. 2008 legislation recognizes various rights of adjacent communities to forest resources.

Source: Adapted from FAO, 2009a.

TABLE 5
Major milestones in the regulatory framework affecting forest management in Viet Nam

Year	Regulatory change
1976	Ministry of Forestry established as State organization responsible for forestry issues at the national level; benchmark for nationalization of forest resources.
1981	Directive 100CT/TW issued by the Central Communist Party initiates reform in the agriculture sector.
1986	<i>Doi Moi</i> (economic reform) policy launched by decision of the Sixth National Congress of the Vietnamese Communist Party.
1988	Resolution 10/NQ/TW issued by the Central Communist Party consolidates reform in the agriculture sector.
1991	Forest Protection and Development Law passed by the Eighth National Assembly, marking an effort to involve local people and different economic sectors in forest protection and development.
1993	Land Law passed by the Ninth National Assembly stipulates the title-holders' rights to lease, exchange, inherit, mortgage and transfer land-use titles.
1994	Government Decree 02/CP on the allocation of forest land to local organizations, households and individuals.
1995	Government Decree 01/CP on the allocation of land through contracts for agriculture, forestry and aquaculture purposes.
1999	Government Decree 163/1999/ND-CP on land allocation and lease for forestry purposes.
2003	Land Law passed by the Eleventh National Assembly recognizes communities' legal status in land tenure.
2004	Forest Protection and Development Law passed by the Eleventh National Assembly recognizes common property as a legal forest management arrangement.

Source: Nguyen *et al.*, 2008.

decentralization of functions to State political/administrative units, and on to devolution to local organizations, individuals, households and communities.

Another aspect to be considered in creating an enabling regulatory framework is the existence of disincentives such as taxes and fees. In China, before the 2005 government tax reform eliminated tax on forest products, high taxes and a complex tax system were serious disincentives for tree planting and forest management, with negative social and

environment effects. Government and the forestry department charged more than ten official taxes and fees on timber and wood commodities, and there were also unofficial forestry charges (Liu and Edmunds, 2003; Liu and Landell-Mills, 2003).

Key issue

Complex compliance procedures can inhibit the adoption of devolved forms of forest management, or reduce the potential benefits.

Even when significant tenure reform has occurred, complex or costly compliance procedures such as multiple steps for registration of forests and forest management groups can neutralize the benefits of secure tenure arrangements and make it difficult or impossible for stakeholders to comply. In Viet Nam,

for example, the establishment of community forests requires the completion of 11 steps, each of which has to be appraised, endorsed and approved by different bureaucratic and political entities at the commune, district and provincial levels. Box 16 gives an example of a similar situation in Cameroon.

In a review of the benefits of small-scale harvesting and processing of timber, Suzuki *et al.* (2008) observe that the transaction costs of regulatory requirements for harvesting and transport are often very onerous.

BOX 16

Example of complex compliance procedures acting against the objectives of tenure reform in Cameroon

In Cameroon, community forestry management agreements are signed with the forestry administration and issued for 25 years. However, they need to be renewed every five years. The application for renewal is submitted with a new management plan for the forestry administration's approval, but subnational forestry administration officials often undermine or delay the process, and ask for money from the village communities concerned. Local communities report that the process for acquiring a management agreement is very long and expensive. This barrier is exacerbated by corrupt practices along the commodity chain, resulting in many community forests being captured by members of local elite groups, who provide funds for their creation and then confiscate all the financial benefits and rights. The signing of the management agreement also constitutes a serious barrier, as it requires the decisional involvement of many local-level officials and administrative authorities.

In addition, the certificate of exploitation has to be renewed every year, to be valid for forest exploitation during the following year. The forestry administration requires a series of transactions before it signs these annual certificates. There are also high transaction costs along the value chain for marketing the products of community forest exploitation. For instance, a village community has to obtain a letter of transportation from the forestry administration before it can transport forest products to an urban market, and many abuses occur during this process.

Source: Oyono, 2009.

In many countries, management decisions by local communities are limited by requirements for very detailed management plans. In Nepal, for example, forest user groups receive permanent use rights, but the management of community forests is subject to a management plan negotiated with and approved by the district forest office. These plans are very technical and complex, and include a detailed inventory (which can be of dubious veracity and value) and prescriptions regarding all aspects of management. The technical complexity means that communities require external technical support, for which they have to pay. In effect, only relatively minor decisions are left in the hands of the user groups, which limits the groups' capacity to apply the legal rights to which they are entitled.

A positive example comes from the Gambia, where community forest management plans are prepared almost entirely by community management committees (Box 17).

Tenure is essentially about who has the power to make decisions regarding resources. Even when formal legal tenure exists, regulations can make it difficult to exercise such decision-making power. Restrictions on the decisions that people can make about resources (including those arising from restrictive management plans) can therefore limit secure tenure's value to resource use. Ribot (2002) argues that government regulation of communities' resource management should apply minimum standards rather than detailed prescriptions. It is better to have a few rules about what cannot be done than detailed prescriptions about what must be done. Such an approach makes secure tenure more meaningful.

Key issue

Technically complex, detailed and prescriptive management plans can make forest management by local stakeholders difficult. As a result, control tends to remain in the hands of forest authorities, thus disempowering non-state stakeholders.

BOX 17

Community forestry in the Gambia

Community forest management plans in the Gambia have been substantially simplified and are based on qualitative rather than quantitative assessments. The key technical aspects required for a management plan are:

- a set of simple harvesting guidelines, based on canopy cover rather than calculation of annual allowable cut;
- an assessment of forest resources, determined by participatory mapping and transect walks rather than by a detailed technical inventory;
- a management agreement developed through a two-tier process consisting of a three-year preliminary agreement, when the emphasis is on institution building, management planning and capacity building of all parties, followed by a five-year agreement giving full ownership over forest resources.

Bureaucratic constraints

There are many examples of forestry agencies exhibiting caution about devolving access and use rights to other stakeholders in case those stakeholders do not manage the forests sustainably. Sometimes this caution arises from paradigmatic differences about the purposes of forest management. Forestry agencies may fear that they will be disadvantaged by the changes, and often respond by insisting on management and compliance procedures that are more demanding than those they abide by themselves to manage State forest land. Another common strategy is to limit tenure reform to forest land of little value, while retaining high-value forests under State control.

In many cases of tenure rights being transferred to a wider range of stakeholders, the government retains major power over forest management decision-making, including harvesting and benefit sharing, thus limiting local empowerment and constraining local groups' ability to improve their livelihoods.

Fundamental policy and regulatory changes cannot occur if government institutions lack the potential for moving towards change. Such potential involves political will and leadership, including the presence of "champions" to lead policy change. Champions of change outside government are equally important in creating a political environment conducive to change.

Many genuine tenure changes were not initiated by forestry agencies but instead resulted from political pressure, including political movements. In post-Suharto Indonesia, for example, the impetus for forest tenure change almost certainly arose from national-level political movements rather than bureaucratic initiatives. In the four Latin American countries discussed by Pacheco and Barry (2009) "governments ... adopted more proactive roles in recognizing forest lands in response to political pressure from indigenous organizations, smallholders and landless people".

Building the capacity of key stakeholders

As indicated in the previous sections, tenure reform involves often radical changes to regulatory frameworks and governance. This requires that key stakeholders, including government officials, adopt new and different forest management roles in which they frequently have little training or experience. Substantial capacity building is needed to enable all stakeholders to exercise their rights and accept new responsibilities (see Box 18).

Key issue

Key stakeholders frequently have limited knowledge of their rights and responsibilities under reformed tenure arrangements, and limited capacity to exercise these rights. Government officials also frequently require substantial capacity building to acquire the skills needed to operate in the reformed environment.

If sector-wide capacity building is needed, innovative and low-cost approaches may be considered, particularly if substantial donor support is lacking. FAO has tested capacity building approaches based on *in-situ* mentoring in reformed forest agencies in Africa and South America, with promising results (Box 19).

BOX 18

Capacity building needs associated with new tenure arrangements in Nepal

Nepal's forest policy, adopted in 1990, introduced three radical changes to previous approaches to forest management in most of the country:

- phased handing over of all accessible hill forests to local communities, to the extent that they are able and willing to manage them;
- entrusting forest users to protect and manage the forests, with the users receiving all of the income;
- retraining the entire staff of the Ministry of Forests and Soil Conservation for their new role as advisors and extensionists.

The policy thus provided the mandate for a decade of capacity building for government staff and local communities, enabling them to adopt the new forest management roles associated with the radical change in tenure. These aspects of the policy have had a profound impact on forest management in the country.

Source: Gilmour and Fisher, 1991.

BOX 19

An innovative approach to building government officials' capacities in new roles

Capacity building of government forest departments and key institutions such as forestry schools, training institutes and other agencies was achieved by integrating participatory approaches into day-to-day work supporting SFM. Key features of the project were:

- primary targeting of middle-level managers in State forest institutions (e.g. district/division forestry officers);
- piloting of novel and innovative capacity building approaches, particularly *in-situ* mentoring and e-learning;
- an initial emphasis on a limited number of core participatory methods, to create a "software" approach to their use;
- attempts to expand participation and participatory methods outside the community forestry/collaborative forest management "ghetto" and make them available to district managers;
- promoting and facilitating the increased use of information technology by middle management;
- facilitating South-South experience exchange and technical assistance.

Source: Adapted from Gilmour and Sarfo-Mensah, 2005.

FAO also provides support to countries through strengthening their knowledge, skills and tools for enhancing stakeholder participation in key forestry decision-making processes at the national level.

Forest tenure and other land uses

In forest tenure reform it is important to remember that forests are part of wider landscapes involving a variety of land uses such as agriculture, livestock raising and wildlife conservation. This is particularly important when considering forest management objectives associated with livelihood improvement, as livelihoods are often derived from a variety of different niches in the landscape. Even in legally identified forests, different types of land use can occur, although forests are often managed by agencies with a primary, if not exclusive, focus on forests. Forest management objectives and practices need to recognize the other land management categories in the vicinity, and this has implications for forest tenure reform. Undertaking forest tenure reform without taking account of the relationships between forests and other land uses is fraught with risk.

In swidden agriculture, for example, forest use and agriculture are inseparable. In the Lao People's Democratic Republic, agriculture is practised in areas formally regarded as forests. Customary tenure of land for swidden agriculture is communal, but agricultural use rights are allocated to individuals and households, with rules specifying transfers and periods of use. Similar combinations of communal and individual tenure occur in Liberia (Lebbie *et al.*, 2009), with the difference that customary land tenure has legal status in Liberia.⁴

In Thailand, in a lengthy process of tenure reform directed mainly at recognizing community forests in protected areas, advocates of community forests have avoided the issue of agriculture and horticulture in forests, probably for strategic political reasons (Walker, 2004). Walker argues that advocates of community forestry have tended to ignore the importance of agriculture inside protected forests, focusing on claims for rights to NWFPs rather than to farm in forests, although farming is the most important livelihood concern. Even people-friendly versions of a draft community forestry bill did not permit agriculture in Thailand's forests. What Walker calls the "arborealization" of community forestry is essentially

embedded in the idea that forest areas need to be separated from wider land use practices. Community forestry advocates seem to have been reluctant to challenge this dominant idea and have avoided advocating for agriculture in forests.

Ghana presents another example of the practical difficulties involved in separating forests from other land uses and forest

Key issue

The historical, cultural, economic and political context of each country is unique and must be understood by all stakeholders before they embark on tenure reforms. This includes the role of forests in the wider landscape.

⁴ The relationship between customary land tenure and rights to the forests on the land is currently the subject of debate and controversy in Liberia.

tenure from broader tenure. Most land in Ghana is under an extremely complex but constitutionally recognized system of customary tenure. Laws place many forest areas under the control of the Forestry Commission, and there are regulations about rights to trees on non-forest land. The intersection between customary tenure and forest law becomes extremely complex in the case of plantation crops, especially cocoa. Attempting any form of forest tenure reform outside the broader context of land and tree tenure would make no sense whatsoever.

CONCLUSIONS

All of the studies reviewed in this chapter suggest that although security of tenure may be necessary for achieving SFM and improved livelihoods, it is not sufficient in itself. Other factors need to be addressed at the same time (see Figure 1 where it is postulated that the interactions among tenure, regulatory frameworks and governance are critical in determining the extent to which forest management objectives are achieved). It is also clear that there are a wide range of successful tenure systems in many countries, each of which involves a combination of different stakeholders and different tenure arrangements. However, numerous challenges have been identified in attempts to carry out tenure reform, as discussed in this section.

Addressing poverty reduction is not the same as addressing income generation, and there is no single approach to tenure reform that is ideal for poverty reduction. In all tenure systems, poverty reduction requires the identification of power relationships and gender inequities and of poor women and men as target groups, so that relevant pro-poor and gender-sensitive activities can be developed and implemented. Such pro-poor approaches need to be incorporated into governance systems.

It is sometimes assumed that industrial forestry is beyond the capacity of rural communities in terms of expertise and financial resources, and this is seen as limiting forests' potential to contribute significantly to poverty reduction (Wunder, 2001). However, this position ignores the potential for communities to contract operations to concessionaires when tenure reform has put the forests under community control. In such cases, contracts could be issued by communities rather than governments, and technical expertise could be obtained by contract. There would most likely still be a need to strengthen communities' capacity to manage and administer the contracts, as experience of concessions in the Pacific demonstrates (discussed in Box 14). Unfortunately, most public forestry administrations are not well equipped to provide this type of support as they are not accustomed to playing the role of facilitator to new forest managers. Devolving management rights to non-State stakeholders requires forestry administrations to adapt their roles and functions and move from managing forest resources to facilitating management by others.

Although it is difficult to summarize the results of studies carried out over such a wide geographical spread, the following points highlight the key findings:

- Secure forest tenure is a fundamental element in achieving improved livelihoods and SFM.

- Forest tenure reform should be implemented as part of a holistic and integrated reform agenda supported by related forest policy, legislation and institutional arrangements, and should not be limited to recognizing or granting title and/or usufruct rights. In particular, tenure reform should be embedded in the overall development agenda of the country or region.
- Improved governance systems are critical to ensuring that the intent of the regulatory framework defining and legitimizing the reformed tenure arrangements can be translated into meaningful outcomes.
- Sufficient room should be allowed for various players to develop forest management systems that suit their own particular circumstances.
- Traditional/customary forest management arrangements of cultural and religious value should be supported.
- When pre-existing customary rights are recognized or new rights are formally granted, supportive measures should be in place to ensure that all forest users, especially smallholders and local and indigenous communities, know their rights and responsibilities and have the capacities to obtain the benefits provided by access to forest resources. Intensive capacity building, social mobilization and debate are required.
- The reform of forest tenure is a learning process and its implementation requires the adoption of action learning approaches.
- An ongoing demand for land, weak governance in many countries and emerging global problems such as climate change increase the urgency of addressing forest tenure reform.

This chapter concludes with an important reminder. Much of the argument in favour of tenure reform is based on pragmatic concerns about improving the effectiveness of tenure in contributing to livelihoods and SFM. However, it is important to remember that there is another element of tenure reform – the underlying importance of human rights. There are indigenous peoples (including those in the Amazon, the Dayaks in Borneo and Australian Aborigines) whose claims to forest rights are based on human rights rather than the relevance of tenure to SFM or livelihoods.

One of the recommendations made by Liu and Zhao (FAO, 2009b) in concluding their discussion of the tenure transitions taking place in China is that: “A holistic and integrated reform agenda should be put in place.” This recommendation could also apply to many other countries, but raises the question as to what the key elements of such a holistic and integrated reform agenda are, and how the agenda should be put in place. This question is addressed in the final chapters of this publication.

6. Principles for reforming forest tenure

The previous two chapters identified many of the issues associated with reforming forest tenure. The following discussion proposes a series of *principles* that can be applied when embarking on an adaptive, deliberative, reflective process of tenure reform. Each principle is developed from one of the key issues outlined in Chapter 5, informed by the discussion and analysis in earlier chapters.

PRINCIPLE 1: ADAPTIVE AND MULTI-STAKEHOLDER APPROACH

Effective tenure reform requires an adaptive, deliberative, reflective and multi-stakeholder approach.

The reform of forest tenure is a learning process. Implementation requires sufficient time for the identification of key stakeholders, discussions within and among stakeholder groups, negotiations

among stakeholders over forest management objectives, and feedback from field experiences to guide the policy dialogue and allow incremental changes. This enables experiential learning to be used continually to update knowledge and inform future planning and action.

Example: The case of Shinyanga in the United Republic of Tanzania (Chapter 5) demonstrates very positive benefits in terms of restoring forests and generating income for the district's population through the reinvigoration of *ngitili* (traditional forest reserves) and the recognition of rights to trees in these *ngitili*. However, a recent study by the Programme on Forests (PROFOR) in one village reports that inadequate land was set aside for communal use by poorer people because wealthier people obtained land for private use for livestock raising (Shepherd, 2008; Barrow and Mlenge, 2008). It was also found that poorer people received less income from forests than wealthier people. This highlights the need for checks and balances and a critical approach to learning from implementation experiences, so that future planning and action can be adapted and improved based on those experiences.

PRINCIPLE 2: TENURE AS PART OF A WIDER REFORM AGENDA

Forest tenure reform should be implemented as part of a holistic and integrated reform agenda.

The reform should be supported by enabling policy, legislation and institutional arrangements, and should not be limited to recognizing or granting title and/or usufruct rights. In particular, tenure

reform should be embedded in the country's overall development agenda.

Example: As described by Gilmour (2009a), a new forest law in Bhutan in 1995 signalled the Government's desire to reform forest tenure by making areas of government forest available to communities to manage sustainably for their own benefit. However, few changes took place over the following years, primarily because key parts of the regulatory framework were not supportive of this legislative change; associated legislation to mandate decentralized and devolved local-level planning was lacking; government forest officers continued to operate in a command-and-control manner; and local communities were largely unaware of their new rights under the law. It took several years for these issues to be addressed effectively. The 1995 legislation has now been complemented with supportive rules and regulations (which have been revised three times based on field experience) that recognize the traditional and cultural rights of local people; implementation guidelines have been formulated and applied; legislation to mandate decentralized and devolved local-level planning for all sectors has been enacted; a new cadre of forest officers has been established to support local communities' efforts to manage their forests; and substantial capacity building has taken place for government staff and communities. Community forestry is now moving ahead rapidly and has a clear place in the country's key planning instruments, with strategic links to:

- governance of renewable natural resources;
- decentralization and devolution;
- commercial harvesting of forest products;
- livelihood support and poverty reduction.

PRINCIPLE 3: SOCIAL EQUITY

All aspects of tenure reform should give attention to the empowerment of marginalized groups, particularly women and the poor.

Control over natural resources is an important source of power. Establishing pro-poor tenure systems requires the tackling of power relations at all levels by applying principles of democratic governance. Women's tenure security needs special attention. Women are often responsible for managing household income, providing food and raising children, but they frequently lack secure access to resources, owing to discriminatory norms and practices. Particular attention needs to be paid to intra-community relations, ensuring that women and men have equal rights of access to and control over forest resources, and addressing potential unintended impacts of tenure reform on women.

Example: CARE Nepal (2008) describe how a community forest user group in Banke District, Nepal conducted governance literacy classes for women members in 2007. The classes covered technical aspects of community forestry, as well as gender equality and women's rights. Over time, many of the women became more confident and able to express their opinions in public. They discovered that there were legal provisions for the user groups to set aside funds for implementing income-generating activities for poor and marginalized households, and requested

that funds be provided to ten households. Some of the women subsequently ran for executive office in the community forest user group.

PRINCIPLE 4: CUSTOMARY RIGHTS AND SYSTEMS

Relevant customary tenure systems should be identified, recognized and incorporated into regulatory frameworks.

In many countries, customary forms of forest tenure exist and function outside formal legal tenure. In some cases, formal legal ownership by States has little or no effect on the way in which the people living in and around forests regulate access to and use of forests.

In other situations, formal and local tenure operate in parallel, with the enforcement of government regulations affecting the way in which local tenure operates. This invariably leads to confusion and conflict, and frequently to degradation of the forest.

Example: At an international conference on forest tenure, governance and enterprise in Africa (RRI, 2009), participants collated the key lessons emerging from experiences across the region. The concluding statement from the conference included the following points:

- Respect and recognition of customary systems are keys to success. The most successful forest tenure reforms, especially in Africa, are those in which the rights established by customary systems are understood and recognized by the statutory legal systems for land and forest tenure. Such understanding and recognition are essential elements for promoting consensus building, the equitable distribution of benefits, and sustainable development.
- National policies must recognize the legality of customary rights. A balance between the statutory and customary systems is a prerequisite for success.

PRINCIPLE 5: REGULATORY FRAMEWORK

The regulatory framework to support policy changes associated with tenure reform should be enabling as well as enforcing.

Such a framework removes any constraints, so that the mandated individuals and groups (such as smallholders or local communities) can manage forest in ways that improve both their own livelihoods and the condition of forests in their vicinity.

Although government agencies retain the mandate for appropriate law enforcement, in devolved forest management they also need to adopt a supportive and facilitative role in assisting forest managers' efforts.

Example: The Mongolian Government began to consider the diversification of forest tenure in 1995, and has since tested various approaches (FAO, 2010a). Forest user groups were established in several provinces, and the government approved a resolution allowing the leasing of forest resources to business groups and local residents for periods of 15 to 60 years, extendable for a maximum of 60 years. Some 21 forest user groups and eight private enterprises had leased a total of 270 000 ha by 2000.

However, the regulatory framework focused on the responsibilities of the forest users rather than their rights to use resources. The user groups were responsible for funding and conducting all environmental management, including wildfire, pest and deforestation control, and assisting environmental law enforcement. The groups were granted the right to use NWFPs, but they were not allowed to cut timber. They could thus not generate significant income from their forest management efforts. As a result, other communities were discouraged from establishing forest user groups, and some groups' contracts were terminated.

In this case, the regulatory framework focused primarily on responsibilities and enforcement, and was not sufficiently enabling to encourage investments of time and other resources in forest management. Based on these experiences, the regulatory framework has been revised to make it more enabling by balancing the rights and responsibilities of forest users.

PRINCIPLE 6: TENURE SECURITY

The regulatory framework should include mechanisms for making forest tenure as secure as possible.

This generally requires that access and use rights are expressed as hard rights, and ideally are included in the higher levels of the regulatory framework (constitution, legislation and policy)

rather than subordinate levels (such as implementation guidelines), so they cannot be revoked by bureaucratic discretion.

Example: As reported by Larson *et al.* (2007), land titling programmes in many Latin American countries have granted indigenous and other communities the legal right to property that they have occupied, sometimes for generations. Although this does not necessarily bring economic returns, there are clear benefits in terms of empowerment and tenure security. In some cases, these changes have also brought financial benefits, for example, by increasing local communities' negotiating power with logging companies. In addition, the communities need no longer be concerned about fines for operating illegally, nor are they subject to central government decisions to sell their forests to logging companies. Depending on the extent and type of tenure rights granted, the communities are now likely to have the legal right to choose whether or not to log or extract other forest products, and may also be able to exclude others from their land.

PRINCIPLE 7: COMPLIANCE PROCEDURES

Compliance procedures should be as simple as possible to minimize transaction costs and maximize the regulatory framework's enabling effects.

When tenure has been reformed, complex compliance procedures such as multiple or costly processes for registering forests and establishing forest management groups can neutralize the benefits of secure tenure and make it difficult or

impossible for stakeholders to comply. When developing rules and implementation guidelines, it is useful to distinguish between the government's needs to satisfy its

own requirements for monitoring biophysical and socio-economic outcomes, and the communities' needs to manage their forests. Both aspects are frequently made the responsibility of the new forest managers, increasing the burden of compliance.

Example: In Bolivia (FAO, 2009a), forest rights have been recognized for private landholders including indigenous people, while public production forests are still allocated through forest concessions to timber companies and to local forest user associations in areas classified as municipal forest reserves. The State regulates the use of forest resources through the approval and enforcement of forest management plans, ensuring that individual smallholders and community groups establish effective sustainable forest practices. However, to obtain a concession on municipal lands, local forest users have to create and register an association. This process is very slow, bureaucratic and costly, involving compliance with 26 requirements, including delimitation of the land to be used by the association, and approval of the forest management plan. Obtaining association status costs about US\$4 000, and the delimitation of forest land about US\$16 000. As a result, many target stakeholders were left out, and associations tend to consist of local elite groups with access to production capital such as transportation and sawmills.

PRINCIPLE 8: MINIMUM STANDARDS FOR FOREST MANAGEMENT

A minimum standards approach should be applied when developing management plans for smallholder or community use.

Governments frequently prescribe very detailed, highly technical and complex management plans, which limit or prevent effective decision-making about resource use by smallholders or communities. A minimum standards approach imposes a few

rules about what cannot be done rather than lengthy prescriptions about what must be done. It implies leaving as much decision-making about management objectives as possible to local discretion, subject to clear standards for conservation and regeneration.

Example: The minimum standards approach was successfully applied in the Gambia, where community forest management plans have been substantially simplified and are based on qualitative rather than quantitative assessments (Box 17). The plans can be handwritten on ordinary paper, do not require a forest inventory (only a forest assessment conducted during a transect walk) and make use of simple sketch maps (FAO, 2004).

PRINCIPLE 9: GOOD GOVERNANCE

Forest governance systems should be transparent, accountable and participatory, including multi-stakeholder decision-making processes.

Good governance is essential in enabling the intention of the regulatory framework that defines and legitimizes the reformed tenure arrangements to be translated into meaningful outcomes (see Chapter 3 for a more extensive discussion of governance).

Example: Many country interventions aimed at enhancing forest governance to support tenure security focus on improving communication and dialogue among different stakeholders by providing platforms for information sharing and securing a safe space for building mutual trust and accountability. Examples of this include the initiatives promoted by the Forest Governance Learning Group led by the International Institute for Environment and Development (IIED), and the Strengthening Voices for Better Choices (SVBC) programme led by IUCN.

As a consequence of the decentralization process foreseen in the Democratic Republic of the Congo's 2006 Constitution, local governments will have the mandate and financial responsibility for managing local development and resources, including enforcing relevant laws, maintaining social infrastructure, and issuing permits and licences. In the country's Equator Province, SVBC supported the creation of multi-stakeholder platforms at the community, territorial and provincial levels with the aims of:

- engaging the private sector (timber companies), public administration and civil society in a dialogue that includes joint analysis and resolution of forest governance issues;
- disseminating the forest law and related decrees concerning (illegal) logging and trade in timber and non-timber products;
- raising awareness of the importance of paying taxes and respecting local authorities;
- monitoring the implementation of forest concession management plans.

The platforms became operational only recently, and internal difficulties are preventing them from contributing fully to governance and accountability. Nonetheless, SVBC has contributed to good forest governance in several ways, including conflict management at the local level; information, education and communication activities on forest laws, implementation decrees and stakeholder rights and obligations; and transparency in tax collection and expenditures (Klaver, 2009).

PRINCIPLE 10: CAPACITY BUILDING

Supportive measures should be in place to ensure that all stakeholders know their rights and responsibilities and have the capacity to exercise them effectively.

Key stakeholders, particularly local and indigenous communities and smallholders, frequently have limited knowledge of their rights and responsibilities under reformed tenure arrangements. Empowering these stakeholders so that they can exercise their rights usually requires their involvement

in intensive capacity building and social mobilization.

As mentioned in Chapter 5, forestry administrations are frequently required to perform new roles when forest tenure has been reformed, but they often lack the capacity (technical skills, attitudes and approaches) to carry out their new mandate. Focused capacity building is needed to enable officials to work effectively in the reformed environment (see examples in Boxes 18 and 19).

Example: R.J. Fisher (personal communication) observed that farmers in Ghana who had recently been given rights to harvest the trees growing on private land were not confident about these rights, and there was no system of registration. In Asankrangwa District, IUCN staff and the District Forester initiated an information campaign to inform people of their rights, and developed a registration form to provide evidence that trees had been properly registered and could therefore be used as the farmers wished.



7. The process for reforming forest tenure

OVERALL APPROACH

As already noted, radical changes to tenure are often associated with major political events, but once these major shifts have occurred significant positive changes can take place through the application of a deliberative, adaptive, reflective approach that applies feedback loops from field experience.

Nepal provides a good example of a considered approach to tenure reform, and the country is viewed as a regional leader in devolved forest tenure reform. Widespread adoption of the user group concept (in which forest user groups are empowered to manage forests independently of administrative-political units) has led to significant improvements in both the biophysical and socio-economic outcomes of forest management. The rapid and widespread adoption of reforms in Nepal was part of a democratic reform process that followed revolution in 1990, although the reforms were also able to build on extensive field experimentation and intensive policy debate that took place during the previous decade.

The principles outlined in the previous chapter are used as explicit guides to develop the approach outlined in this chapter. However, although the following discussion may seem to infer a linear approach to reform, the reality is very different. Just as policy formulation tends to be a “messy” business, so too is any attempt to reform tenure. There will invariably be many stops, starts, reversals, blind alleys, etc. As emphasized in previous chapters, it is vital to apply a flexible and adaptive process for tenure reform. Gilmour (2005) notes that this involves a series of interrelated processes encompassing:

- understanding the social and biophysical context at multiple levels, including identifying stakeholders and dealing with multiple (and sometimes conflicting) interests;
- negotiating objectives and outcomes for different levels;
- applying action learning (plan, act, observe and reflect) to facilitate the implementation process;
- carrying out monitoring and impact assessment.

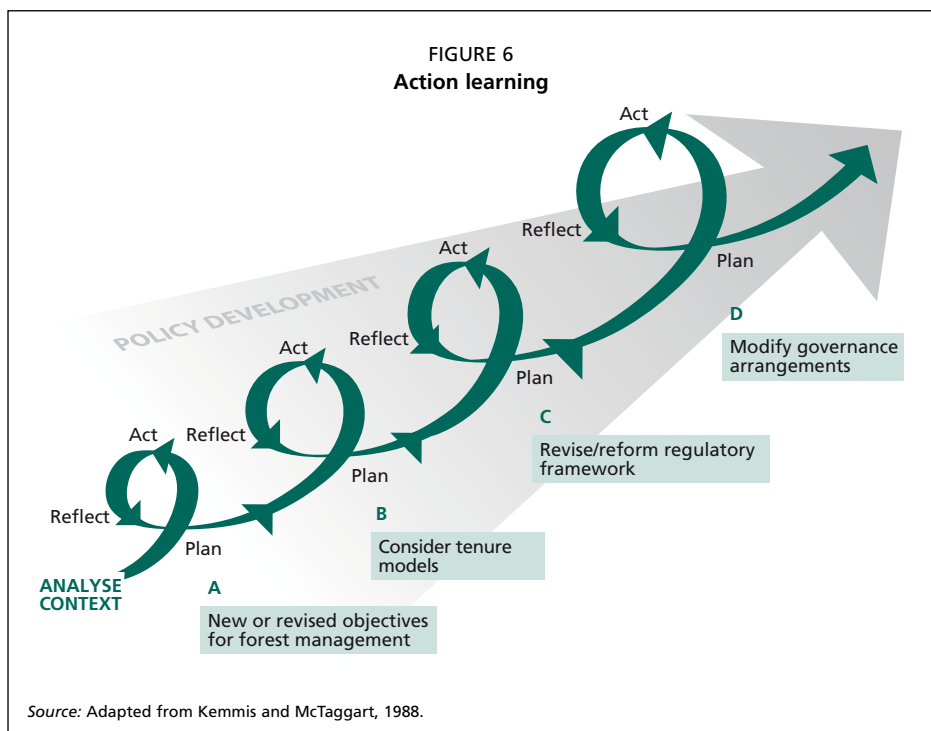
These processes should not be thought of as a series of sequential steps in which one task is completed before moving on to the next. Instead, they are interrelated, overlapping and involve a series of action learning loops in which experiential learning is continually used to update knowledge and inform future planning and action, as outlined in Principle 1. For example, the collection and updating of information to understand the context will be ongoing. Monitoring and impact assessment is not a one-off activity at the end of an initiative, but a continuous

process that feeds constantly into the action learning cycle from the outset of the intervention.

In action learning, a person learns by critically reflecting on previous actions and experience and using this learning to act more effectively. This is generally understood as a group process. The concept was first developed by Revans (1980). For the process proposed in this publication, Dick's (1997) definition is most useful. He defines action learning "as a process in which a group of people come together more or less regularly to help each other to learn from their experience". The process used to lead to improved action is extremely important. Action learning is often thought of as a cyclical process, as illustrated in Figure 6.

The process is iterative and any single step will involve smaller learning cycles. Another fundamental aspect is the full involvement of key stakeholders. The process should be expert guided rather than expert driven, and it should reflect a wide range of societal views, particularly those of stakeholders who are likely to be directly affected by the reform outcomes (FAO, 2007).

In an ideal world, overall policy reform should be the starting point that leads to the consideration of appropriate tenure arrangements for delivering the forest management outcomes required by society. However, the world is far from ideal, and experience shows that different starting points may be appropriate. Some countries have extensive experience of a range of tenure forms resulting from many years of trials. This may lead to the adoption of tenure modalities that have been found to work in the prevailing context. A wider policy reform process is then required, to "catch



up” with what has become accepted practice. The process outlined in the following discussion is an idealized one, but it includes the key elements of a deliberative and adaptive process to guide tenure reform, irrespective of the starting point.

KEY ELEMENTS OF A DELIBERATIVE, REFLECTIVE, ADAPTIVE PROCESS OF TENURE REFORM

Analyse the context

An analysis of the current situation is the essential first step in an action learning cycle.

One of the recurrent themes throughout this publication has been that tenure reform cannot be viewed in isolation from everything else that is going on. This is crystallized in Principle 2, which emphasizes the need for a holistic approach. A useful starting point is to locate the tenure reform agenda in the overall historical, political, economic and development context of the country or region. Issues that need to be considered include the following.

International agreements or treaties: Most countries are party to various regional and international agreements, some of which will have ramifications for tenure reform. Of particular importance are those related to human rights in general and recognition of the rights of indigenous people in particular. Primary consideration should be given to any human rights issues and the need to recognize legitimate existing rights claims. It is important that these be kept in mind so that the planned tenure reforms are consistent with the country’s obligations under regional and international agreements.

Historical trends of tenure changes: There is need for analysis of the changes associated with major events such as colonization, de-colonization, moves from feudal to post-feudal societies, political shifts leading to collectivization or de-collectivization, contemporary global influences related to decentralization and devolution, structural adjustments, climate change, etc. Both legal and customary tenure arrangements should come within the ambit of the analysis, and special consideration should be given to identifying the winners and losers of these macro changes and the residual claims to resources that might remain from past regimes.

The country’s development context: Locate forest management and its objectives within the overall contemporary development context, analyse the cross-sectoral issues (land laws, environmental legislation, etc), and identify overlaps and actual or potential conflicts.

The current regulatory framework for forest management: Consider the constitution, laws, decrees, policies (both forest and forest-related), rules and regulations, implementation guidelines and the extent to which this framework contributes to or hinders the achievement of forest management objectives. (Box 15 gives an example of a regulatory framework that is not supportive of national forest management objectives.)

Current governance arrangements: Consider both the organizational and the institutional arrangements and the extent to which these help or hinder the achievement of forest management objectives. For example, if the current forest management objective is SFM but the forests are degrading, what factors are constraining the achievement of this objective? Consider the differences between the stated objectives of forest management and the way in which forests are actually managed. For example, the explicit objectives might relate to SFM while the forests are actually being managed to enrich forest officers or others.

Current state of the country's forests: Are the forests improving or deteriorating, and are they being managed to achieve the current forest management objectives?

Current tenure arrangements: Identify the statutory, indigenous, local and customary tenure arrangements and overlaps/conflicts with the statutory framework. Give particular consideration to the security of various tenure arrangements and the extent to which different stakeholder groups are empowered (or disempowered) to act.

Stakeholders: Identify the key stakeholders and focus on those whose livelihoods are likely to be directly or indirectly affected by tenure reform. Clarify how rights are currently distributed and look for gender or other inequities.

Determine new or revised forest management objectives in the contemporary political and development context

Conduct stakeholder workshops to canvas a wide range of views on the objectives of forest management, and negotiate a consensus.

Points to consider: This is a critical and fundamental exercise and its importance cannot be overemphasized. It is not a single or simple operation and needs to be undertaken with regard to the different perspectives of different stakeholders. (See FAO, 2007 for a discussion on the use of multi-stakeholder processes in forestry.)

In most countries, the social objectives of forest management change considerably over time, and their regular review ensures that forest management continues to reflect society's demands. Different stakeholders' views regarding the fundamental purpose of forest management can also vary greatly. For example, Yachkaschi *et al.* (2010) note that in the Islamic Republic of Iran,

... there is a basic conflict between State's and local communities' perceptions of the purpose of cooperatives (Forest Dwellers' Cooperatives [FDCs]) ... the State considers objectives such as forest protection and resource sustainability, while local people living in poverty tend to view the FDC mainly as a potential source of income for their own livelihoods.

The weakest sections of society are likely to need special support to ensure that their voices are heard in the process, as noted in Principle 3.

The management adage that “form follows function” is particularly relevant here, as all of the structures, arrangements or forms associated with regulatory frameworks, tenure and governance flow from the determination of this primary function of forest management – the objectives.

Consider tenure models for achieving forest management objectives

Conduct stakeholder workshops to canvas a wide range of views on appropriate tenure models for achieving the forest management objectives. Principle 4 emphasizes the importance of identifying customary tenure systems that continue to be relevant. Use the results of pilot trials and other experiences, and build on the successes. If relevant pilot trials are not available, look for experiences from other countries with similar contexts. Table 1 outlines the key characteristics of tenure models from four Latin American countries. These might be useful when identifying options for countries with similar contexts.

Points to consider: This part of the process requires adequate time to ensure that all competing and conflicting views are fully and thoroughly discussed. In particular, the likely winners and losers from the proposed changes need to be discussed. Generally, no solution is perfect, and several different approaches can achieve acceptable outcomes. FAO (2008) notes that “... both formal titling of individual ownership and systems based on customary tenure can respond to the needs of the poorest and marginalized groups.” The final determination of which tenure options to adopt will depend on the circumstances. Similar arguments apply to the links between tenure and the other key components of forest management objectives. Consideration of the historical, cultural, economic and political context is critical in determining which tenure options are most appropriate, recognizing that the process will undoubtedly evolve over time. Caution is also needed to guard against imposing inappropriate modalities, such as by attempting to introduce community management of forest resources in a context where farmers have no tradition of common property decision-making. Such an approach could result in the groups created to implement community management failing to function.

Viet Nam provides an interesting example, with customary management systems enduring in some parts of the country for some indigenous groups, while forest utilization has traditionally been carried out by households in other areas. Viet Nam’s *kinh* ethnic majority tends to operate within a cultural and economic system centred on the household and with little emphasis on wider communal values. However, many ethnic minority groups, most of whom live close to forests in upland and more remote areas, retain strong values related to communal decision-making. Viet Nam’s recent response to this dichotomy has been to develop a regulatory framework that accommodates both cultural forms, with household forestry becoming the dominant form of devolved forest tenure in majority *kinh* areas, while community forest management is widely tested in some ethnic minority areas. (Table 5 outlines how the regulatory framework evolved to reflect and support this overall reform.)

Revise/reform the regulatory framework

Principle 5 addresses the regulatory framework and notes the importance of incorporating new tenure arrangements in relevant parts of the framework, with particular emphasis on making it as enabling as possible. The regulatory framework includes policy, legislation, rules and regulations, implementation guidelines, etc.

Points to consider: Ensure that key rights (to ownership, access, use, etc.) are embedded as hard rights in the policy and law (see Box 11 for definitions), so they cannot be withheld or withdrawn at the discretion of government officials. This will help to make the new tenure arrangements secure (as emphasized in Principle 6), because hard rights can be defended in court if necessary.

Compliance procedures, including the preparation of management plans and registration requirements, are generally included in subordinate elements of the regulatory framework such as rules and regulations and implementation guidelines. These should be kept as simple as possible to ensure the maximum empowerment of stakeholders (taking note of the discussion in Principles 7 and 8).

Table 4 gives examples of changes to the regulatory frameworks in four Latin American countries to make them more enabling for the reformed tenure arrangements. Table 5 shows the evolution of Viet Nam's regulatory framework over three decades, as the political focus shifted from centralized control, to the decentralization of functions to State political/administrative units, and on to devolution to local organizations, individuals, households and communities.

Modify governance arrangements to support the reformed regulatory framework

These arrangements include:

- the institutional arrangements best suited to managing the power relations in ways that will achieve the desired forest management objectives;
- the organizational structures most suited to fulfilling the functions needed to deliver forest management objectives, which should be identified by applying the adage that “form follows function” – first determine what function the organization (or part of the organization) needs to fulfil, then consider the most appropriate structure (form) for carrying out that function.

Points to consider: Principle 9 notes that good governance requires organizational structures and institutional arrangements to deliver outcomes that are open, transparent, accountable, predictable, participatory, inclusive and equitable. However, as noted by Larson *et al.* (2008) for Latin America:

... new tenure arrangements and the new authorities and organizations that govern them are not often created in a vacuum, but rather involve laying a new set of institutional arrangements over existing ones. This situation can create conflict and insecurity in numerous ways. It could divide or change previous

patterns of access and governance institutions, sometimes leading to the breakdown of the former and open access dynamics. The new arrangements may infringe on existing rights or exclude smallholders or extractivists who previously had access.

Tenure reforms aimed at decentralized and devolved forms of forest management should contribute to a greater sense of ownership of the forests and responsibility for their sustainable management among those with new mandates. The benefits derived from such management include non-cash benefits such as empowerment, so equity in decision-making is often as important as equity in benefit sharing.

Social networks, such as federations and NGOs, frequently have important roles in advocacy, sponsoring and support for tenure transitions. These networks may include politically active leaders, organizations and coalitions that can help advance the democratization of forest governance. In particular, they can support and advocate for the new rights associated with tenure reform (see the example of FECOFUN in Nepal in Box 10).

Among the elements that can assist the development of good governance is an institutional analysis of the roles and responsibilities of key actors, including recommendations for improving the institutional arrangements to generate better overall efficiency and effectiveness. However, it is important to recognize that organizational and institutional arrangements for government-supported systems tend to replicate existing social hierarchies and inequities, including the gender aspects of access to and use of forest resources, unless these issues are explicitly acknowledged and addressed. Political will and clear directions from high levels in relevant ministries are needed to improve governance.

Analyse the regulatory frameworks applied to other sectors

Principle 2 emphasizes the importance of taking a holistic approach to tenure reform, including looking outside the forest sector. It is important to identify the changes that are needed in other sectors to support forest tenure reform, and to encourage other sectors to make these changes. This is difficult, and generally requires cross-sectoral cooperation and coordination. Reference to national development agendas, strategies and frameworks can frequently provide strategic support for such endeavours.

Points to consider: Laws and other legal instruments in non-forest sectors frequently impinge on forest management. For example, transport or marketing regulations may limit the ability of smallholders or local communities to transport or market forest products, even if the reformed forest sector empowers them to do so.

Although forests may be legally distinct entities, they occur within a landscape of other land-use categories, such as grazing and agricultural land. Forest management does not occur in a vacuum, and local communities and individuals generally depend on many land-use categories to satisfy their livelihood requirements. The regulatory frameworks applying primarily to

livestock, agriculture and water should therefore be analysed, to assess the extent to which their various instruments are supportive of forest tenure reform. In a review of decentralization policies affecting decision-making over forests in Latin America, Larson *et al.* (2007) note that contractual arrangements tend to operate between local or State governments and forestry institutes. Forest-dependent groups are not able to improve their opportunities for engaging in forestry-based activities without specific policies operating in their favour – starting with secure access to forest resources – and such policy changes have usually come about in response to organized demands in policy spheres outside forestry. This emphasizes the importance of considering the regulatory frameworks outside the forest sector, to ensure that they are supportive of forest sector goals and objectives.

In many countries, virtually all the land that is not cultivated is defined as forest land, regardless of whether or not it is tree covered. In such situations, much grazing land falls under the technical umbrella of forest land, and is therefore brought within the ambit of forest tenure reform. In these circumstances, the regulatory framework for livestock management should be harmonized with that for forest land.

Review implementation experiences

Apply the adaptive action learning processes outlined in Principle 1 to assess the appropriateness of tenure and governance arrangements in achieving forest management objectives, based on actual experiences.

Points to consider: There is likely to be strong resistance to reforms from many groups, particularly government officials, who might be very cautious about transferring management rights to other stakeholders if they are not confident that these stakeholders can manage forests sustainably.

Radical agendas such as tenure reform and the associated reforms of governance and regulatory frameworks invariably have unintended consequences, regardless of how careful the design and how serious the intent. These should be identified and made explicit rather than ignored. (see Box 13 for an example of unintended consequences in a large afforestation project in China.)

Observing and reflecting on implementation experiences and impacts is an essential part of an action learning approach and helps increase decision-makers' confidence in the reform's effectiveness. It is also an important aspect of any monitoring and evaluation exercise. In action learning, such reflection/review leads to a new plan and new action – the process of revision.

Revise the regulatory framework and governance arrangements

Revise the regulatory framework (particularly the lower-level subordinate instruments) and governance arrangements regularly, based on reviews of their efficiency and effectiveness, to improve forest management outcomes continually, according to the adaptive, action learning approach discussed in Principle 1.

Points to consider: Higher-level elements of the regulatory framework, such as policy and legislation, generally require approval from the political level, so changes in these elements are normally shaped by the political and developmental directions deemed necessary for society, which are set periodically. It is easier to amend the lower levels of the regulatory framework to improve their efficiency and effectiveness, as they generally require approval from the bureaucratic rather than the political level.

Support implementation of the reformed tenure arrangements

Stakeholders need information and capacity to make the most of their involvement, particularly through identifying and articulating their interests. Awareness raising and capacity building are therefore critical aspects of reform and need focused attention throughout the entire process (as outlined in Principle 10).

Raise awareness about the reformed tenure arrangements: Awareness raising of all members of society (especially the key stakeholders who are likely to be most affected by the changes) will be needed to disseminate information on the new policies and laws, particularly the roles of government officials, the new rights and responsibilities (compliance requirements) of various stakeholders, and how these rights can be exercised. Following forest land allocation in Viet Nam, a survey in two provinces revealed that relatively few recipients of the allocated land had knowledge of their rights (Nguyen *et al.*, 2008).

Build the capacity of key stakeholders: Throughout the entire process, there is need to identify capacity needs and provide capacity building for various stakeholders. This very important aspect of reform is often overlooked. Capacity building needs tend to change over time, so this should be an ongoing process, requiring a variety of approaches rather than a one-off training course or workshop.

Identify the capacities that different stakeholder groups need to implement new forms of forest management, particularly where management is devolved to smallholders or community groups. Capacity building is likely to be needed by government staff at all levels, to fit them for new roles such as facilitating devolved and decentralized forms of forest management, and by smallholders and indigenous and community groups, who might be being empowered for the first time to manage forests directly and distribute the resulting benefits (see example in Box 18). Marginalized and disadvantaged groups are likely to need focused support to enable them to take advantage of reformed tenure arrangements (as noted in Principle 3). Commenting on tenure reforms in Viet Nam, Thuan (2005) notes that forest land allocation has been based on the ability to invest labour and capital in the land. As poor people, particularly the ethnic minorities who form the majority of forest-dependent people, face shortages of both labour and finance, the policy has effectively excluded them from a larger share of the land allocation.

As already mentioned, politically active social networks of leaders, organizations and coalitions have an important role in supporting and advocating for new rights associated with tenure reform. Focused support can help strengthen their capacity to function efficiently and effectively (see example of FECOFUN in Nepal in Box 10).

Skills that are likely to be needed for planning and implementing reformed tenure regimes include:

- participatory tools and techniques for engaging with multiple stakeholders;
- approaches for working with multiple stakeholders to reach consensus on key positions (as discussed in FAO, 2007);
- extension skills for government officials to fit them for new advisory and support roles (rather than their previous policing and licensing roles);
- technical and other skills for community groups and smallholders to become active forest managers;
- marketing and related skills to enable community groups and smallholders to market forest goods and services;
- conflict management skills to address the inevitable conflicts associated with changing tenure arrangements;
- negotiation and mediation skills, particularly for more vulnerable stakeholders (including women) to enhance their empowerment;
- enhanced capacity for social networks, such as federations of users, to support and represent the interests of devolved groups of forest managers in policy and political arenas.

Points to consider: Tenure reforms generally require key actors such as government officials, smallholders, community groups or individuals to adopt very different roles from those that previously prevailed. The relationships among key actors are also often changed dramatically. For example, government officials may need to change from active forest management, which may have involved a high degree of command and control, to participatory forest management, where they are required to assist and support smallholders and various types of community groups in managing forests for their own multiple benefits rather than for the State's economic benefit. This implies a fundamental change in the organizational culture of agencies, which is very difficult to achieve. Such a change of attitude and approach invariably requires a great deal of support. An analysis of case studies across all major ecological zones in Nepal revealed that although local rights of access and usage were guaranteed in national policies and laws, "... a latent hesitation exists among government field officers to fully transfer the rights to communities" (Paudel, Banjade and Dahal, 2008). It is worth keeping in mind that bureaucratic power and processes tend to reproduce themselves, which creates problems when strongly hierarchical organizations are supposed to sponsor participatory entities, resulting in policies and practices that reinforce existing social hierarchies and divisions.

The fundamental changes associated with adopting new roles and working modalities are never easy. On-the-job training is generally necessary for several

years; this tends to be expensive, and development partners can play an important supporting role.

Politicians in some countries have argued that fundamental cultural changes in forest agencies are impossible, and have responded by disbanding or greatly depowering and downsizing their forest agencies. Examples include New Zealand, Mexico and the Russian Federation, although associated macroeconomic drivers have frequently contributed to these dramatic changes.

An important part of overall capacity building for implementing reformed tenure arrangements is support to the training institutes – forestry schools, colleges and universities – that train the next generation of professional and technical officers. There is likely to be a need to review and revise curricula and even teaching approaches, so that future graduates have realistic expectations of what their jobs will entail and how to perform them in the new reformed environment.



8. Emerging issues

Several of the issues emerging in the international arena have the potential to affect forest policy in general and tenure reform processes in particular. The most important of these are discussed in this chapter.

GROWING DEMAND FOR SUSTAINABLE FOREST MANAGEMENT AND LEGAL TIMBER HARVESTING

Over the past two decades, there has been growing interest in ensuring that forests are managed sustainably and that timber is harvested legally. This has given rise to various international and national initiatives aimed at supporting these objectives. The following discussion addresses some of these initiatives from the point of view of tenure and tenure reform.

Some countries have taken unilateral action to prevent imports of illegally harvested timber. For example, in 2008, the United States of America added provisions to the century-old Lacey Act aimed at banning commerce in illegally sourced timber and wood products. These provisions make it illegal to import timber from a country where timber has been harvested in contravention to that country's laws. This policy sets a precedent for global trade in plant products, which could support other countries' efforts to govern their natural resources more effectively. It also reinforces initiatives aimed at encouraging SFM and discouraging illegal timber harvesting.

One of the principal approaches to ensuring the sustainability of forest management practices is through formal certification. Most certification schemes have a set of principles and criteria against which forest management practices are judged. Among other elements, these emphasize the importance of ensuring that tenure and use rights are clearly defined and uncontested. For example, one of the Forest Stewardship Council's Key Principles requires: "Demonstrated and uncontested, clearly defined, long-term land tenure and use rights", while another requires: "Recognition and respect for indigenous peoples' rights" (FSC, no date).

A relatively recent approach to reducing illegal logging is the forest law enforcement, governance and trade (FLEGT) process, which arose from international concerns about the impact of illegal logging and associated trade. The European Union (EU) adopted a FLEGT Action Plan in 2003, at the heart of which are Voluntary Partnership Agreements (VPAs) between the EU and countries that produce or export timber. These agreements aim to ensure that any export of timber from a partner country is accompanied by a licence demonstrating that the timber has been legally harvested (Brazill and Broekhoven, 2009). Within the FLEGT process, it is widely recognized that tenure insecurity is often a cause of illegal logging activities. Hence, clarification of tenure issues,

as well as consultation with a wide range of stakeholders, improved governance and supportive regulatory frameworks are essential aspects of developing a VPA. However, although a VPA process that defines legality might tackle tenure reform, it does not necessarily do so (Matthew Markopoulos, personal communication).

Clearly, tenure issues are central to current approaches aimed at ensuring that forests are managed sustainably and that traded timber comes from legal sources.

PAYMENTS FOR ENVIRONMENTAL SERVICES AND REDD+⁵

An important area of emerging concern is the relationship between payments for environmental (or ecosystem) services (PES) and tenure reform. The PES concept has attracted increasing interest in recent years “as a mechanism to translate external, non-market values of the environment into real financial incentives for local actors to provide environmental services” (Engel, Pagiola and Wunder, 2008). The basic idea behind a PES approach is that the external beneficiaries of an environmental service make direct, contractual and conditional payments to local landholders and users in return for adopting practices that secure ecosystem conservation and restoration (Wunder, 2005). Wunder gives examples of four types of PES arrangements:

- carbon sequestration and storage, such as a northern electricity company paying farmers in the tropics for planting and maintaining trees;
- biodiversity protection, such as conservation donors paying local people for setting aside or naturally restoring areas to create a biological corridor;
- watershed protection, such as downstream water users paying upstream farmers for adopting land uses that limit deforestation, soil erosion, flooding risks, etc.;
- landscape beauty, such as a tourism operator paying a local community not to hunt in a forest being used for tourists’ wildlife viewing.

Wunder defines PES as a transaction that is voluntary, between at least one service buyer and at least one service seller, focused on a well-defined environmental service (or a land use likely to secure that service), and conditional on contract compliance.

Wunder, Engel and Pagiola (2008) analyse PES case studies from both developed and developing countries. Most are in Latin America, but they also include examples from China, France and Australia. The authors distinguish between user- and government-financed programmes, with the former tending to be of far smaller scale than the latter. Government-financed programmes also tend to pursue non-environmental objectives such as poverty alleviation or regional development, in addition to the main environmental objectives. Government-financed programmes are normally managed by national agencies either created for the purpose or already working in the sector. In almost all cases, someone has to act as an intermediary between those who are paying for the service and those who provide it:

⁵ This section is adapted from Gilmour, 2009b with additions.

Working with providers is particularly complex logistically (and accounts for the bulk of the transaction costs) as there are usually many providers dispersed over the landscape. Someone needs to negotiate with them and/or communicate the offered payments, contract with interested providers, monitor compliance and make payments. (Wunder, Engel and Pagiola, 2008)

In almost all cases, payments are made directly to landholders, which can include individuals, community groups, cooperatives and indigenous communities.

Forests' role in carbon capture and storage provides an opportunity for PES, and has made forests an important element in recent international climate change deliberations. A new concept is currently being developed for reducing emissions from deforestation and degradation in developing countries (REDD+), to be applied in the post-2012 Kyoto Protocol. While the idea behind carbon transfers is to pay people or governments for planting trees to capture carbon, the idea behind REDD is to pay people to avoid deforestation and forest degradation. Nations at risk of large reductions in forest area or serious declines in forest quality stand to generate revenue under such a system (Vickers, 2008). The World Bank's Forest Carbon Partnership Facility and the UN-REDD Programme led by FAO, the United Nations Development Programme (UNDP) and the United Nations Environment Programme (UNEP) plan to prepare developing countries so that they can participate in a carbon offset market for forestry projects.

There are many practical difficulties associated with operationalizing a PES system. The link between the service to be provided and the vegetation/land-use change is often tenuous, and there are major auditing issues. In most cases, surrogate or proxy measures (such as area of marginal land reforested, or increase in tree/vegetation density) for determining compliance will need to be agreed.

Wunder, Engel and Pagiola (2008) also question whether programmes are promoting the right land uses, as the underlying biophysical linkages have not been fully measured and are subject to controversy. However, the authors also argue that "in many cases where landscapes are currently in near natural condition and services are satisfactory, there is a strong case to be made for conservation based on the precautionary principle – particularly as preventing adverse land use changes ... would be much cheaper than restoration efforts" (Wunder, Engel and Pagiola, 2008).

The role of forests in carbon sequestration is doubtless an important consideration in the overall climate change debate, and REDD+ approaches could well have a role in future forest management scenarios. This will essentially mean that international or nationally important objectives will be added to the existing mix of local forest management objectives. However, several cautions related to tenure reform should be kept in mind, as effective implementation of REDD+ will depend on tenure reform in many countries. Another serious concern is that the carbon-related aspects of forests seem likely to be more dominant in REDD policy than the rights and interests of indigenous peoples and local communities.

It is increasingly accepted that REDD+ can work only if forest tenure is clear, because the payments for services must be directed to people with forest rights

(Cotula and Mayers, 2009; Fisher, 2009), to ensure that the people who depend on forests are compensated when their access to forest resources is restricted. In addition to this issue of simple justice, there is also a pragmatic one: people are unlikely to conserve forest unless they are compensated for avoiding degrading forest use. Cotula and Mayers (2009) also note that effective local institutional capability, and the knowledge and preparedness to put good forestry into practice will be essential for REDD+. This will require effective and equitable local property rights. Consideration of tenure will therefore have to be the starting point, not an afterthought. If tenure is not sorted out before REDD+ is implemented, there are negative implications for both livelihoods and the likely success of the scheme in conservation terms. Given the generally slow rate of implementing effective tenure reform, there is a risk that undue haste resulting from implementation of REDD+ will result in rights being allocated to the wrong people (i.e. those without traditional rights) (Fisher, 2009).

REDD+ is increasingly being advocated as having pro-poor benefits. As Fisher *et al.* (2008) point out for PES generally, there is nothing automatic about the pro-poor benefits of REDD+, and REDD+ would need to be carefully targeted to make it pro-poor. At the same time, unless tenure is sorted out, REDD+ has the potential to undermine livelihoods and increase poverty.

A desire to engineer landscapes to optimize carbon budgets seems to be emerging from the discussions, although there is no clarity about how this will take place in practice. If money is to flow from international or industry sources to national governments in exchange for guaranteed increases in carbon capture and storage, carbon forestry will have the potential to recentralize power when national governments control the management agenda. This could change the dynamics of devolved forest management rights. In particular, there is a strong possibility that the deliberative, adaptive and reflective process for carrying out tenure and associated reforms, which is central to the approach proposed in this publication, could be distorted or even discarded. Foreseen benefits from REDD+ may become a disincentive for governments to devolve tenure (Fisher, 2009). There is thus a real danger that many of the beneficial effects of decentralizing and devolving forest management could be negated. Lewis (2009) argues that the REDD debate has:

... focused on technical and methodological obstacles and on sourcing carbon finance ... (and that) Without careful planning, REDD stands to create large numbers of “carbon refugees” as governments curb financially unrewarding deforesting activities such as those of small-scale agriculturalists and fuel-wood harvesters ...

Lewis goes on to quote from studies that claim that:

... larger forest areas and a high degree of community autonomy in decision-making are all associated with both high carbon storage and livelihood benefits. Conversely, local users with insecure property rights extract resources at unsustainable rates.

For these reasons, it is imperative that relevant government and non-governmental organizations engage in the climate change debate to influence the rules of engagement, particularly to protect community rights. The introduction of new agendas (such as REDD+ and other approaches associated with carbon capture) can be a distraction from pursuing tenure reform, and particularly from making the associated regulatory frameworks and governance systems as enabling as possible. Once these systems are functional and effective, additional agendas can be added, as long as appropriate safeguards are in place to guarantee local livelihoods and local empowerment.



9. Conclusions

Over the past two decades, significant and radical changes have been taking place in the formal tenure arrangements that apply to many of the world's forests. The macro directions of these changes are primarily a result of macro-level political (and to some extent economic) transitions. However, once these major shifts in direction have occurred, substantial changes can take place through the application of a deliberative, adaptive approach to tenure reform. While State ownership and management still dominate forest tenure, there has been a significant move towards the devolution of ownership and management rights to households, smallholders, communities, indigenous groups and other entities. This is leading to a more diversified tenure system that can be a basis for improving forest management and local livelihoods, particularly where State capacities to manage forests are weak.

A major thread throughout this publication is that tenure reform should not be a single stand-alone process, but part of a wider, more holistic approach that must be embedded within the country's development agenda and linked to the management of other natural resources such as land and water. Social justice is another important consideration in many countries. Experience suggests that tenure reform alone is unlikely to lead to the achievement of forest management objectives, which generally encompass sustainable forest management and improvement of local livelihoods. Tenure is part of a broader system, and reform requires parallel attention to reforming regulatory frameworks and governance arrangements to ensure that they are as supportive as possible.

The proposed process for tenure reform emphasizes engagement with a wide range of stakeholders in a deliberative, reflective approach, progressing in an adaptive fashion by applying feedback loops from field experience. This should not be seen as a linear process. This publication has derived several principles, which are used to define and guide a process for carrying out tenure reform.

Because tenure reform is rarely a linear process, it can sometimes seem to be rather "messy", as is policy-making in general. Moreover, things do not always proceed as expected and there are invariably unintended consequences.

In spite of the problems that still exist, there is sufficient evidence from many countries where successful tenure reforms have taken place to warrant optimism that the process is worth pursuing in a manner that is informed by best practice. The application of the principles proposed in this publication is likely to lead to outcomes that will substantially increase the likelihood of achieving forest management objectives that reflect contemporary societal views.

Reviewing the global debate on tenure security, Ellsworth (2004) says:

The empirical evidence shows that there is no single property regime that will lead to attaining the main goals of ... social justice, livelihood generation, sound

forest management, biodiversity conservation, or economic prosperity. Such outcomes are situation and site-specific, hard to predict, and in any case not necessarily enduring through time. This is because the powers of the various players contesting for security and various property rights are constantly changing, so the underlying property regime is changing all the time as well.

This statement encapsulates many of the issues that have been discussed, and emphasizes the dynamism of the politics of tenure reform. The challenge for the future is to deliver improved forest management outcomes more widely through a considered approach to reforming forest tenure that is constantly in touch with and informed by the ever-changing social and political environment.

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Annex

Categories and definitions

FOREST OWNERSHIP

Forest ownership	Generally refers to the legal right to freely and exclusively use, control, transfer, or otherwise benefit from a forest. Ownership can be acquired through transfers such as sales, donations, and inheritance.
Management rights of public forests	Refers to the right to manage and use publicly owned forests for a specific period of time.
Public ownership	Forest owned by the State; or administrative units of the Public Administration; or by institutions or corporations owned by the Public Administration.
Private ownership	Forest owned by individuals, families, communities, private co-operatives, corporations and other business entities, private religious and educational institutions, pension or investment funds, NGOs, nature conservation associations and other private institutions.
Individuals (subcategory of private ownership)	Forest owned by individuals and families.
Private business entities and institutions (subcategory of private ownership)	Forest owned by private corporations, co-operatives, companies and other business entities, as well as private organizations such as NGOs, nature conservation associations, and private religious and educational institutions, etc.
Local communities (subcategory of private ownership)	Forest owned by a group of individuals belonging to the same community`residing within or in the vicinity of a forest area. The community members are co-owners that share exclusive rights and duties, and benefits contribute to the community development.

Indigenous / tribal communities (subcategory of private ownership)	Forest owned by communities of indigenous or tribal people.
Other types of ownership	Other kinds of ownership arrangements not covered by the categories above. Also includes areas where ownership is unclear or disputed.

CATEGORIES RELATED TO THE HOLDER OF MANAGEMENT RIGHTS OF PUBLIC FOREST RESOURCES

Public administration	The public administration (or institutions or corporations owned by the public administration) retains management rights and responsibilities within the limits specified by the legislation.
Individuals/ households	Forest management rights and responsibilities are transferred from the public administration to individuals or households through long-term leases or management agreements.
Private institutions	Forest management rights and responsibilities are transferred from the public administration to corporations, other business entities, private co-operatives, private non-profit institutions and associations, etc., through long-term leases or management agreements.
Communities	Forest management rights and responsibilities are transferred from the public administration to local communities (including indigenous and tribal communities) through long-term leases or management agreements.
Other form of management rights	Forests for which the transfer of management rights does not belong to any of the categories mentioned above.

Source: FAO, 2010c.

FAO TECHNICAL PAPERS

FAO FORESTRY PAPERS

1	Forest utilization contracts on public land, 1977 (E F S)	25	Public forestry administrations in Latin America, 1981 (E)
2	Planning forest roads and harvesting systems, 1977 (E F S)	26	Forestry and rural development, 1981 (E F S)
3	World list of forestry schools, 1977 (E/F/S)	27	Manual of forest inventory, 1981 (E F)
3 Rev.1	World list of forestry schools, 1981 (E/F/S)	28	Small and medium sawmills in developing countries, 1981 (E S)
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Reforming forest tenure

Issues, principles and process

Secure tenure is an important prerequisite for sustainable forest management. More diversified tenure systems could provide a basis for improving forest management and local livelihoods, particularly where the State has insufficient capacity to manage forests. In the past decade many countries have initiated efforts to reform their tenure arrangements for forests and forest land, devolving some degree of access and management from the State to others, mainly households, private companies and communities. This publication provides practical guidance for policy-makers and others concerned with addressing forest tenure reform. Drawing from many sources, including forest tenure assessments carried out by FAO in Africa, Southeast Asia, Latin America and Central Asia, it deduces lessons about what works and what does not, and why. It formulates a set of ten principles to guide tenure reform, and proposes an adaptive process for diversifying forest tenure in a context-appropriate way. The publication emphasizes that successful tenure reform is linked with reform in associated regulatory frameworks and governance arrangements, and must be seen in the context of a wider national development agenda.

