

Forests for People

Community Rights and Forest Tenure Reform

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Conclusions and Reflections for the Future of Forest Tenure Reform

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This book has explored the experiences of forest tenure reforms in 11 countries, across dozens of regions and communities, with the goal of understanding their origins, processes of implementation and outcomes for local life and forest conditions. As we have seen, these reforms range from those that are somewhat older to those that are incipient and vary from new revenue rights and short-term concessions to full-fledged statutory ownership and land titles. The granting of rights has sometimes transferred limited new rights or taken away others and has often been laden with responsibilities to conserve forests, but it has also offered new livelihood opportunities and/or improved forest condition in many cases.

These tenure reforms cannot be fully understood without knowledge of the political-historical context of each country and the dynamics of other important processes affecting governance at the same time. Their outcomes cannot be separated from the many social processes in which they are embedded. This book, however, has focused on the reforms as a little known or understood global trend – and has thus sought to understand both its breadth, across nations and world regions, and the in-depth issues it involves.

To summarize the vast set of experiences and issues, this concluding chapter first reviews some of the principal findings and then discusses central issues and concerns raised by the reforms. This is followed by a discussion of

the emerging challenges of global climate change in light of the research. The chapter closes with a short proposal for the future of tenure reform.

Research findings

Forest tenure reforms have arisen for a number of reasons. ‘Top-down’ reforms have been developed because of concern over deforestation, to share conservation costs, to obtain support for government policies, to promote social justice and rights under new democratic regimes, to respond to donor pressure for larger reforms and to appease internal dissent or demands. ‘Bottom-up’ reforms have emerged because people see opportunities to reclaim historical rights to forests that have been taken away, or because the forests over which they have customary rights are being invaded or threatened by outsiders. At times, reforms have arisen when communities seek help from the state for forest management or conservation.

Taken as a whole, forest tenure reforms are different from past land or agrarian reforms in that rights are granted over collective, rather than individual, properties and alienation rights, or the right to sell the land, are not granted. In addition, the state maintains an important management role in relation to the expectation – or rule – that forests remain intact. Land is not redistributed; rather, rights tend to be granted to people already living in and using forests. Finally, reforms are aimed not only at livelihoods or development concerns (and sometimes land rights), as in the past, but also at addressing ancestral rights of indigenous communities and promoting forest conservation.

Indigenous rights movements have been a major driver of reform, particularly in Latin America; in Africa, in part because of overwhelming formal state ownership of forests, decentralization has been the principal driver, though tenure reform was not necessarily among its goals. Both of these forces have played some role in Asia, as have community forestry policies in some countries. Global conservation interests and actors have shaped the nature and extent of reforms in all three regions.

Indigenous demands have been central in the introduction of rights-based approaches to reform and may have achieved the most in terms of the extent of reforms – but they also may have met the most resistance. Decentralization has provided opportunities for greater local decision-making but is faced with the challenging interface between statutory change and customary practices and authorities, as well as the ongoing tendency of the postcolonial state to centralize power. Conservation interests have guaranteed that attention to forest conservation is taken into account in reforms but often at the expense of community rights and livelihoods, and possibly even of customary practices that have sustained forests as well.

Forest reforms – at least those that have been effectively implemented – have generally granted use rights and exclusion rights to forests, but management rights have involved varied and sometimes complex combinations of local and state decisions and responsibilities. In some cases, the state retains all the decision-making power and communities are left only to implement responsibilities to

protect forests, but often the balance of power is more complex. For example, there is usually a distinction between higher-value (often timber) and lower-value (often non-timber) resources, and/or between commercial and subsistence uses, with communities granted greater decision-making over the latter and less over the former in both cases. Management rules, which are often mandated by the state, also place restrictions on withdrawal rights. Hence the bundle of rights is not cumulative in practice, as it is commonly conceived in theory. Rather, if exclusion rights are granted, the nature of management rights may be one of the deciding factors that characterize the *extent* of the reform, as it defines the degree and nature of decision-making that is permitted in the local arena. In general, retention of major management rights by the state has attenuated reforms and the recognition of local rights. Another issue is the permanence of the reform: whether it is temporary, revocable or granted in perpetuity. For example, rights may be granted to communities through presidential decree, forest acts or regulations, but all of these are vulnerable to unilateral reform. Rights granted through laws are more secure, and a constitution even more so.

The granting of certain rights through reform may actually have the effect of taking rights away where communities are already living in forests and already have local institutions for land and forest access and management. These institutions may be based on customary or other *de facto* rights. This clash between statutory and customary systems is most apparent, and has been most studied, in Africa but is relevant to some degree in most sites that have some level of functioning collective action or institutions. The state may seek to suppress, ignore or support these local or customary institutions (Benjamin, 2008), though the effect of ignoring them may also be suppression. For example, the granting of rigid exclusion rights to sedentary communities is often done without consideration of the customary rights of seasonal resource users, such as transhumant pastoralists.

The imposition of state rules and interests over existing customary practices is likely to result in ‘sterile dualisms’, whereby ‘impracticable state law [coexists with] unauthorized local practices’ (Benjamin, 2008, p2256), or ‘forum shopping’ (von Benda-Beckmann, 1981), in which people choose which rule they will follow based on their particular interest. It may also undermine effective local institutions and lead to open-access dynamics (Fitzpatrick, 2006). At the same time, not all local institutions are effective at forest management, either for internal use or for preventing invasions by outsiders. Communities sometimes request greater state intervention to improve forest condition or tenure security. It remains fairly uncommon, however, for states to recognize and support effective local institutions and practices and to integrate statutory and customary systems effectively.

In addition to recognizing the land and forest resources that are managed, at least to some extent, by customary practices, community tenure reforms also involve creating or recognizing a governance institution that represents the community. The size and boundaries of the forestland ceded by the state to local communities may coincide with an existing institution, but often a

new level of governance and the formation of a new structure is required. This new institution is likely to play a central role in the allocation of rights to and benefits from forests, and a legitimate and effective institution ready to assume a new domain of powers on behalf of the community or at the larger scale may not exist prior to the reform.

Hence authority relations and the scale of their existence constitute a site of struggle and conflict. For example, the state and the community may not recognize the same actor as the legitimate community representative, or the recognized actor may not be accountable to the community. The construction of legitimate and accountable authority is a critical challenge for reforms involving communal or collective rights and, even in the absence of overt conflict, may involve delicate negotiation between traditional and modern political institutions. A trusted facilitator who can bridge those two cultures can be useful in such negotiations.

Other organizations beyond the community scale offer additional opportunities, and challenges, for representation. Given the failure of many states to carry out tenure changes fully or facilitate access to benefits from forests, community networks and other forms of collective action can be definitive for defending and increasing community rights and for improving market engagement. In fact, such networks can spend considerable human and financial resources just to defend community forest rights against competing interests, such as logging companies, colonists, conservation organizations and sometimes the state itself. With regard to market engagement, the most successful network, in the cases studied, is a producer federation that was set up specifically for this task; it appears much more difficult for political organizations to take on this additional and different set of challenges.

As political organizations, however, community networks such as the Federation of Community Forest User Groups, Nepal, have proven to be integral to stopping bureaucratic encroachment and negotiating new terms of engagement between communities and the state, especially where the state limits the rights granted to communities through regulation. This is partly related to the issue of co-management, mentioned above, but also goes beyond that. One type of regulation involves the macro-scale classification and zoning of forests, especially in Africa and some parts of Asia, whereby certain, usually higher-quality, forests fall under one classification (for industrial concessions or conservation) and lower-quality forests under another. This 'first cut' of defining who has access to what kind of forest often precedes the formal tenure reform, which may then recognize community rights only to forests with lower classifications, as in Cameroon, or to forests of lower value more generally, as in Nepal. Other types of regulations limit access to certain resources or require communities to jump through bureaucratic hoops to obtain permits. Though some regulation is important to protect forests for the future, existing legislation commonly includes rules that cannot be enforced and buttresses unnecessary and sometimes corrupt bureaucracies.

Regulations can make certain markets off-limits to communities, either through specific prohibitions or rules for compliance that are costly or

otherwise prohibitive. Not all communities want to engage with markets and some believe that markets only allow others to capture rents from community resources and products. Most regulations affecting market access are skewed in favour of large industry or traders. Nevertheless, markets can also present opportunities and communities often engage with them informally if formal participation is too difficult or bureaucratic. Through regulations, the state can play a central role in affecting whether markets are opportunities or a danger for communities.

One factor affecting the outcomes of different forms of market engagement is community capacity. A common alternative to subsistence models, particularly in Latin America, has been the preconceived community forestry enterprise model, designed on the operating premises of large-scale logging, often for international markets. Whereas subsistence models may lead to much smaller livelihood improvements, the enterprise model can overwhelm communities with the demand to create new institutions and rapidly assume responsibilities and capacities, and it tends to foster external dependence. An emerging challenge is how to build an array of more appropriate, organic models that address both conservation and livelihood needs and are sustainable over the long term. The variety of cases examined here suggest that there is substantial room for policy improvements that would both build community capacity and address structural market distortions, such as legal and regulatory barriers, patron–client relationships and asymmetric information. Much less attention is usually paid to the latter.

Market conditions are another aspect that can affect outcomes for communities. Tenure reforms that facilitate engagement in timber markets provide the largest livelihood improvements as measured by change in income, particularly through the enterprise models mentioned above. But most of the reforms resulted in some kind of livelihood benefit when this was measured more broadly to include intangible benefits, such as empowerment or an end to outside intervention (such as state-authorized logging concessions) and access to new forest products and income. Reforms do not always improve resource access, however, and may even decrease it, at least temporarily and/or for some actors or products. This is because new rights are often accompanied by new restrictions, rules and responsibilities, and some resource users, particularly poor and marginalized groups, may be left out.

Most importantly, however, livelihood benefits are limited because of what happens after new rights have been granted on paper. During the process of implementation new rights are challenged and obstructed, both by state bureaucrats and by other powerful interest groups. And even when rights to forests are implemented in practice, little may be done to facilitate the exercise of those rights, such as through building community capacity, an enabling regulatory framework and beneficial market engagement, as discussed above.

Like livelihood improvements, which should be understood in light of these accompanying measures, changes in forest condition must be analysed in context. This is because forest conditions, in general, reflect multiple factors, some of which are outside the control of communities, such as pressure from

loggers, miners, colonists or growing populations. It is notable, however, that forest conditions improved in cases where communities were given degraded lands and forests (particularly in Asia) and forest conditions did not decline under community management in several other cases, even when livelihoods improved.

Our research was also intended to explore implications of tenure reform for equity. The findings indicate that positive outcomes – avoiding elite capture, remedying gender and caste discrimination – were the result of specific policies and practices aimed at promoting equity, sometimes through positive discrimination. It is significant that the communities with the greatest apparent efforts to promote the rights of poor and disadvantaged groups are in Nepal, a country that has a powerful national movement and discourse promoting such policies. This alone does not remove structural disadvantages, but Nepal is clearly ahead of most of the other cases.

Central challenges

As the previous discussion has made clear, understanding reforms and their outcomes involves understanding three stages of the reform: the statutory change and its origin, the implementation of that change and the way in which the reform facilitated – or was combined with other factors to facilitate – improvements in livelihoods and forest condition. Each phase involves a different set of challenges and the statutory change is only the beginning of the reform process.

Statutory changes do not all promote sweeping changes in rights. The more ambitious reforms often emerged from grassroots demands – particularly for indigenous rights to traditional lands. In all cases, the implementation of reforms encounters delays and obstacles: competing interests and claims for the same forests or forest resources (whether from loggers, land grabbers, private industries or conservation organizations), lack of follow-through and the state's attempts to attenuate the rights granted. In fact, the state is charged with implementing statutory reforms, but another sector of the state may also be a competitor for resources. In particular, the cases studied demonstrate foot dragging in land titling, policy reversals, corruption and regulations of all kinds, as well as the failure of the state to defend new community rights from competing interests and intrusions.

Organized communities – and, in particular, community networks and federations – are better placed to defend their rights against these challenges. What actually gets implemented, then, is a result of struggle and opportunity combined, as reforms advance when communities and their allies take advantage of political moments. But political opportunities may arise before effective and accountable local management institutions have had time to form, which puts the benefits of reform at the risk of elite capture and the promotion or continuation of other inequities. It is not clear how to reconcile these contradictory needs. Hence the third stage of the reform, the facilitation and realization of benefits, faces two additional challenges: on the one hand,

devising policies and programmes to bolster new opportunities and, on the other, supporting the creation of effective internal governance institutions and accountability mechanisms for decision-making and benefit distribution.

In general, across the three stages of reform, the obstacles facing communities can be grouped into three types: political, technical and conceptual. Most of the obstacles discussed so far are political and refer to competition for rights, resources and benefits from forests. They involve actors who oppose or interfere with reforms because they believe they have something to lose if communities are empowered, or who take advantage of reforms for their own gain: loggers, mining or petroleum companies that want resource rights, conservationists pushing for exclusive protected areas, bureaucrats who hold on to power and line their pockets by controlling decisions and resources, community leaders or elites who seek a disproportionate share of benefits. These political challenges require organized political responses.

Nevertheless, not all interference or problems with failed implementation or follow-through are due to political competition and corruption. Technical obstacles refer to capacity issues. The failure of the state to demarcate territories accurately, fairly or in a timely fashion, for example, may reflect a problem of human resources, such as experience or skill, or of funding. For their part, communities may not have experience in organized, collective forest management. Most reforms are new and constitute a steep learning process for all involved. Technical weaknesses, however, can be confused with more intentional delays and can also serve as a smokescreen for political interests of powerful actors. In addition, forest and environmental agencies are often reluctant to cede or share their technical roles with communities. Overcoming these weaknesses requires political will to obtain the knowledge or undertake the training required to move the reform process forward.

Conceptual obstacles refer to the extent to which communities are seen as, and given the chance to be, good forest stewards. Conceptual obstacles may also serve as a smokescreen for political interests, but there are real, legitimate concerns about the future of forests if communities are given greater rights. At the same time, from a rights perspective, and taking into account historical and traditional rights and past abuses of traditional peoples, communities should be granted their legitimate rights and should not be subject to laws and regulations other than those that apply to the rest of the population.

Some rights issues may have long-term consequences for – and beyond – forests. What are the economic, social, cultural and scientific consequences of declining customary practices and traditional knowledge due to use restrictions and the superimposition of state regulations over local rules? We may not know until it is too late. Transhumant pastoralism in Nepal's high hills constitutes a way of life for ethnic groups such as the Sherpas, Bhote and Tamang as well as a lucrative profession. It contributes to the national economy through the supply of milk, meat, draught animals and woollen goods, international trade and the identification of the region's species. But herder populations are declining as they are being banned from grazing their animals in forest areas and forced into smaller regions (Banjade and Paudel, 2008).

What are the consequences for forests? Outside ‘experts’ often appear to mistake sustainable local practices for degradation and take strong stances against an idea – fire, shifting cultivation, ranching, herding – without fully understanding each practice, its context or its long-term role in shaping forest landscapes; these ideas then become self-perpetuating and inaccurate narratives of degradation (Fairhead and Leach, 1996, 1998; Kull, 2004; Dove, 1983). In Nepal, pastoralists improve protection against forest fires and have superb ethnobotanic skills, traditional knowledge that may now be lost. Past evidence suggests there has been coordinated pasture management as well, with seasonal restrictions, rotational grazing and well-defined and mutually agreed rights.

We have already discussed at length the extent to which regulation – understood as over-regulation – interferes with new tenure rights, as the state retains the right to make important decisions about resource management. How much and what kind of regulation is really needed, under what circumstances and why, and how much is too much? Rather than starting from the perspective of state regulation, however, we propose starting from communities: what are local needs and practices and what potential do they have for sustainable, grassroots forest management? Fundamentally, if greater local control and appropriation is behind the principle of better and more sustainable management – and if greater long-term security promotes a long-term interest in sustaining resources – then to what extent do over-regulation and the retention of management rights interfere with its potential?

Fitzpatrick (2005) argues that the design of tenure reforms should be based on an assessment of the sources of tenure insecurity affecting communities (see Chapter 4). According to Fitzpatrick, the more external the insecurity, the less the state should interfere in internal affairs and, rather, focus on defending the perimeter of the community’s customary area; the more internal, the greater the role for the state in mediating decisions over access.

A similar argument could be made regarding tenure reform and the causes of deforestation (see Table 10.1). The more external the causes of deforestation, the more the reform should seek to strengthen the community’s exclusion and internal rule-making rights, while providing appropriate forums for negotiation with poor, external users (see Mwangi and Dohrn, 2008); the more internal, the greater the role for the state.

Current forest conditions should guide decisions regarding the extent to which recovery or maintenance of forest conditions (or management for certain products) is the priority. Internal incentives for forest maintenance, such as livelihood contributions or cultural values, should be reinforced and external pressures controlled. This constitutes another critical variable.

Table 10.1 merits some important caveats. First, it assumes that tenure rights have been granted or recognized and address underlying problems of insecurity. Second, it refers only to proximate causes of deforestation. The state itself may be an underlying cause of degradation if it promotes contradictory policies or specific policies that encourage forest clearing. These policies should be addressed as well. Third, external degradation may be a cause of internal degradation (Ribot, personal communication), if local people overexploit their

Table 10.1 *Degree and type of state regulatory role based on causes of deforestation and forest ‘dependence’*

<i>Contribution of (standing) forest to livelihoods or cultural reproduction</i>	<i>Causes of deforestation/degradation</i>	
	<i>External (or none)</i>	<i>Internal</i>
Strong	No state intervention in community: state protects borders	Moderate state role: state facilitates rule enforcement
Weak	Moderate state role: state protects borders and facilitates organization and incentives to increase livelihood contribution*	High state role: greater state regulation of forest use (but communities still have right to participate in decisions)

* if desired by the community

Source: Elaborated by the authors based on ideas from Fitzpatrick (2005)

own resources rather than have them ‘stolen’ by outsiders. Hence external degradation should be addressed first and in this light: state facilitation of internal rule enforcement may not be needed.

At times, a strong role for the state will be justified, including through restrictions and regulations. But reforms should not be a way for the state to gain control over communities: forest departments still tend to blame local populations for degradation, failing to see communities as allies. Of particular concern are responsibilities that significantly constrain livelihoods, especially those of the poorest members of society; the failure to address or even recognize preexisting practices or the costs to communities of newly assigned responsibilities; corruption and rules that are unenforceable. The tenure reform should aim to reinforce or alter the incentive structure in favour of the use and conservation of forest products. The state should seek to provide incentives and increase capacities for local forest management, building on the potential knowledge, energy and indigenous organizational structures that are currently ignored or marginalized – an opportunity that has not yet been grasped and needs to be harmonized with formal management systems.

Forest tenure and emerging global concerns

The research conducted here examines cases in which communities have been granted greater statutory rights to forests. It demonstrates the benefits of these reforms, as well as some risks, and the many obstacles they have faced in implementation. Though formal statutory rights are not always needed and may at times (depending on how they are implemented) undermine some customary rights or a certain population’s customary rights, formal rights appear to be particularly important in the face of competing interests with multiple stakeholders; and they may be increasingly important for the future security of forest rights – particularly with regard to climate change.

Climate change adds several new dimensions to an already complex framework of rights and resources. Forests both contribute to climate change and are affected by it, and forest-based populations are vulnerable both to direct climate change effects (ecological change, changing weather patterns, extreme events) and to competing interests for those forests or lands as mitigation schemes (such as carbon markets and bio-fuels expansion) mature.

The role of forests in influencing and responding to climate change is not fully understood (Science, 2008). Nevertheless, it is estimated that forests contribute more than 17 per cent to anthropogenic carbon emissions (IPCC, 2007). Higher global temperatures are expected to cause longer dry seasons and increases in forest fires and fire intensity, as they already have in some areas; they have also caused disruptions in seasonal patterns, such as rainfall or bird migrations, which may no longer be reliable indicators for making local land-use decisions (Macchi et al, 2008). In Nepal, climate change is leading to rising temperature, glacial retreat and changes in water availability. Extreme weather events such as hurricanes are also expected to increase; Hurricane Felix interrupted our research in Nicaragua. Changes in weather patterns and forest ecosystems will also affect the availability and distribution of wildlife and forest products.

The ability of populations to respond and adapt to these kinds of challenges depends to a large degree on policies. An International Union for the Conservation of Nature (IUCN) report on climate change concludes,

[I]nstitutions and policy makers play a key role in empowering indigenous and traditional peoples by securing and enhancing their entitlement to resources including land, water, biodiversity as well as health care, technology, education, information and power in order to improve their capacity to adapt to climate change and decrease their social and biophysical vulnerability. Where institutions fail to secure these entitlements, the resilience of indigenous and traditional peoples may decrease and the threshold, beyond which a system may not be able to adapt to environmental change, may be exceeded. (Macchi et al, 2008, p22)

Though not all of the forest-based peoples studied here are indigenous, indigenous peoples constitute a particularly well-organized population globally that has issued its own formal declarations on these issues. One of the most important of these is the explicit priority given to food security. The Anchorage Declaration issued from the Indigenous People's Global Summit on Climate Change in early 2009 states:

In order to provide the resources necessary for our collective survival in response to the climate crisis, we declare our communities, waters, air, forests, oceans, sea ice, traditional lands and territories to be 'Food Sovereignty Areas,' defined and directed

by Indigenous Peoples according to customary laws, free from extractive industries, deforestation and chemical-based industrial food production systems (i.e. contaminants, agro-fuels, genetically modified organisms). (Anchorage Declaration, 2009)

But without secure and enforced land and resource rights, indigenous priorities for food security and cultural reproduction are challenged even further by climate change. In addition to ongoing demands for land and forests by competing actors, mitigation proposals also threaten forest peoples, such as through the expansion of bio-fuels and the reducing emissions from deforestation and degradation (REDD) schemes. Bio-fuels have increased the demand for land and though in theory they should not expand into forests (thereby negating any potential positive greenhouse gas emissions effects), this has occurred in some areas: in Indonesia, for example, the expansion of oil palm plantations has led to violence and repression and the takeover of indigenous lands without due process (Seymour, 2008).

Indigenous peoples have also issued their own response to REDD schemes, demanding that all initiatives ‘secure the recognition and implementation of the human rights of Indigenous Peoples, including security of land tenure, ownership, recognition of land title according to traditional ways, uses and customary laws and the multiple benefits of forests for climate, ecosystems, and Peoples before taking any action’ (Anchorage Declaration, 2009). As currently conceived, REDD strategies contemplate providing payments for avoided emissions from forest clearing and degradation (see Angelsen, 2008). REDD is a climate change strategy, however, not a poverty alleviation strategy, and the needs of poor people living in forests have not, at least not yet, been taken into account (Griffiths, 2008). Many people fear the consequences for local people and believe that REDD will not succeed without the support of indigenous groups (Brown et al, 2008; Griffiths, 2008; Macchi et al, 2008; Cotula and Mayers, 2009).

The problems are numerous. REDD and carbon markets introduce another layer of tenure rights to five pools of carbon – underground biomass, above-ground biomass, deadwood, litter and soil organic carbon – over the existing web of rights to land and forests. The question of who retains ownership over which carbon pool is significant in terms of the distribution of benefits from carbon marketing. In many cases the state might retain ownership. If, due to the actions of the local community, there are fewer forest fires and less deforestation, more carbon is retained in the biosphere; and if carbon stock increases, such as through the protection of natural regeneration, more carbon is captured from the atmosphere. But without clear rights over forests and carbon, it is likely that communities would not be able to claim benefits from REDD schemes, to the detriment of efforts to mitigate climate change.

Proposed REDD strategies fail even to acknowledge or address existing forest governance problems including, but not limited to, tenure as well as international human rights standards (Griffiths, 2008; Seymour, 2008). They are aimed at providing payments for avoided deforestation and hence could

‘reward polluters with a history of forest destruction’ but not those forest populations who already maintain and protect forest resources (Griffiths, 2008, p2). While this makes sense purely from an efficiency standpoint, it could undermine the legitimacy of the entire effort, foster conflict and provide perverse incentives for deforestation. Also, without secure tenure rights, local communities are ‘vulnerable to dispossession – which could be a major concern if REDD increases land values and outside interest’ (Cotula and Mayers, 2009, p3). Indigenous groups have demanded participation not only at the sub-national scale but also in global REDD negotiations.

The research presented throughout this book demonstrates that competition for forests and forestland is already fierce and that forest-based communities are often marginalized both in decision-making spheres and from access to forest resources and benefits. Even when they win new rights, serious challenges remain: for the implementation of rights in practice, for the defence of those rights and for the construction of the institutions necessary to exercise the rights, improve livelihoods and distribute benefits equitably. The state has dragged its heels on implementation of reforms, failed to defend community exclusion rights and retained decision-making powers over resource use. What do REDD schemes bring to this difficult scenario? If such schemes would prioritize protective strategies and severely restrict forest use, they would once again interfere with livelihood needs and impose formal restrictions and regulations over local rules and customs. If state officials have competed in the past with communities for resources as well as for decision-making power (and corruption continues to be a serious concern) this does not bode well for grassroots participation in, and the democratization of, strategies that require strict technical monitoring and compliance requirements and ‘high levels of central coordination’ (Cotula and Mayers, 2009, p2).¹

The research also demonstrates the importance of follow-through in reforms and of a specific commitment to issues such as poverty, equity and representation. Substantial income benefits reached only those communities that had built the necessary institutions and market relations; gender and other equity issues had to be explicitly incorporated in reforms. New rights and benefits for collectives require attention to representation and authority relations; without serious attention to accountability, local ‘authorities’ may in fact be tools of the state or fail to distribute benefits.

Hence, secure tenure rights² are a necessary but not sufficient condition for protecting local populations and increasing resilience to threats from both climate change and mitigation efforts. They are also needed for these communities to actually benefit from REDD. At the same time, it is likely that insecure tenure contributes to climate change in at least two ways: by facilitating colonization and conversion of forests by ‘outside’ interests and by undermining traditional practices that have historically maintained forests (Anchorage Declaration, 2009). Secure tenure for groups living in forests, combined with exclusion rights protected by the state, could reduce colonization and conversion rates.

Given that the implementation of tenure rights in practice is still often tenuous, even when these rights are substantial, the land grab associated with bio-fuels plantations and possibly REDD schemes is likely to impede further – and possibly reverse past – progress in promoting community rights to forests. This reality cannot be ignored: the simple question of ‘who owns the carbon?’ provokes the issue. What strategies will competing interests use to undermine existing community rights? How will third parties try to take advantage of communities that have gained rights? What are the most effective strategies for communities to defend and deepen their rights, including participation in opportunities like REDD?

Indigenous groups and other forest-dependent populations must have a place at the bargaining table, both globally and nationally, to participate in the design, implementation and monitoring of climate change mitigation schemes. Within nations, the right to choose through free prior and informed consent (known as FPIC) should be required not only for indigenous peoples but all affected forest peoples. The importance of grassroots organization and higher-level networks cannot be overemphasized. Helping them, where needed, to understand the concepts, discourses, technicalities, biases and interests of climate change mitigation programmes and of their competitors, and providing the evidence from research to help sustain their arguments as they argue for their rights – this is the central role of their allies and supporters.

Future of reforms

We propose a tenure reform that starts with communities and builds on explicit agreements regarding rights and responsibilities as the basis of a workable system of forest governance. Ideally, resource decision-making will be located in the community and recognized as such, based on minimum standards for forest maintenance, and implemented with an emphasis on strengthening the collective governance structures in forest areas. Rights should be based on the recognition, but not the calcification, of customary rights and practices and the negotiation of conflict through transparent and accountable institutions. Zoning decisions, regarding different forest uses at scale, will be made with the understanding that high-quality forest areas should be designated for the recognition of community rights and include the informed participation of local rights holders. Alienation rights do not need to be granted to communities, but the state should not have the right to alienate these lands either, thus guaranteeing the permanence of rights and tenure security through strong tenure instruments.

The state will protect the rights of communities by guaranteeing their exclusion rights and upholding principles, such as free prior and informed consent, and will facilitate the negotiation mechanisms needed to address overlapping and seasonal resource rights of people external to communities. The state, together with other external actors, such as donors or NGOs, will facilitate the strengthening of local governance organizations and institutions for conflict resolution and the participation of communities in forest product

markets. The ‘models’ of organization will be far-reaching and more akin to the nature and variety of community production patterns, allowing for the development of community-grown forest-based enterprises.

The state needs to review the organization and incoherence of its own policies across the sectors that affect forest tenure, management and governance. Ministries or agencies in agriculture, forestry, land reform, water, environment, minerals and hydrocarbons need to update their knowledge of the role of forests locally, nationally and globally, and rethink and reorganize their roles, policies and programmes. Since some deforestation and forest management problems stem from the state’s own contradictory policies, the state agencies should reconcile and share their goals and support the capacity for local forest dwellers to become the protagonists of sustainable forest use and conservation.

Where continuing pressure on forestlands from colonists or internal conflict and lack of representation at the community level lead to deforestation, more emphasis is needed on understanding how current policies – subsidies for bio-fuel production, subsidies for industrial timber concessions, lack of instruments in forest planning to address the social realm of forest governance – may foster these problems. The combination of external interests and conflicting policies has often weakened and destroyed local governance without offering alternatives. Fostering and providing a central role for local decision-making in juggling and coordinating these often contradictory policies is a crucial step forward in governing forests. Promoting exposure between and discussion among sometimes antagonistic groups (colonists, indigenous, traditional forest peoples) seeking access to forestland could be more advantageous than pitting them against each other. In cases where interests in alternative land uses are desired, communities themselves need to be a part of the decision-making for compensation or alternative proposals to determine the real value of their assets.

Given past experience, we recognize that no such ideal states or policies exist; what happens in practice will instead be defined by social and political processes of negotiation and contestation. Hence what we are proposing is a road map for communities and community organizations and their advocates... for the future of forest tenure reform.

Notes

1. Central coordination is needed to guarantee ‘strong and fair rules and institutions, macroeconomic and agricultural policies in tune with forest policies, effective monitoring’ (Cotula and Mayers, 2009, p2).
2. We also recognize that secure tenure can lead to forest conversion for more profitable uses (Tacconi, 2007a), as expressed elsewhere in this book.

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