Forests for People

Community Rights and Forest Tenure Reform

Edited by

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Significant tenure reforms in public forestlands have taken place over the past 20 years worldwide, but particularly in Latin America. These reforms, initiated more aggressively since the mid-1980s, appear widespread enough to constitute an important global trend. They also present an opportunity to advance the recognition of human rights and two critical values: providing benefits for poor forest dwellers and conserving forests for environmental reasons. Such tenure reforms may be essential to successful forestland governance.

Tenure and property rights are among the defining institutions of a society and are deeply embedded in regional and national history and local culture. In each region studied, the imprint of the major colonial powers (Spain, Portugal, Britain, The Netherlands and France) left very different land and forest regimes and legal systems. These systems also defined the rules for exclusion and the meaning of community, embedding a wide variety of relationships around land and forest resources (e.g. settler colonies, rule through ‘traditional’ chiefs, plantation regimes, peonage and slavery). The current tenure reforms can be properly understood only within these larger contexts. The findings in this book result from mapping these recent changes at the community level, understanding who receives what rights and recording and analysing how regulatory frameworks and market challenges work for or against community interests.

A significant challenge is seeing the issues and trends that emerge from an analysis across the regions, drawing from particular countries and cases, while trying to keep their contextual differences in mind. Two insights emerge: first, forest tenure reform has unique characteristics and is distinct from other land reforms; and second, several global dynamics are in some cases driving, and in all cases shaping, these reforms. In this chapter, we discuss the nature of this forest tenure reform, as well as three forces that are shaping the political and
Institutional context: the recognition of indigenous rights, global biodiversity conservation and democratic decentralization. We note that these forces have come largely from outside the realm of forestry per se, particularly in Latin America and Africa, but have nevertheless challenged and influenced it significantly. The chapter concludes by discussing the legacy of these forces on forest tenure changes in light of increasing global concern for the role that forests play in regulating climate.

What is different about forest tenure?

According to the biological definition, forest landscapes—like other common pool resources such as lakes and fishing grounds—hold multiple resources with a wide array of values for various stakeholders, from local dwellers to distant urban folk. Far from providing only timber, forests represent food, shelter and medicine for local consumption. They also hold the genetic biodiversity that may allow us to cure future diseases, house much of the planet’s wildlife, regulate freshwater flows across regions and contribute to global climate regulation through their capacity to capture and store the carbon emitted into the atmosphere. They are also sanctuaries for the spiritual renewal of indigenous populations and urban vacationers.

Who has what rights to these resources? Understanding tenure rights as a set of agreements between social actors with respect to a resource (von Benda-Beckman et al, 2006) allows us to break away from the notion of absolute property rights, or a single private owner, and see forest tenure as often involving groups of people with multiple and simultaneous rights and hence a shared interest in a common resource. As with other common pool resources, the task is governing multiple resources in a shared space while maintaining them as renewable resources.

Analysis of the past 20 years of tenure reform in forests requires a departure from premises lingering from agricultural land reforms and assumptions that underlie many administrative approaches to the formalization of property rights. Discussions of property rights and tenure security often overlook the unique set of conditions that distinguish rights to collective or common property resources, like forests, that are particularly important in developing countries. In an extensive review of African cases, Diaw (2005) argues that the layers of embedded tenure systems characteristic of communal or customary lands result in resilience and flexibility that have allowed these systems to survive in the face of persistent antagonism from, and confrontation with, the dominant, more discrete view of land tenure. Recent literature has scrutinized the pitfalls of simplification, noting that overly simplified formal property rights have skewed the underlying social relations that define ‘property’. Problems emerge when the logic of previous reforms promoting private individual property is mechanically transferred to tenure reform in the forest or other common pool resources (Cousins and Sjaastad, 2008).

There are several ways to approach the differences. Bruce (1998) lays out a simple distinction in terminology, stating that tenure reform describes legal
reforms of tenure rights whether by the state or local communities. It differs from land reform because rather than redistributing land, it more often leaves people holding the same land but with different rights.

According to El-Ghonemy (2003, p34) by the 1960s, 'the accepted sense of the term “land reform” meant the redistribution of property and use rights of land for the benefit of landless agricultural workers'. However, he notes that because of the influence of powerful land reform movements in Latin America, ‘this previously used narrow English term “land reform” was transformed to agrarian reform corresponding to the Spanish term “reforma agraria“’. The expanded term included transformations in the broader policy frameworks within which land reform might take place and referred to ‘the class character of the relations of production and distribution in farming and related enterprises’ (Cousins, 2007a, p232). Such reforms were most effective in improving beneficiaries’ livelihoods when they fitted into broader policies aimed at reducing poverty and developing productive smallholder agriculture. Targeted credit lines, training and extension programmes, government price subsidies and often a direct role in commercialization all proposed to turn land reforms into the basis for rural ‘development’.

Over time, opposition to redistribution mounted and agrarian reform also came to mean government-promoted settlement or resettlement programmes on publicly owned land, land registration, consolidation of fragmented holdings, tenancy improvement and land taxation (El-Ghonemy, 2003). Publicly owned land referred mainly to forests into which peasants and small farmers moved, both spontaneously and through planned ‘colonization’ or ‘transmigration’ schemes. These colonists occupied dense forested areas and were offered (or promised) land titles for clearing the forest for agriculture or ranching, in keeping with rural development approaches of the time (Thiesenhusen, 1995; de Janvry, 1981).

Since colonial times in Latin America, land with standing forest cover was officially considered ‘idle’ land (tierra ociosa); in Indonesia, it was considered ‘empty’ (tanah kosong). Throughout the tropics, to gain a rightful claim to either official or customary ownership, the forest had to be cleared. Deforesting the land was seen as a measure of invested labour (e.g. for Cameroon see Diaw, 1997; for Indonesia see Colfer with Dudley, 1993; for Latin America see Clay, 1988), demonstrating the ‘social use of land‘ (and from an official point of view, made it worthy of a title). Underlying this process was the notion that work constituted a basis for ownership, rendered visible through land clearance. This concept of the social use of land has in many areas been supported by law and has become a cultural institution throughout Latin America (Ankersen and Ruppert, 2006), as in many tropical countries.

In Latin America, the forest resource was seen as abundant and the state’s objective was to bring forested regions under state control and into productive use. However, colonization programmes often set off new waves of conflict as supposedly empty forests proved to be filled with people unwilling to give up their land and livelihoods without a fight (Schmink and Wood, 1992). Environmental concerns and indigenous territorial rights were largely
neglected. In most of Asia and many parts of Africa similar assumptions governed settlement programmes to fill ‘empty lands’, also already inhabited by local groups, often practicing sustainable, long-rotation agriculture. Though in many places in-migrants were welcomed when populations were sparse, resource-dependent people may become less hospitable as populations grow to densities that endanger the sustainability of local customary systems (e.g. Peluso, 1994).

Also in Asia and Africa, colonial and postcolonial regimes perceived the forest as a scarce resource to be protected from agriculture, poaching and grazing. The creation of forest reserves – along with wildlife reserves for protecting game animals – was the norm and people were excluded and even evicted (Adams, 2004).

In contrast to the agrarian approach described above, the bulk of the current forest tenure reforms have focused on the change in rights that occur within forests. These reforms have principally recognized the rights of preexisting forest dwellers, in what are overwhelmingly (officially) state-owned forests. Unlike the case with agrarian land reform, there is an entire array of rights holders bound by a complex web of interests (Meinzen-Dick and Mwangi, 2008), including the state itself. Therefore, forest tenure reform is a far more complex endeavour involving a set of agreements about who has what kind of rights to which forest resources. More often than not, these rights holders’ interests vary with the season, climate, price of forest goods or political factors. Forest landscapes, for example, may include rotating agriculture or forest gardens or the seasonal use of forests by nomadic herders. Flexibility in the rules that allocate rights is necessary (Berry, 1993; Barry and Meinzen-Dick, 2008).

Again, in contrast to most agrarian land reforms, where land was titled mainly as individual private property (Alegret, 2003; El-Ghonemy, 2003), forest tenure reform mostly involves granting collective rights but maintaining the state as a principal rights holder. Alienation rights, those that relate to the division and sale of the land, are legally retained by the state. The underlying logic is that forests are ultimately a public good (see Chapter 7), that their subdivision into small units will result in clearing and that only the state can guarantee their permanence (an assumption that has been increasingly called into question).

The implications of those differences for forest tenure reform are several. First, the state remains a rights holder, often playing a central role in forest resource management (see Chapter 3), and the ‘enforcer’ of exclusion rights. Second, the collectives, communities or groups of communities that receive forest tenure rights are bound in relationships that could be considered co-ownership or co-management of forests with the state. Third, in most countries studied, division and sale of forestland is prohibited, even when titles are granted, and the forests are not legally considered ‘property’ (are not subject to mortgage or embargo), which lessens the opportunities to use titles as collateral for investment capital or credit. Hence, forestland is not a commodity, in the sense that it does not enter into formal land markets. This constitutes one
of the fundamental differences from land reform, where land can be legally divided and sold.\textsuperscript{3}

In summary, forest tenure reform involves decisions about access, use, management and exclusion rights – the fundamental rights of forest governance. The struggle for the transfer of real decision-making powers, particularly management and exclusion rights, from the state to communities becomes the centre of our concern. To what degree do communities hold and shape these rights? To what extent does the state undermine or recognize existing decision-making rights and practices? How can the state best organize supporting institutions to enfranchise communities and enhance their benefits from forests? Our analyses of the implications for local community enfranchisement, welfare and forest conditions have identified the following fundamental characteristics of forest tenure reform:

1. land titles or rights are granted with the understanding that the forest resource should be maintained (or restored);
2. tenure rights are essentially for multiple users of various forest resources;
3. in the vast majority of cases, alienation rights to the land are still held by the state;
4. thus the land cannot be legally divided and sold (and is thus not a legal commodity);
5. most of the reformed forestlands are being demarcated and titled as collective or communal properties;
6. this means the recognition of a previously existing collective governance structure and/or the creation of a new one (or a combination).

\textbf{Context and shaping of forest tenure reform}

The current transition in forest tenure began during a period of dramatic political change for many of the forested countries of the south. During the 1980s and 1990s, the Philippines, Indonesia and Brazil witnessed the demise and fall of dictatorial regimes, followed by the construction of more democratic political systems. Guatemala and Nicaragua were embroiled in civil wars and then faced the task of postwar reconciliation and reconstruction. West and Central Africa, specifically Ghana, Cameroon and Burkina Faso, experienced a variety of postcolonial governments from the 1960s to the 1980s, sometimes with substantial upheaval, but generally had returned to constitutional democracies and multiparty politics by the mid-1990s.

During this same period the global development paradigm underwent major modifications as models intended to ensure broad, equitable rural development were abandoned in favour of neo-liberal models of macroeconomic growth (El-Ghonemy, 2003).\textsuperscript{4} The earlier rural development models were part of a worldwide undertaking to modernize agricultural production as the engine of rural development, with coordinated financial, institutional and scientific efforts. Land locked up in large and unproductive holdings was to be redistributed to the landless and others, thus providing dynamism in land markets.
By the mid-1980s, structural adjustment policies had forced the contraction of fiscal spending and reversed emphasis on state institutions as the agents of integrated rural development. Programmes that accompanied land tenure reforms waned; the market would become the principal driver of economic growth. Downsizing of the state, fiscal restrictions and monetary policies forced changes in exchange rates and eroded government crop subsidies, leaving rural sectors highly vulnerable to shifts in international trade (see for example Sunderlin and Pokam, 2002; El-Ghonemy, 2003; Thiesenhusen, 1995).

Most countries with significant forestland underwent these macroeconomic changes, which constituted a shift in the development paradigm and the institutions and agencies associated with it. Under market liberalization, agrarian reform was transformed from an act of land redistribution through state intervention to market-based land ‘reforms’ and land administration projects aimed at formalizing titles and modernizing cadastres and registries (Rosset et al, 2006; Deininger and Binswanger, 2001). For the forest sector, timber trade was liberalized and became export focused, and reduced budgets meant dwindling extension agencies, staff and programmes.5

Despite regional differences, the changes in this macroeconomic policy helped set the conditions – particularly for the state – under which forest tenure reform would unfold. During this same period, three additional international trends emerged worldwide:

1. the demand for the recognition of indigenous peoples’ rights to their identity and ancestral lands motivated tenure reforms, especially in Latin America;
2. the global drive for biodiversity conservation profoundly influenced how rights and governance in forests have been redefined; and
3. decentralization, in many cases part of structural adjustment programmes themselves, became an important force in forest reform, most evidently in Africa.

Rather than discussing the role and impact of these three dynamics in every region, we present an overview with emphasis on the region in which each force has had particular influence.

**Recognition of indigenous rights**

Most of the area under forest tenure reform has been in Latin America. As of 2008, roughly 197 million ha had been granted to the continent’s indigenous and smallholder communities, all in predominantly forested landscapes (Pacheco et al, 2008c; Sunderlin et al, 2008). Most of this formal transfer of rights has come about through the recognition of indigenous ethnic identity and rights to ancestral lands. Figures on the total indigenous population are inexact, but a 2002 estimate was more than 52 million, or just under 12 per cent of the total regional population (Roldan, 2004).

To put this in perspective, about 120 million people live in rural areas in Latin America (Quijandría et al, 2001). It is estimated that approximately 25
million live in subtropical and tropical landscapes, an important portion of which are covered with forests. Roughly speaking, 12 million people occupy forestlands in Mexico, a large portion of whom are indigenous, 3 million live in the forested landscapes of Central America and about 10 million in the forests of Amazonia, 1 million of whom are indigenous (Kaimowitz, 2003a). Bolivia, Guatemala and Peru have the highest percentage of indigenous population, with 71 per cent, 66 per cent and 47 per cent, respectively, in contrast to Brazil, with the largest land area under indigenous tenure but representing only 0.2 per cent of the population (Roldan, 2004).

The struggle for recognition of indigenous identity and rights dates from the colonial period (which in Latin America had ended by the mid-1800s) and has been a source of strife and conflict, often invisible. In the 1980s, a wave of international recognition of these rights represented the culmination of a sustained global battle – led by Latin America – for the expansion of human rights to consider indigenous claims for ethnic identity and resource rights. At the heart of these legal processes was an attempt to safeguard indigenous cultural reproduction (e.g. language, knowledge, landscape). The rights perspective has shaped tenure reform far beyond Latin America and even beyond indigenous peoples.6

**Origin and goals**

The movements for the recognition of indigenous rights organized over the course of the 1980s and 1990s were first focused on rights of identity. Alliances with international NGOs and legal council brought about achievements in the international sphere, such as the revision of international conventions like the second International Labour Organization (ILO) Indigenous and Tribal Peoples Convention No. 169 of 1989. ILO convention 169 has provisions

> requiring ratifying states to identify indigenous lands and guarantee the effective protection of rights of ownership and possession; to safeguard indigenous rights to participate in the management and conservation of resources and to consult with indigenous peoples over mineral or sub-surface resource development. (Plant and Hvalkof, 2001 pp32–38)

Together with a host of other international legal supports, this convention was eventually ratified by most South American countries with important indigenous populations, giving it force of domestic law in those countries.7

Strong national-level advocacy harnessed to the force of these international treaties eventually led to the abandonment of official assimilation policies in most Latin American countries. By the 1990s, constitutional recognition of states as multicultural began to have implications for changes in rights of identity, use of language and political representation and rights to land (Plant and Hvalkof, 2001). These constitutional victories fed the resurgence of indigenous identity throughout the region. But little really changed in practice
without secondary legislation, something with juridical ‘teeth’ that would
translate these constitutional aspirations into the concrete manifestation of
rights, including rights to land and its resources (Leyva et al, 2008).

Enthusiasm was spurred by the surprise 2001 landmark decision in the
InterAmerican Court of Human Rights in favour of the Mayangna Indians
in Nicaragua, in the Awas Tingni case. When the state failed to consult with
indigenous communities over a logging concession on their ancestral lands, the
court ruled that the government of Nicaragua had to demarcate and title Awas
Tingni’s traditional lands. A combination of external and internal pressure,
including conditions tied to World Bank loans, led the government to take this
step, setting a legal precedent in the country – and a new trend in the region
(Larson and Mendoza-Lewis, 2009; Stocks, 2005, see also Chapter 5).

For indigenous peoples, the collective right to land forms an essential part
of their identity and is necessary to ensure their cultural reproduction (Bae,
2005). Thus, demands throughout the region have focused on the restoration
of the territories that were long inhabited by indigenous and tribal peoples. The
concept of territory, as opposed to land, for indigenous peoples in general refers
to the space and resources under their control that enable them to develop and
reproduce the social and cultural aspects of their livelihoods. It also reflects
the collective aspects of the relationship between indigenous peoples and
their lands. This expanded concept of territories was more easily applied to
the Amazon and other tropical lowlands, where the contiguous land areas
vested in indigenous groups can cover several million hectares, rather than in
more densely populated forests. This model also allowed for recognition of
an integrated approach to resource management (Plant and Hvalkof, 2001).
Although the concept of contiguous territories belonging to groups of people
applies in Africa and Asia as well, the scale of such landholdings is much
smaller outside Latin America.

Struggles over indigenous lands at the national level often emerged over
the right to exclude intruders. The issues included land invasions by colonists
and the expansion of forest areas under conservation regimes or extractive
industries, such as subsoil mining of hydrocarbons and minerals. Indigenous
communities also encountered new restrictions that limited their rights to use
their forest resources and in many places met with the negative impacts of
extractive activities, such as deforestation related to roads, fires, clear-cutting,
water contamination and loss of wildlife and fishing grounds. These are all
problems that plague indigenous peoples in Africa and Asia as well, but without
the serious policy response.

Latin America’s current tenure reforms have taken place almost exclusively
in the expansive lowland tropical forests of the Amazon basin and Central
America, where there is a very high correlation between indigenous lands and
forest cover. These lowlands also include a great variety of ecosystems, ranging
from swamps, lakes and river valleys with seasonal flooding to higher-lying
savannas and montane rainforest (Chapin et al, 2005; Plant and Hvalkof,
2001). In most cases, reforms have recognized the rights of traditional land
users to establish boundaries for claims but disputed their size (often seen as
‘too much for too few’, Stocks, 2005). The legal process typically dictated that the state establish ‘proper land titling systems’ for indigenous landownership and recognize customary governance institutions in the territories. The implementation of these mandates, however, has faced numerous hurdles, ranging from the conceptual to the institutional and practical, as well as the disadvantageous position of indigenous peoples in the power structures of their countries.

**Implementation and outcomes**
The delimitation of large lowland territories in forests previously deemed ‘empty’ was based on traditional livelihoods, resource uses and customary practices. The holistic and integrated use of the forestland and water system, wildlife and vegetation was accepted as legitimate and legally sanctioned. But this implied the participation of indigenous people themselves in demarcation. Over the next two decades participatory land-use mapping expanded and evolved, accompanied by ethnographic interpretation and geographic referencing based on people’s accounts of their land areas and uses (Herlihy and Knapp, 2003; Chapin et al, 2005). International NGOs and eventually support from the World Bank were crucial for developing the tools and increasing indigenous participation in this complex and costly mapping process.

Nevertheless, technical and political barriers hinder the implementation of these reforms. ‘Land’ reforms in forested landscapes require different approaches from traditional agrarian landownership, yet for the most part the same agricultural institutions and technical agencies remain the principal vehicles for implementation. Usually they rely on the same legal, procedural and even technical norms and mechanisms of agrarian reform (e.g. land regularization, demarcation, elimination of third-party claims, titling and land registration). Even legal conflicts are often channelled to agrarian tribunals, where the rules for arbitration may be inappropriate.

The Bolivian government is in the process of titling nearly 24 million ha to benefit 200,000 indigenous people (Pacheco, 2006). The case of Guarayos exemplifies the processes and outcomes that have ensued in some countries, particularly where indigenous territories are located near agricultural frontiers (see Chapters 3 and 5). Bolivian law recognized community lands and created a formal type of communal property for indigenous people known as a TCO (tierra comunitaria de origen, original community land). TCOs were created for individual communities, entire ethnic groups in multiple settlements or even several ethnic groups together. The government carries out a territorial needs assessment taking into account the group’s historical occupation of the region, livelihoods characteristics and the potential for population growth. Once the proposed size and shape of the TCO have been presented, the National Institute of Agrarian Reform (INRA) – in theory – prohibits the entrance of third parties establishing new claims.

Existing third-party claims are resolved through saneamiento (adjudication), but in practice stakeholders with more economic and political power have
been able to influence or slow the process to their benefit. Timber concessions were granted to 11 industries. Ranchers and farmers were beginning to lay claim to expansive territories that indigenous people had treated as commons. Colonist smallholders were encroaching on village space and occupying lands to establish claims. The initial promise of receiving a TCO quickly settled into a long, open-ended administrative process.

INRA failed to take into account the traditional indigenous system of agricultural zones and zones of influence (mostly forestland). It also focused on remote areas with low population that allowed titling to advance more quickly while avoiding zones where land claims were contested – areas of greater interest to local politicians and business. Populous problem areas were not addressed. Most Guarayo families, for example, were left without clear tenure and old and new third-party claimants had time to consolidate their holdings.

Despite such difficulties, the reforms have generally advanced tenure rights for indigenous peoples. For example, in Brazil, indigenous rights were recognized for about 100 million ha involving 500,000 people (Barr et al, 2002) and the state supports their exclusion rights. In Nicaragua, roughly 2 million ha of forestland is in areas being claimed by and demarcated for indigenous territories. The Philippines, too, has begun to recognize indigenous rights through certificates of ancestral domain, such as the one granted to the Ikalanah people in our study (Pullin et al, 2008; see Chapter 5).

These rights-based reforms have not only benefited indigenous peoples but also opened up opportunities for other claimants, particularly communities whose livelihoods depend on rubber, brazil nuts, acai, chicle or xate and/or whose basis for claims is the traditional, de facto possession of forest resources (Cronkleton et al, 2008). The policy responses and mechanisms devised by governments to satisfy the demands of these extractive communities also constitute a central piece of the forest reform. They include, for example, 20 million ha allocated to about 145,000 smallholders and extractivists in Brazil (CNS, 2005). In the Petén, Guatemala, about 500,000 ha has been granted through 13 forest concessions to local community groups (Junkin, 2007).

How secure are these new rights? Defending exclusion rights to common pool resources is an inherent problem, and given the relatively small populations and large size of these territories, enforcement is even more difficult. Outcomes depend on the institutional capacity of the residents, the characteristics of the tenure mechanism used and the state’s political will to defend the boundaries from incursion.11 Additionally, in Latin America (and most countries in Asia and Africa), the multiple interests of the state itself are a central problem. While one state agency grants rights to indigenous groups for extensive forestland, another grants subsoil concessions to industries for resource extraction (hydrocarbons, water and minerals). Rights frequently overlap (Barry and Taylor, 2008), and though legally coherent – the state is usually the owner of all subsoil resources – this duality results in state promotion of incursion into indigenous lands. The same problem occurs in parts of Africa (e.g. Ranjatson, 2009, on Madagascar).
and Asia (Moira Moeliono, personal communication, 2009, on Indonesia). Except in rare cases, such as Nicaragua, where communities may have the right to say no to subsoil concessions, depending on interpretation of the law (Larson, 2008), indigenous people have little legal recourse. Yet the incursions stand in stark contradiction to the fundamental nature of the rights they have been legally granted.

**Expansion of biodiversity conservation**

The second important force shaping forest tenure reforms has been the rise of the global movement for biodiversity conservation. The interests of this international conservation effort stemmed from awareness of the rapid rate of biodiversity loss, particularly due to deforestation in developing countries. It spurred an extensive expansion of forest zoning and conservation areas to protect forests from human intervention by establishing protected areas, biosphere reserves and national parks (Adams, 2004; Sayer et al, 2008).

**Origin and goals**

From the mid-1980s to the mid-1990s conservation areas grew at a rapid pace in attempts to meet the globally established goal of putting 10 per cent of Earth's terrestrial systems under conservation management. By 2004 the goal had been surpassed, having reached 12 per cent (Bray and Anderson, 2006) and a few world regions went far beyond. In 2003, Central America had almost 28 per cent of its land in protected areas; South America had 22 per cent; Southeast Asia had 16 per cent and eastern and southern Africa had 17 per cent (Chape et al, 2003). The growth of conservation areas, each with its own regime of rights and practices, would serve to restructure the zoning of forest land across many countries. New definitions of what should be set aside, what could support restricted use or what could be logged by whom, and what could be used by local people, redrew the boundaries of the permissible.

The implementation of zoning for conservation occurred more or less at the same time that demands were crystallizing in international law for the recognition of local peoples’ property rights (Fisher et al, 2005). The expansion of conservation into Latin America’s tropical lowland forests is simultaneous with the indigenous mobilization discussed above, often involving the same lands. Although this was sometimes conflictive, it also spurred attempts at coordination (COICA, 2003). In Africa, conservation, which had originated with the protection of wildlife species for elite colonial game hunting (Adams, 2004), had been transformed over time and by the 1990s had evolved into the protection of large-scale ecosystems encompassing the habitats of all the species of concern.

Roe (2008) describes the late 1990s to the early 2000s, in particular, as a period of ‘backlash’ against community-based conservation, which had garnered relatively strong support during the previous decade, as both ‘conservation and development policy merged around theories of sustainable
development’. This backlash marked a return to ‘protectionism’ based on the arguments ‘that community participation is a noble goal but diverts funding away from conservation, and has minimal effect on biodiversity conservation’ – a sentiment widely expressed at the 2004 World Conservation Congress in Bangkok.

As a major force reshaping the distribution of rights in forests, conservation policies were often contentious. They would prove to be one of the most highly centralized exercises of defining forest use ever, created not at the national level or at the seat of a colonial power, but from a few cities in a handful of northern, developed countries. The definitions of biodiversity and where it was threatened were determined mostly by northern, and often urban-based, scientists and conservationists. Although such people were at the cutting edge of their fields, their decisions demonstrated a distance from, and ignorance of, the intricacies of social life in and local perceptions of forests.

Biodiversity was defined as ‘total diversity and variability of living things and of the systems of which they are a part’, including ecosystems, species and genetic diversity (Heywood, 1995, p9).14 Humans were not included. Underlying premises included the belief that there were large expanses of pristine forests and other landscapes that should be preserved from harm by humankind (Sayer et al, 2008). Few efforts were made to understand the causes of biodiversity loss or the social complexities of these human-modified landscapes; consequently, false assumptions often led to drastic and erroneous measures.

Sayer et al (2008) note that conservationists acknowledged the lack of full understanding of how forest ecosystems really function and thus argued for a precautionary principle, which proved to be a factor in these massive set-asides. Technological advances and the decreasing costs of computer and satellite imagery made it far easier to establish baselines and track changes – such as forest fire and deforestation. Global awareness of macro-level forest dynamics jumped and was soon linked to understanding the role that forests (and other landscapes) played in maintaining a balance in global climate.

Much of this growing knowledge was housed in a few large, mostly US-based NGOs whose staff became the organizers and promoters of this new conservation agenda. During the 1990s these organizations witnessed enormous growth and became increasingly powerful in influencing the policies of national-level agencies and institutions in charge of forest management around the world (Khare and Bray, 2004). Together, these international conservation agencies came to enjoy budgets often equal to or larger than their counterpart environmental ministries in many developing countries, themselves suffering from fiscal downsizing. Between 1998 and 2002, the combined revenue of the three principal NGOs – Conservation International, The Nature Conservancy and World Wildlife Fund – made them the second most important conservation actors, after the multilateral banks’ conservation programmes (Khare and Bray, 2004).
Implementation and outcomes

After designating ‘hotspots’ or eco-regions, the conservation agencies next sought to gain the assent of national governments for the adoption of conservation areas, with a promise of financial and technical support. Some areas became only ‘paper parks’. In others, large-scale, wholesale rezoning of forest access and use created conflicts at many levels, especially with indigenous peoples (Colchester, 2000b, 2004).

In Central Africa the advance of the conservation regime met with little visible resistance as governments in some cases adopted conservation criteria into their forest zoning, either ignoring or evicting local forest peoples (Brockington and Igoe, 2006; Cernea, 1997, 2006). In Southeast Asia, protected area policies were often based on coercion and criminalization of people living near forests, and sometimes their eviction as well (Inoue and Isozaki, 2003); such a process is currently underway in northern Laos (Fitriana, 2008). Some Mexican and Central American conservation efforts redesigned whole rural landscapes: the large ecosystem approach to conservation drew boundaries for set-asides or limited resource use, sometimes including small towns and whole villages within their perimeters (Secretariat of Environment, Natural Resources and Fishing – SEMARNAP, personal communication). The margins of error were gargantuan, and legal battles and social upheaval often ensued (Plant and Hvalkof, 2001; Colchester, 2004).

Particularly egregious policies, such as the eviction of local peoples from protected areas – now disputed (Maisals et al, 2007) – have been more common in Africa and Asia than in Latin America (Brockington et al, 2006; Cernea, 1997, 2006; Adamson, 2003, in Bray et al, 2005). Dowie (2005), referring to ‘conservation refugees’, documents forced removals on three continents and discusses the growing discord between communities and conservation organizations, which are increasingly seen as the new colonizers. Displacement of peoples for conservation purposes is still underway in many parts of the world (see for example Ghate and Beasley, 2007; Baird and Shoemaker, 2005), though as Curran et al (in press) argue, some authors have exaggerated its prevalence.

In other contexts, where resident communities were ‘found’ and their claims to natural resources prevailed, conservationists promoted the imposition of management regulations (Bray and Anderson, 2006). By 2000, some conservationists realized that local forest dwellers were far more prevalent and numerous than originally estimated. Oviedo (2002) reports that about 86 per cent of national parks in South America are inhabited, mostly by indigenous and traditional peoples. Globally, more than 1 billion people (at least 25 per cent of whom are malnourished) live in global biodiversity hotspots, the 25 large-scale biodiversity priority areas identified by Conservation International, subsisting on less than US$1 per day (McNeely, 1999, in Molnar et al, 2004).

Regulations on people living in these areas include prohibitions on the hunting of certain wildlife species and the suppression of other basic practices of forest-agricultural systems. For example, from pre-colonial times until the
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present, swidden agriculture has been a central land-use strategy by peoples living in tropical forests around the globe. Groups of people (e.g. communities, tribes) typically recognize a territory that belongs to them (what Diaw, 2005, has called ‘collective property’) and forest clearing, planting and regeneration are both livelihood practices and a way of staking their claim to a part of the forest (see Chapter 4). Highly criticized by conservationists as destructive, shifting cultivation may have a role in creating and maintaining resilient, adaptive livelihoods and forest systems (Kerkhoff and Erni, 2005; Cramb et al, 2009).

Finding the forests more populated than expected, facing the demands of indigenous and other customary land claims, both on the ground and in the courts, and calculating the real costs of these exclusion schemes have led conservation NGOs and their national counterparts to move towards co-management approaches that incorporate greater participation of local communities in forest management. In some cases, these populations allied with conservation organizations, and the environmental agencies with whom they worked, against their common ‘adversaries’ (loggers, miners or ranchers). The establishment of the Maya Biosphere Reserve, straddling Guatemala, Mexico and Belize, evolved from outright hostility and the threat of social unrest, through clashes among NGOs, the government environmental agency and local forest dwellers (in the Guatemala portion), to a common agreement. Communities organized to protect their rights to forestland and resources and pushed for replacing the industrial timber concessions with community concessions (Monterroso and Barry, 2007; see Chapters 3 and 6). The result is a successful co-management arrangement between conservationists and community foresters (Nittler and Tschinkel, 2005).

Though limited mostly to temperate forests in developed countries, an important contribution of conservation efforts to forest management has been the emphasis on expanding the definitions and application of sustainable forest management criteria. One stream has focused on reduced-impact logging (de Camino, 2000; CIFOR, 1999); another has explicitly linked community management, sustainable forest management and conservation concerns (see for example Ritchie et al, 2000; Colfer and Byron, 2001). The establishment of principles for forest certification that recognized the social and economic realms helped raise awareness within the forestry community of the needs and possible contribution of local forest peoples (Molnar, 2003) and the potential of building on local governance systems (Gibson et al, 2000).

The fundamental issues of addressing global interests in biodiversity conservation and their impact on forests and forest-dwelling peoples remain only partially resolved, however. Roe (2008) summarizes the concerns as:

1. the impact and accountability of the activities of the big international conservation NGOs;
2. the apparently increasingly protectionist focus of conservation policy and the implications for communities in and around protected areas; and
the current lack of attention to biodiversity conservation on the development agenda, with the prioritization of poverty reduction and carbon sequestration.

Sayer et al (2008, p3) point out that ‘biodiversity presents special challenges in determining optimum arrangements for use and ownership of forests. Biodiversity has certain values that accrue primarily to the global community while local owners and users of the forest lack effective mechanisms to profit from these values’. With the resurgence of interest in forests under new climate change mechanisms, lessons from the experience of biodiversity conservation and its implications for forest tenure reform and governance would be well heeded.

Decentralization and natural resource management

The third factor shaping tenure reforms is democratic decentralization, defined as the transfer of power and resources from the central government ‘to authorities representative of and accountable to local populations’ (Ribot, 2004, p9). It is associated with the development and strengthening of local elected governments but often blends other arrangements. Decentralization as a global policy trend has been promoted in the name of local democracy by international organizations such as the World Bank, particularly since the late 1980s. Not all decentralizations have implications for natural resource management or for tenure rights; this section focuses on those that do.15

Decentralization has not been the primary driver of forest reform in Latin America. In Bolivia, however, both departmental and local governments participate in forest administration, and local governments can establish municipal reserves in up to 20 per cent of public forests to give as concessions to local logging associations. In Asia, decentralization has been central to forest reforms in Indonesia, where important powers over forests were granted to local governments, some of which have since been rescinded (Resosudarmo, 2005; see Chapter 4); the impacts on communities’ rights have been minimal, however. Community forestry in Nepal began with decentralization to panchayats (local governments) but has since shifted to devolution to community user groups (Agrawal and Ostrom, 2001). In the Philippines, community forestry emerged out of a wave of democratization policies after the fall of Ferdinand Marcos, but decentralization as a specific policy came somewhat later, granting a role to local government in policies that were already underway (see Pulhin et al, 2008; Magno, 2001). This section focuses on Africa, where the reforms are characterized by the nature of the interface between statutory and customary regimes.

Origin and goals

Decentralization is not a new phenomenon (Kuechli and Blaser, 2005; Sasu, 2005). What is new about current decentralizations is the emphasis on ‘democratic decentralization’, particularly through the formation of autonomous
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local governments (in its ‘ideal form’, Ribot, 2002), as well as a discourse promoting participation in decision-making, participatory democracy, pluralism and rights (Conyers, 1983). The theoretical benefits are well known by now: decision-making closer to local people should be more equitable, efficient, participatory and accountable and, possibly, ecologically sustainable. In practice, however, decentralizations have often been implemented in response to economic or political crises or pressure from donors and for reasons not always related to these goals. Ribot (2004, p8) summarizes the main objectives as government downsizing or, alternatively, consolidation (‘shedding risks and burdens’), promoting national unity, improving service delivery, increasing local participation and democracy and strengthening local government.

Agrawal and Ostrom (2001, p492) argue that ‘decentralization can be said to have occurred only when governments devolve property rights over resources’ in such a way that some level of decision-making over management, exclusion and alienation (the ‘collective-choice level of analysis’) is granted in the local arena. At the same time, there must be a set of ‘constitutional-level’ rules that secure local people’s right to make these decisions. ‘Simply granting rights to undertake operational-level actions is insufficient to justify claims of decentralization’ (Agrawal and Ostrom, 2001, p492). Nevertheless, in practice forest decentralization policies sometimes result less in devolving local control and more in maintaining or even increasing state control over local forests and forest communities (Becker, 2001; Sarin et al, 2003; Elias and Wittman, 2005; Schroeder, 1999).

Policies implemented in the name of democratic decentralization almost by definition affect tenure rights in public forests by altering the distribution of decision-making powers in the local arena; this is particularly true where customary tenure rights are widespread. In Africa, the state formally owns virtually all forestland in a number of countries (RRI, 2009), but some 60 per cent of the total forest estate is ‘off-reserve’ or not formally ‘classified’ by the state; in these areas, ‘customary and other unregistered forms of tenure dominate’ (Alden Wily, 2004). Decentralization policies in Africa present a mixture of maintaining or increasing state control (e.g. Mongbo, 2008), usurpation of power and benefits by customary authorities (e.g. Ntsebeza, 2005) or elites (e.g. Oyono, 2005b) and, at times, devolving rights to local communities, particularly in unclassified forests (Alden Wily, 2004).

Implementation and outcomes

Under colonialism, policies of ‘indirect rule’ for anglophone or ‘association’ for francophone Africa in a sense set up parallel societies, described by Mamdani (1996) as ‘decentralized despotism’, whereby Africans lived under customary law and authorities and Europeans and urban citizens lived under statutory civil law (Ribot, 2002). Though lauded at the time by some as a way to promote self-determination (Mair, cited in Ribot, 2002), indirect rule and similar colonial policies were later repudiated by many as racist, cruel and unjust.
The system was implemented by incorporating chiefs or other ‘customary authorities’ into the administrative structures of the colonial state. These authorities, which sometimes were not, in fact, customary at all, permitted the state’s administrative control and management of rural affairs. Chiefs were empowered by colonial authorities to allocate customary land for local use, which became the basis for their power (Mamdani, 1996). The legitimacy of both local governments and customary authorities was undermined by ‘the coercive abuses of the colonial state’ (Ribot, 2002).

Colonial forest policies were based on state control of forests and the incorporation of scientific forestry principles (see Chapter 7). French policies in west Africa, for example, established state ownership of forests under two classifications: classified forests, under direct control of the state, and protected forests, all others that were not privately owned; communities had the right to subsistence use of forests, but the state managed all commercial use (Becker, 2001). Chiefs were in charge of local land allocation but had no rights to manage forests (Ribot, personal communication).

In the first two decades following independence the top priority of many new postcolonial governments was to consolidate central control over the country. In many cases, this was a time of great political turmoil. Decentralizations that occurred during this period were ‘without exception’ in the form of de-concentration (Ribot, 2002). It was in the 1980s and 1990s that the discourse of democratic decentralization took hold. Today, the commitment to greater ‘devolved governance of society and its resources’ has been written into ‘20 or more new National Constitutions across the continent’; also, since 1990, 41 out of 56 African states have drafted new forest laws (Alden Wily, 2004, p2).

The implementation of this forest sector decentralization has taken several paths in shaping local tenure rights. Here we focus on general trends and the most important issues raised by our case studies in Cameroon, Ghana and Burkina Faso. In general, reforms overall have continued to maintain centralized decision-making power over forests. This is best summarized by Ribot (1999, p23):

*The current decentralization and participatory movement is devolving state-backed powers that are still administratively driven and locally administered by quasi-local quasi-representative bodies...In the context of ongoing administrative management of rural areas, participatory projects and laws create privileges to be allocated mostly by foresters and councilors, often with burdensome responsibilities, rather than rights for communities and individuals that the state would defend. Such projects and laws administer local programs rather than devolve control. They back centrally chosen and/or non-representative powers rather than supporting representative systems of local governance.*

Rights to classified or priority state forests, which tend to be the richer and more valuable, have been granted to communities at best through co-management
arrangements in which the state plays the central role in all management decisions. Communities are somewhat more likely to gain more substantial decision-making powers in less valuable forests, where communities have enjoyed greater de facto or customary control previously; in a few countries these have even begun to be registered as common property to communities (Alden Wily, 2004). In other cases, however, forest administrations have only granted local rights while also increasing their own management role (e.g. Oyono et al, 2006).

With regard to tenure rights, the central issue of concern is the extent to which reforms increase or reinforce rural people’s rights to land and forest resources. On the one hand, however, ‘recognizing customary rights’ sometimes involves reinforcing the power of customary authorities who may fail to act for the benefit of communities; on the other hand, granting greater power and oversight to elected local governments may undermine customary rights and practices through greater state interference. Based on his research in Mali, Benjamin (2008, p2260) found that the superimposition of modern legal institutions on community institutions through decentralization created ambiguities that ‘can undermine both the authority of nascent local governments and the performance of customary institutions’.

In our cases, the types of reforms studied involve benefit-sharing arrangements, community forests and community concessions. In Ghana, the constitution provides for a portion of revenues from logging to be returned to the local sphere, through both local governments and chiefs. The larger portion is provided to chiefs, without clarity regarding their obligations to spend these funds to benefit communities; most use them for personal gain (Marfo, 2009; Chapter 5). Cameroon’s community forests are granted not to customary authorities but rather to newly created management committees; these are often usurped by local (and sometimes external) elites, who can finance and maneuver the complicated requirements for approval (Oyono et al, 2008).

Concessions in Burkina Faso vary based on the forest classification, with greater room for customary practices and local decision-making in those forests of less interest to the forestry administration. These unclassified forests are under elected village councils whose decisions are subject to approval by the local government (Kante, 2008; Chapter 5). It remains to be seen whether this approach will succeed in respecting and reinforcing, rather than undermining, customary rights and practices, but at least some people trust their traditional authorities more than local governments (see Diaw, 2009).

One of the paramount issues is how to respect people’s customary rights and practices while not reinforcing unaccountable customary authorities who may usurp benefits intended for communities. As Alden Wily (2008, p46) writes:

‘Tradition’ (or custom) especially need[s] to be put in context, for it is not necessarily the substance of old rules or even the identity of rule-makers that needs embedding in statute but that such arrangements derive from the ‘communal reference’ – the fact that
local community, not state is the source of decision making, norm making, regulation and enforcement.

The question is not which entity is a better representative of local people but whether it is possible to negotiate fair, workable solutions grounded in such a ‘communal reference’ (e.g. Benjamin, 2008).

Discussion and conclusions

Fundamentally, in today’s reforms, rights are granted to a collective rather than to individuals, alienation rights over the land are not granted, the state maintains an important ongoing role in forest management and the forest is expected to remain intact. Reform is aimed at three objectives simultaneously: addressing demands for greater rights from communities already living in forests, improving livelihoods and promoting conservation.

Three global forces or dynamics have shaped these reforms: demands for indigenous rights, conservation and decentralization. Indigenous rights have played a central role in driving reforms in Latin America; decentralization has been the principal driver in Africa. Conservation has played a role globally and all three dynamics have been important to some degree in Asia. Each of these forces, in each national (and local) context, shape the playing field by influencing who has which powers and rights over which resources.

The indigenous rights struggle brought the criterion of rights into tenure reforms globally, even if the initial intent involved ethnic identity, ancestral occupation and use of forestlands. In practice, this opened the way for recognition of non-indigenous forest-dwelling peoples’ rights as well. The rights of forest dwellers became the starting point for determining the location and extent of forest access and use areas, and local people were recognized as agents of conservation. Some indigenous groups have won a certain degree of recognition of self-governance, as well as respect for their culture and identity. Historical land-use practices were used to determine the boundaries of territories and sometimes these were drawn through participatory mapping practices. Indigenous perspectives also introduced greater recognition of multiple uses and more holistic views of forests.

Some challenges have not been addressed, however. For example, land-use mapping can define the perimeters for demarcation and titling but has not had the capacity to recognize – for the use of communities themselves – internal and socially embedded systems of customary rights to land and resource use. Also, territorial demarcation has often raised issues regarding representation and decision-making on behalf of the collective, since it has almost always created a demand for new levels of governance, as well as difficulties in defending the borders of the territory. These rights reforms have also been introduced in part to respond to a moral commitment. They fail to offer incentives for effective forest resource management and market participation, where these are desired by communities. Finally, the state undermines these commitments by giving out
subsoil rights overlapping indigenous land and resources and fails to honour or
back exclusion rights.

Forest conservation efforts have ensured that a broad set of forest values
are respected by reforms through the emphasis on biodiversity and the global
value of forests. It has introduced and promoted the application of broader
scientific criteria into the framework for forest management through the
development of new principles for low-impact logging, certification schemes
and formal community management. At times, the alliance of conservation
interests and local groups demanding forest rights has been critical in winning
state and donor support for reforms.

The recent global approach to conservation, however, has tended to
stem from elite and external determination of forest resource rules, with little
understanding of the needs and rights of forest dwellers, their historic role (at
times) in conservation and conflicting definitions of biodiversity. Top-down
zoning and regulation by distant policy-makers through rigid categorization
promotes exclusion, restricts and undermines customary rights and management
practices and overburdens livelihood options for both subsistence and market
access. Protection without people has not worked and attempts to create such
formal management regimes have sometimes destroyed local governance and
management capacity without providing an effective alternative.

Decentralization policies have also had mixed results. Though not
designed as an instrument for tenure change, depending on its goals and
how it is implemented, decentralization affects the realm of local rights
over forest resources. In some countries, decentralization has contributed
to greater understanding and recognition of customary rights and practices
of local resource management. It has the potential to promote greater and
more democratic local decision-making as well as to address complex and
overlapping tenure regimes.

Yet decentralization has often perpetuated or even deepened and extended
a colonial-type state role in local forest management. It has also encountered
significant challenges at the interface of statutory and customary practices and
rights, sometimes imposing the former or overlaying it on to the latter, failing
to protect rights and promoting greater insecurity. Similarly, decentralization
has brought to light complex issues of customary authority: some customary
authorities are more legitimate or contribute to better forest management
practices, but others are autocratic and unaccountable and usurp benefits
and decision-making intended for communities. So far there has also been
little acknowledgement or successful integration of indigenous knowledge
and management practices with other management efforts. Reinforcement of
only upwards accountability in the decentralized structure works against local
development and fosters corruption. Decisions over tenure rights are often
highly vulnerable to policy change, thus promoting insecurity.

In this examination of the forces that shape today’s transition in who
has what rights over forest resources, we see the absence of a shared and full
understanding of the nature of and challenges implied in the reform. The forest
as a social and ecological construct with multiple values of local, national
and global importance is abandoned, maybe has never been grasped. Each ‘uncle’, whether the indigenous rights movement, decentralization processes or conservation agents, brings its concerns and goals to the fore and attempts to ‘manage’ and benefit from forests from its vantage point. Yet the forest, in its multiplicity of functions and uses, and forest dwellers remain only partially tended to, often undermined and certainly far from being empowered to play their potential role. With the advent of new global interest in forests stemming from concerns over the role they play in climate change, the question is whether this new force will be capable of integrating a global understanding of what a forest and its peoples mean for their preservation, and how getting the rights right will make a difference in maintaining both – or whether it will be another, distant uncle.

Notes

1. By ‘forestry’ we mean forest science, forestry agencies and policies designed specifically for the forest sector.
2. This is not to be confused with swidden agricultural systems where land clearing formed part of a forest, though this kind of clearing also established claims within the local or customary systems.
3. Under the current neo-liberal view, land is seen as a commodity rather than a social institution (El-Ghonemy, 2003).
4. In general, the anti-poverty programmes developed under neo-liberal reforms were designed in response to the negative and often dramatic impact of structural adjustment policies. Conceived of as ‘safety nets’, funds were targeted at the most vulnerable populations. Design and implementation varied by region, but these funds were expected not to propel rural areas into modernized development, but rather to guarantee a flow of welfare supports.
5. Effects varied enormously in Asia, Africa and Latin America in terms of the size, budget and political power of the forestry institutions and agencies.
7. As of 2004, 17 countries had signed: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominican Republic, Ecuador, Fiji, Guatemala, Honduras, Mexico, The Netherlands, Norway, Paraguay, Peru, Venezuela (GTZ, 2004).
8. Mexico is the exception; the Revolution of 1917 and subsequent 40 years steadily gave recognition for indigenous communal lands and some customary forms of governance (Bray et al, 2005).
9. In theory, this would include the use of swidden systems within these large territories.
10. This is mirrored in the multilateral funding agencies, where little coordination exists between Land Administration and Forest sectors.
11. For example, in Brazil the National Foundation for Indians (FUNAI) plays a very active role in maintaining the outer boundaries of indigenous territories, and the Brazilian Environmental Agency (IBAMA) plays the same role in the case of extractive reserves. In contrast, in Bolivia indigenous people have no similar state agency looking after their interests.
12. For a visual reference, see the first digitized map of the officially recognized indigenous lands and conservation areas and their overlap in the Amazon basin: www.raisg.socioambiental.org (last accessed September 2009).

13. A well-known example of this was the coordination and support given by the conservation organizations to Chico Mendes and the rubber tapper movement in Brazil, which mobilized global awareness of the fate of the rainforests.

14. Redford et al (2003) categorized the sometimes quite different definitions of biodiversity implied in different approaches. Biodiversity targets and objectives can range from valuation of the presence of a species, ecosystems and ecological processes, scenery and landscape integrity to biodiversity measured as an intrinsic good or something of current or future utilitarian value.

15. Over the past decade researchers have analysed the impact on forest governance of this recent wave of decentralization (e.g. Colfer and Capistrano, 2005; Colfer et al, 2008a; Ferroukhi, 2004; German et al, 2009; Ribot and Larson, 2005; Larson and Soto, 2008).

16. This is similar to what Latin America underwent during the Spanish colonial period, a phenomenon referred to as caciquismo, with indigenous leaders co-opted to serve as a liaison class between the communities and the colonial powers.

17. The transfer of powers to branch offices of central government entities.