Forests for People

Community Rights and Forest Tenure Reform

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3

The Devolution of Management Rights and the Co-Management of Community Forests

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The granting of greater local control over forests through tenure reform has created more opportunities for community forestry and possibilities to improve local livelihoods. However, these reforms entail complex shifts in multiple rights and responsibility as well as changes in the relationships between formal rights recipients, government agencies and other stakeholders. How rights are defined and the institutional arrangements that assign and regulate them can either facilitate the adoption of forest management or discourage local participation in forestry. To increase understanding of how tenure reform has shaped forest use by communities, this chapter will disaggregate the bundles of rights and tenure systems in local contexts to explore how these factors influence community forestry models. It will use four cases of forest tenure reform – in Guatemala, India, the Philippines and Bolivia – to illustrate the complex dynamics and multifaceted nature of these changes.

When transferring forest tenure rights to rural communities, states rarely relinquish full control over resource management. Normally negotiation and struggle define the community forestry institutions that emerge, determine how benefits are distributed and, ultimately, how well forests are maintained. Usually, the state retains ownership and control over forest resources, either authorizing use of public lands or requiring forest users on private or communal property to operate under government supervision and within the normative frameworks it defines. Often, these arrangements recognize some existing resource use embedded in local livelihoods and customary practice, but they also introduce new governance standards attempting to restrict certain management decisions

and behaviours. Because management rights are only partially granted and government reserves its role in decision-making, the resulting models require collaboration between communities and state agencies. Situations in which authority, control, responsibilities and benefits are shared to varying degrees are known as collaborative or co-management systems.

From the government's point of view, there are several reasons to adopt co-management approaches rather than relying exclusively on command-and-control strategies. Co-management continues the state's ability to structure and regulate the forestry sector to ensure that both conservation and development agendas are addressed. More importantly, co-management can engage forest-dependent people and bring local knowledge of social and environmental conditions into decision-making. Theoretically, by creating opportunities for direct local benefits from sustainable resource use, such an approach can provide greater motivation to maintain forests. Recognizing local roles through co-management can also alleviate tension with local constituents who had been adversely affected by top-down command-and-control enforcement of environmental law.

The analysis in this chapter emphasizes the nature of management rights extended to communities and examines two central questions: who receives the management rights and how are they defined? How are responsibilities and decision-making powers distributed within co-management systems? We focus primarily on those rights related to resource management and illustrate how powers and responsibilities are balanced between stakeholders and how these arrangements have emerged. Normally, rights were partially devolved to community groups but important controls were retained by government agencies. The resulting co-management systems have produced both positive and negative outcomes. On one hand, the systems involve local stakeholder groups in management, advance forest conservation goals and generate opportunities for forest benefit sharing with local people. On the other, regulatory frameworks and requirements used by the government to maintain control exclude potential participants and cause many community groups to depend on subsidies to join the systems.

Background

Forest tenure reform takes place in landscapes that are often composed of multiple stakeholders, competing interest groups and distinct public agencies holding rights and claiming control over land and forest resources. The transfer of tenure rights is further complicated because it is multifaceted, involving different types of tenure systems and rights bundles. To examine these changes, it is necessary to distinguish the holders of rights, normally conceptualized within one of three tenure systems: public property, communal property and private property. These systems commonly overlap (Feeny et al, 1990) and communities are often mosaics of public, common and privately held land. Frequently, the tenure changes depend on the resource that is being considered; for example, in numerous countries, forests and subsoil resources are held

by the state as public property regardless of whether they are located within communal or private properties.

Tenure rights should be conceived of as a 'bundle of rights' (Schlager and Ostrom, 1992) consisting of access, withdrawal, management, exclusion and alienation rights. These rights grant powers of choice and action to the rights holder. All of these rights are defined by rules. The final three rights (management, exclusion and alienation) are considered 'collective-choice rights' or decision-making rights, since they allow the rights holder to define rules and standards for exercising other rights, such as who has access to the resource or how the harvest of a resource takes place (Schlager and Ostrom, 1992). Because they allow the rights holder to establish new rules or adjust those that exist, these rights are crucial for allowing resource users to adapt to changing conditions affecting resources or their livelihoods.

The nature of management rights granted is crucial for analysing how community forest management functions. Resource management should be understood as a collection of decisions, practices and concepts that involve decision-making beyond the immediate resource use. In a forestry context, this could include decisions to manipulate a resource, such as investing in silvicultural practices to encourage regeneration or to avoid damaging future crop trees, or planning or organizing future activities. Although management and withdrawal rights are similar, the primary difference is in the level of decision-making power. A holder of withdrawal rights can harvest resources but only within defined parameters, with no power to decide how, when or what resource use will take place in the future and little control over others who share withdrawal rights. With management rights, the rights holder can make such decisions. Management rights are closely tied to exclusion rights. Taking advantage of management rights entails investments for future use of a resource, but for these investments to be worthwhile, the stakeholder needs to have the authority and ability to exclude outsiders and others who would not comply with management rules.

In practice, transfer of the entire bundle of rights rarely occurs. Instead, some rights are withheld by the state or are not offered without official oversight or control. In fact, these rights are often not held in their entirety by any one individual, are frequently shared among groups and/or different rights can be held by distinct individuals. According to Meinzen-Dick and Mwangi (2008), property often entails 'webs of interest' that combine public, collective and individual rights over resources. An example would be a collective system where rights may be held by a communal authority that determines the allocation of access rights, but resource use takes place at the individual or household level rather than communally. Even where collective and individual property is recognized, these often involve state claims of authority, particularly in relation to subsoil or forest resources. A common trend in tropical forests is that the state retains or restricts alienation rights while recognizing other rights for indigenous or traditional forest peoples.

Depicting the property arrangements as a matrix with rights holders on one axis and bundles of rights on the other can produce a schematic 'tenure
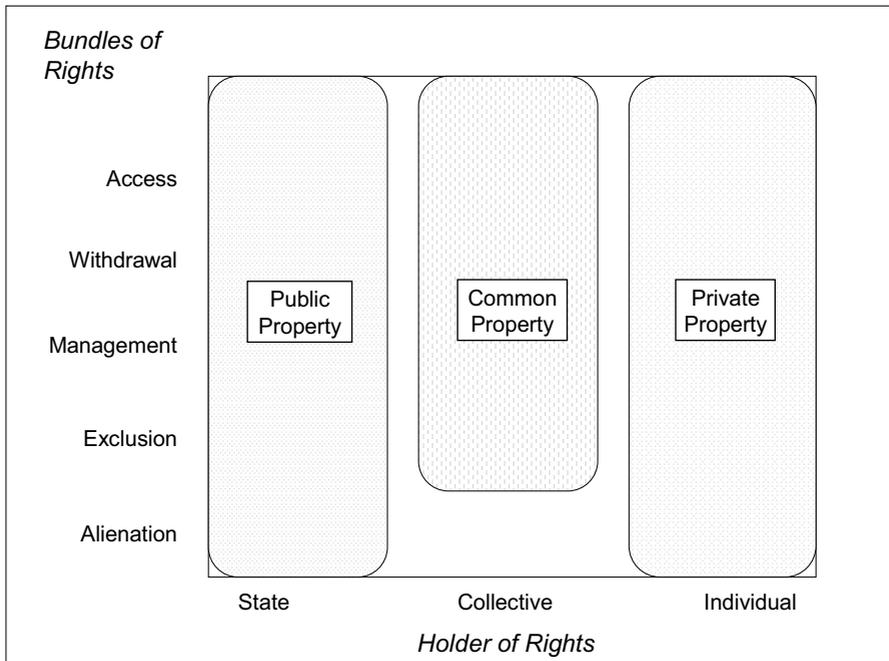
Source: Meinzen-Dick (2006)

Figure 3.1 *Classic property rights systems*

box' (Meinzen-Dick, 2006) that captures the multifaceted characteristics of a property rights system (see Figure 3.1). Disaggregating rights and rights holder configurations allows for analysis of how systems change with devolution or other catalysts. It provides a useful tool for diagramming how rights and rights holders are situated within community forestry systems.

Under forest tenure reform, the management rights granted by the state usually represent a partial devolution of some decision-making powers. When dealing with forest resources, the state typically maintains control through oversight or places restrictions on how community-level actors use and benefit from forest resources. For example, a community given the right to commercially manage timber may be able to choose what portion of its forest to manage, what trees to harvest and how to carry out the harvest; however, its decisions must be approved and comply with management norms established by the state. Although it could seem counterintuitive to devolve rights and then limit them within regulatory frameworks, such give-and-take is part of a negotiated struggle between conservation and development proponents. It has resulted from the realization that local people have roles to play in forest conservation and development. Past attempts to exclude forest-dependent populations from

forests have proven ineffective and at times counterproductive. In fact, efforts based solely on command-and-control schemes can limit the adaptation that is the key to resiliency and could undercut conservation goals (Armitage et al, 2009). In addition, transferring rights to community-level stakeholders provides access to detailed local knowledge necessary for good management decisions and involves local interest groups that could do a better job than forest bureaucrats making standardized decisions in distant offices.

The transfer of management rights under forest tenure reform usually produces community forestry models involving co-management arrangements. The widely used concept of co-management is generally agreed to be 'the sharing of power and responsibility between the government and local resource users' (Berkes et al, 1991, cited in Carlsson and Berkes, 2005; Fischer, 1995). Rather than a static state, co-management should be understood 'as a process in which the parties and their relative influence, positions and activities are continuously re-adjusted' (Carlsson and Berkes, 2005, p67). Finding the right balance in sharing rights and responsibilities can be a struggle. As a process, co-management consists of negotiation, bargaining or mediation and provides a venue for problem solving and learning. Ideally, it combines the strengths and mitigates the weaknesses of each of the partners involved (Singleton, 1998). However, co-management can also generate unintended outcomes for communities. For example, onerous restrictions on resource use can discourage participation in the system, stifle innovation or even exclude some stakeholders. Also, because the state is not a single entity, attempts at collaboration can be undermined when different government branches or agencies have contradictory policies.

What does co-management mean for community forestry? Usually the state maintains ownership and nominal control over forests (i.e. full retention of alienation rights and a partial role in others). Rights for management operations are granted conditionally, requiring compliance with regulations. Within the state's parameters, the rights holders are allowed decision-making power. In general, the types of decisions that need to be made include decisions about:

1 who participates in management and how they participate;
2 which resources will be managed and how; and
3 who benefits from management and how.

Normally, legislation requires community groups to form management organizations (to take responsibility for the resource and the impacts of management practices), develop formal management plans and comply with technical standards. The sharing of decision-making does not eliminate command-and-control aspects, since the state typically requires approval, carries out field inspections and imposes restrictions on transport and sanctions for noncompliance. As a result, the institutional structures set up to allocate and control management rights can be very complex and entail high transaction costs for both communities and governments. Variation in co-management systems is strongly influenced by the decision powers that are granted or

retained by the state and which stakeholder bears the burden of transaction costs or management risks.

Case studies

This section will examine forest tenure reform and its impacts on four community-level stakeholders: community forest concessions in the Guatamalan Petén, timber grower cooperative societies in northern India, a forest resource development cooperative in the southern Philippines and indigenous forest management associations in lowland Bolivia. To analyse how co-management arrangements in community forestry systems are organized and function, this chapter uses the tenure box to illustrate how reforms shifted rights bundles. A second diagram describes how the framework determines the set of stakeholders holding management rights and in turn establishes relationships and parameters defining co-management systems.

Guatemala: Community forest concessions

The Guatemalan Petén was the site of the transfer of tenure rights to community-level organizations in the buffer zone around a major conservation area. The region has experienced a dramatic shift in forest property rights, where forest-dependent communities went from holders of weak customary rights to holders of forest concessions credited with improving regional governance. Improvements in local livelihoods and forest conservation have resulted, but the co-management system still faces challenges. Community groups have had to respond to contradictory strategies of state agencies with jurisdiction over the region and at the same time defend the community concession model from proposals that threaten to take back the rights gained in the reforms.

For many years, the Petén was one of Guatemala's most geographically and politically isolated regions. Throughout the 20th century, consecutive waves of official and spontaneous settlements brought an ethnically and socio-economically diverse population that today has reached 367,000 inhabitants, mostly migrants from other departments. Initially, extractivist communities were established in the 1920s to harvest valuable non-timber forest products (NTFPs) such as *chicle* gum (*Manilkara* spp.) and the ornamental palm *xate* (*Chamaerdorea elegans, C. oblongata* and *C. ernesti-augustii)*. In the 1960s, state-sponsored colonization policies brought indigenous and ethnically mixed settlers to the region, most of whom practiced swidden agriculture and ranching. Other stakeholders moved into the Petén in search of petroleum, precious minerals and timber. These new arrivals greatly accelerated forest conversion.

Historically, the government has had a weak presence in the Petén, and its policies were often ambiguous or contradictory. Although peasant communities used the forests, the government also granted rights to others to harvest NTFPs and timber. In 1989, the creation of the National Commission for Protected

Areas (CONAP) signalled the movement of an environmental agenda to the forefront of state policy in the Petén. In 1990, much of the northern Petén, which had been treated as a forest reserve, was converted into the Maya Biosphere Reserve.

The original territorial scheme encompassed 2.1 million ha with a nucleus under strict conservation rules, a large multiple-use zone where sustainable timber and non-timber harvest was allowed and a buffer zone to relieve pressure on the reserve. CONAP's mandate was to halt illegal logging, stop forest conversion for agriculture and ranching, stop the sacking of archaeological sites and end illegal traffic in drugs, fauna and migrant workers (Nittler and Tschinkel, 2005). The initial restrictive policies in the reserve for land and resource use triggered serious conflicts with the local population. As competing interest groups resisted, it became more difficult for the government to enforce conservation policies that entailed the exclusion of important forest stakeholders (Monterroso and Barry, 2008).

The main source of local opposition was an organization founded in 1995 by community groups to pursue forest management rights that became known as the Association of Forest Communities of Petén (ACOFOP). In response to this resistance, government policy shifted to an approach that delegated management rights to some forest-dependent stakeholders: 25-year forest management concessions were granted to six local communities within the multiple-use zone, six communities bordering it and two local forest industries. The establishment of community concessions created the collectivization of forest rights and established a common property system over 426,000ha of forestland (Monterroso and Barry, 2008). International conservation groups funded heavily by The United States Agency for International Development (USAID) provided significant support through technical assistance to help community organizations qualify and comply with new regulations for concessions. By 2005, ACOFOP had 22 member communities and organizations, representing 14,000 individuals in 30 communities. The members manage the largest expanse of forest under community concessions in the world, over 95 per cent of which has been certified by the Forest Stewardship Council (Nittler and Tschinkel, 2005).

The tenure rights granted to community organizations were broad and included extensive rights over the concessions. Nonetheless, their management rights were conditional on state approval. State agencies required local organizations to register, develop management plans, follow technical norms and certify their timber management operations. In addition, community concession organizations were required to control the holders of customary withdrawal rights for NTFPs. Figure 3.2 illustrates the strengthening of the collective entity to govern the common resource base and shows the significant expansion of management rights, though these were highly regulated. The government retained alienation rights and all rights were granted for the limited duration of the concession.

Although the concessions have functioned successfully, in some cases unresolved conflict exists over historical withdrawal rights to *chicle* trees
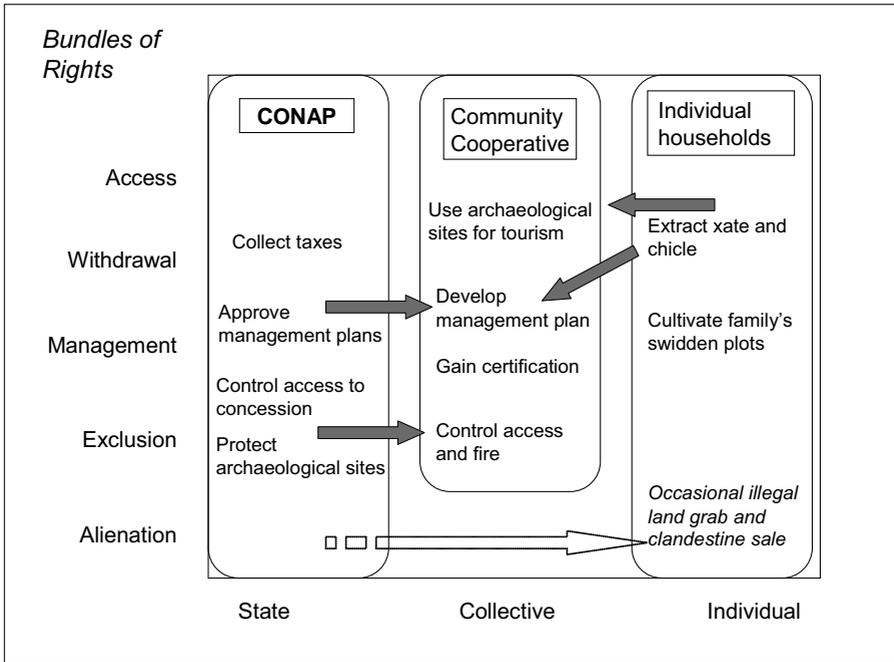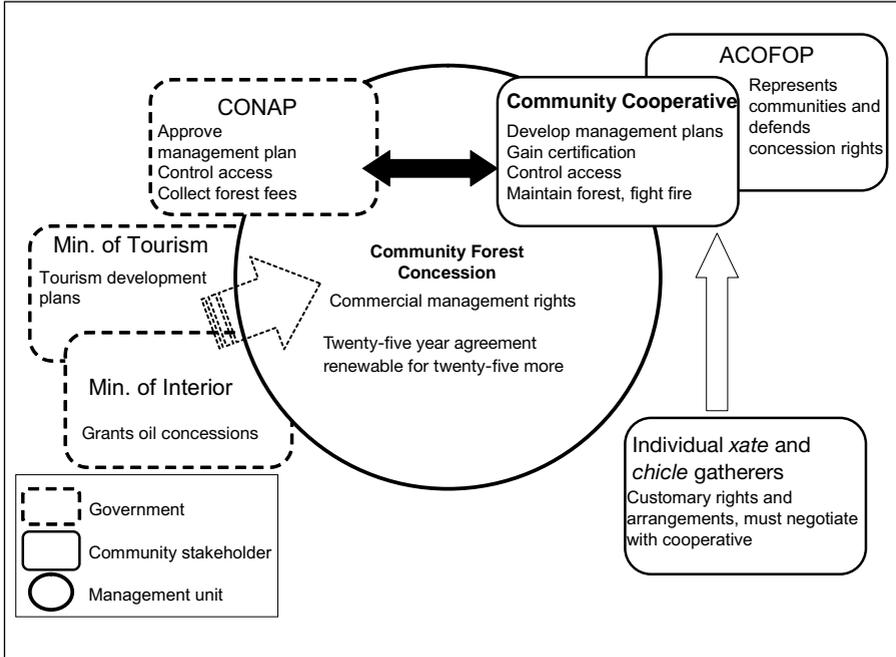
Source: prepared by author

Figure 3.2 *Community forest concessions in Petén*

and *xate* palm. The management rights granted to the community concession organizations have limited year-round NTFP harvests, an important stream of income for women and children. These collectors have no formal rights or representation in the concession organizations. Their discontent has been channelled to the leaders of the community cooperative, who are attempting to modify the regulations.

In general, the community concessions of the Petén do face significant obstacles, especially those operations with the weakest organizations and the least commercially valuable forests (Nittler and Tschinkel, 2005). In some cases, individuals have attempted to seize concession lands as private property. The organizations face scepticism and outright opposition from industry and some NGOs (Gómez and Méndez, 2005; Trópico Verde, 2005). Also, in a region with a growing population and significant landlessness, the concession organizations face a potential threat from groups questioning the allocation of such expansive areas to a small number of community organizations. CONAP is not the only government institution with influence in the Petén and the Maya Biosphere Reserve. Guatemala's tourism and cultural ministries, for example, have overlapping jurisdictions over resource management in the

Source: prepared by author

Figure 3.3 *Co-management of Petén community concessions*

region. Suggested alternative policies have included efforts to create a new conservation area that would rescind forest concession rights. The government has also issued concessions for oil exploration that are superimposed on timber management areas.

Under the co-management system in the Petén (see Figure 3.3), transaction costs increased considerably not only in terms of the financial requirements to participate and gain approval, but also in the time it takes for communities to engage in these bureaucratic processes. For example, the requirements for management plans have to meet international standards for third-party certification. Compliance is complicated by the limited organizational and technical expertise of some community concession groups. Decision-making processes in communities can be slow and conflictive. The pace can make it difficult to react to change or respond to government requests.

Although management rights require compliance with exceedingly complex and cumbersome management rules, the sharing of rights and responsibilities with community concession groups has, in general, furthered forest conservation. In most community concessions, collective efforts were successful in diminishing illegal logging and archaeological looting. Community

members have established their own local governance systems, based on an expanded set of rights of access, use and decision-making over their natural resources. This includes organizing patrols to protect concession boundaries and suppress fire.

Community organizations and ACOFOP have increased their capacity and strengthened their organizations. Government agencies, like CONAP, though weak and underfunded, provide help with legal procedures and some support in the field. However, significant investments were required from external funders to develop lumber mills and train communities in trade and certification standards – investments that allowed the community groups to convert new rights into livelihood and income improvements (Mollinedo et al, 2002).
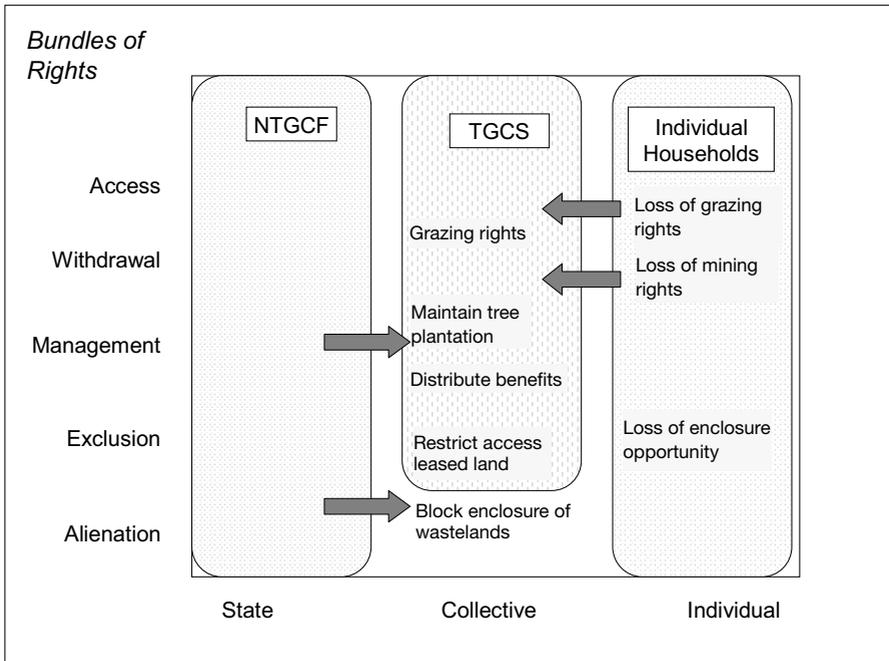
India: Tree growers' cooperatives

The Tree Growers' Cooperative Society programme (TGCS) is a cooperative model created to establish and manage tree plantations on degraded village common lands. It is one of the clearest cases of tenure transfer for community-based forest management in India. It is also an interesting case because the management rights devolved to the cooperatives are relatively broad and a high share of the transaction costs are covered by the state. The cooperatives are provided with long-term leases to state-owned common lands (officially, 'revenue wasteland') for developing tree plantations and increasing fodder production. Decision-making power is devolved to local actors, but the leases are extended only to extremely small and degraded parcels.

The TGCS case study draws on village-level research conducted in the Ajmer district of Rajasthan state in northern India (Saigal et al, 2008). Rajasthan is the largest state in India, constituting 10 per cent of the country's area (GoI, 2008). Although 9 per cent of the state is classified as forestland, the actual forest cover is just 5 per cent (FSI, 2003). Most of the region (61 per cent) is either desert or semidesert (GoR, 2007) and as much as 30 per cent of the state is classified as wasteland (MoRD and NRSA, 2005). State lands classified as revenue wastelands are included in the wasteland total and are treated as common lands by villagers but are often *de facto* 'open access', causing further degradation.

The TGCS programme emerged in the 1980s from growing concern by Indian governmental agencies over fuel wood and fodder scarcity and increasing land degradation. The cooperative model for tree plantations was expected to be a promising institutional alternative to the existing social forestry programme and was launched with substantial funding from the Indian government as well as foreign donors (Saxena, 1996; NTGCF, 1997; Misra, 2002; IRMA, 2006). Programme activities were guided by an organization that became known as the National Tree Growers' Cooperative Federation Limited.

Under the TGCS model, villages were selected to organize and formally register cooperatives that could then lease government-owned wasteland. The leases could cover up to 40ha, were valid for 25 years and could be renewed

Source: prepared by author

Figure 3.4 *Devolution of wasteland rights to India's tree grower cooperatives*

for another 10, provided that there was no violation of the lease conditions. Membership in the cooperatives was drawn from the entire village with one member per household, each paying a nominal membership fee, although in practice other villagers might participate. The cooperatives established fuel wood and fodder plantations on the leased land and contracted guards to protect the plantations against illicit grazing, tree felling and collection of various forest products. The entire cost of the plantation was borne by the national federation, which for the first five years provided technical and programmatic support for field teams based in the region (NTGCF, 1997; IRMA, 2006; Singh, 2007). By 2007, there were 548 tree growers' cooperatives (FES, 2007). Financial support from Swedish and Canadian development agencies ended in 2001 and 2003 respectively (Singh, 2007) and at present there is no specific project supporting the cooperatives. Nonetheless, the leased concessions continue to operate.

The tenure reform represented by TGCS consisted of the temporary devolution of management and exclusion rights over state lands to cooperatives through leased concessions (see Figure 3.4). The cooperatives were granted management responsibility in return for investments, support from the National Tree Growers' Cooperative Federation Limited and the possibility of benefits.

Although expected to prevent encroachment and comply with rules related to cooperative administration, they were given considerable leeway in making management decisions, including how to harvest and distribute resources and how to organize management activities.

To illustrate how management decisions functioned in the cooperatives, it is helpful to examine the local context in greater detail. The three villages studied in this case had registered as TGCS organizations between 1991 and 1992 (Saigal et al, 2008). Their populations ranged from 82 to 220 households and their territories varied from 490 to 1716ha. There were broadly three types of land in the villages: private (mostly agriculture, both unirrigated and irrigated), village council land (common land used for grazing) and government land. The government revenue wasteland ranged from 31 to 262 ha and was generally held as *de facto* commons, used for grazing livestock and collecting fuel wood. The government land was in fact more like 'open access' areas, degraded and barren. It is this revenue wasteland that was leased to the cooperatives. Some of the leased land had been illegally privatized by other villagers and in all three cases TGCS removed illegal encroachments from the leased sites before starting the plantations.

In the co-management arrangement (see Figure 3.5), the leases temporarily provided the cooperatives with management and exclusion rights. The cooperatives received financial and technical support from the national federation and invested considerable effort and money to prepare the sites by carrying out soil and water conservation works, establishing fuel wood and fodder tree plantations, watering saplings and protecting the sites from illicit grazing and harvesting of tree products. Despite the investments, tree survival was low. The cooperatives controlled management decisions over various forest and tree products, including who, how and when to harvest. They closed the areas for several years to allow trees and grasses to grow and opened them for grazing only after trees were beyond browsing height. In effect, closing the areas restricted access rights to other community members who had claimed customary rights.

Although it has been more than ten years since external support ended, plantations in all three sites are still maintained and growing. The cooperatives are keen to renew their leases for the allotted land. The relatively secure tenure has encouraged members to invest in the land and protect the plantations, even after financial and technical support was withdrawn after five years. All three cooperatives kept their plantation guards after the project stopped paying them. Outside the TGCS concessions, the remaining village common lands are slowly being privatized.

The TGCS programme was intended to improve livelihood opportunities, increase fuel wood and fodder supplies and possibly generate cash income from the sale of tree products. Until recently, a major benefit was access to fodder in the post-monsoon period. A household had to pay the cooperative a fee to graze livestock, depending on the composition and size of its herd. The cooperatives used revenue from grazing fees to pay guards and the honorarium of the TGCS secretary. The main benefit at the moment is tree fodder (fresh
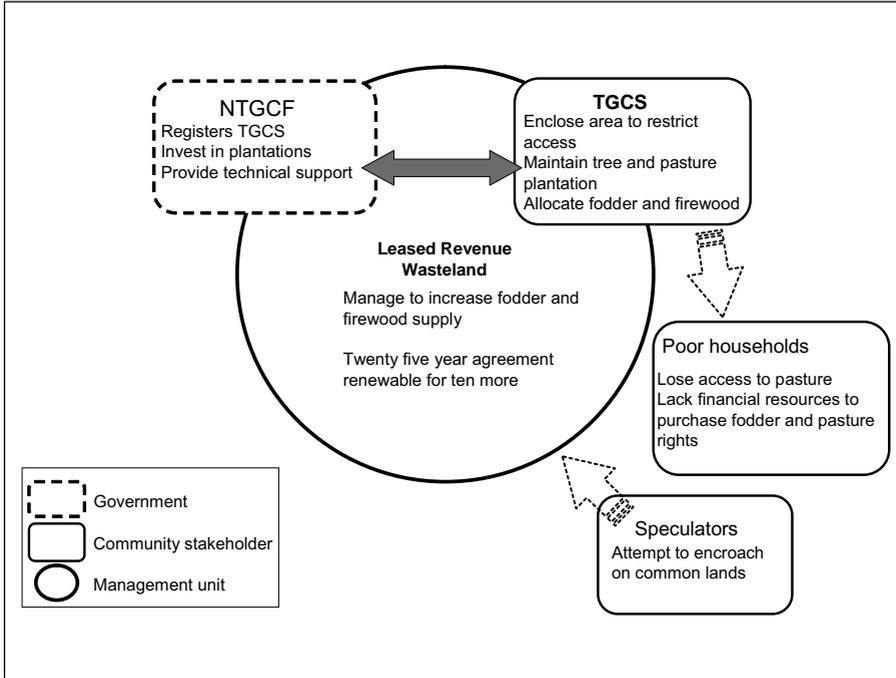
Source: prepared by author

Figure 3.5 *Co-management system in India*

leaves and pods) and some fuel wood. Supplies of fodder and fuel wood have increased only modestly. In the three study villages, a household gets on average only around 7 per cent of its fuel wood supply from the TGCS plantation; over half of the village's fuel wood comes from private lands. Considering that the benefits have been modest at best, it is not surprising that the majority of the respondents felt that the TGCS was at present 'unimportant' for their livelihood (Saigal et al, 2008).

One reason for the low impact is the 40ha limit on leases, regardless of population size. Such small parcels cannot generate substantial livelihood and income benefits for all village households. Furthermore, most leased lands were of poor quality and highly degraded when handed over to the cooperatives. The continuous drought over the past few years means there is hardly any fodder grass and the grazing fee system has been suspended. As a result, cash income has reduced sharply. The yields of fodder grasses have fallen in all three cooperatives, adversely affecting larger animals, such as cows and buffaloes. As a result, cooperatives have discontinued the practice of closing their plantation during the monsoon to allow grasses to regenerate.

The TGCS programme's impacts on village equity have been mixed. The differential impact on households is tied to the level of dependence on the plantation land. Households with more private land (particularly irrigated land) and thus a greater availability of fodder for livestock relied less on the commons. The poor have little private land and are most dependent on the commons. The concession programme inadvertently restricted access to the commons for the poor once the land was converted to a TGCS plantation. The closure of plantation areas for several years to allow trees to grow meant there were fewer alternative sources of pasture and fodder for poor families. The imposition of grazing fees seemed to be equitable, since the same rules applied to all; however, the poor had less ability to pay. Once the plantations had matured, the cooperatives decided to allocate fodder production through auctions, disadvantaging households of limited means. The stock of tree fodder and fuel wood from the entire plantation is auctioned to the highest bidder, who pays upfront and later resells the produce in smaller lots to others. This practice reduced the transaction costs for the cooperatives, but it clearly violated the principles of cooperation, since profits go to those who can pay while the poor are confronted by higher prices. The highest bidder need not even be a member of the cooperative.

The cooperatives were obligated to follow standard cooperative regulations, but because of weak oversight by the government the groups have gradually become less democratic. Elections for leaders are not held regularly and major decisions are made by a managing committee rather than the general assembly. More than just the state's failure to insist upon transparent and democratic procedures, the problem is also due to lack of awareness and apathy of members who remain passive. Residents mentioned that the cooperatives are dominated by particular caste groups (Saigal et al, 2008). The traditional marginalization of certain castes, the poor and women has also prevented broader participation in the organizations.

Despite these weaknesses, the TGCS programme seems to have resulted in better management of leased lands by giving local people a stake in managing resources. Outside the leased concessions there is widespread encroachment of common lands, partially motivated by past government policy that regularized encroached lands by titling them as private property. This is increasingly common where growing urbanization and industrialization are driving up land values. State policies encouraging investments in quarries to support economic development also put pressure on the village common lands. Yet there was no encroachment in TGCS plantations in two of the study villages and only minor encroachment in the third (less than one-third of a hectare).

Philippines: Forest resources development cooperative

The Ngan Panansalan Pagsabangan Forest Resources Development Cooperative is located in the Compostela Valley Province in the southern Philippines island of Mindanao. It represents a shift from a command-and-control system, in which the government granted forest resource rights to large-scale industry, to one

where rights were transferred to community organizations to carry out forest management. The Ngan Panansalan Pagsabangan cooperative manages the second-largest community-based forest management project in the Philippines. It was the first community forestry operation in the Association of Southeast Asian Nations (ASEAN) region to earn SmartWood certification. Although the tenure rights offered innovative opportunities for community actors, the state has been slow to accommodate the new system and community groups like the cooperative face challenges because they lack the economic and political influence formerly held by timber industries in the region (Pulhin and Ramirez, 2008).

Forestland in the Philippines is owned by the state. The main agency responsible for its administration and management is the Department of Environment and Natural Resources (DENR). Until the mid-1990s the state used timber licensing agreements to award logging rights, usually favouring large timber companies. The companies were granted broad management rights over forests and claimed exclusion rights; the state retained alienation rights. There was frequent collusion between DENR and the companies and since DENR's monitoring was weak, the companies were often able to use their political and economic power to avoid supervision.

Prior to the 1990s forestry reform, the harvest of forest resources in Compostela Valley was controlled by the Valderrama Lumber Manufacturers Company Incorporated, which held the timber licence. The licence was for a 26,000 ha concession for 25 years, set to expire in 1994. Under the licensing agreement, the company was granted broad management decision powers but within an official regulatory framework. The government maintained control by monitoring forestry activities and requiring the development of annual operating plans defining the locations of cutting areas and the species and volumes to be cut. The government could suspend or terminate logging agreements if the company committed infractions. However, in practice, companies could avoid oversight by bribing DENR officials. Furthermore, to protect its operation, the company invested in forest law enforcement to exercise exclusion rights. Valderrama Lumber had its own security force to protect the forest; it filed criminal charges or evicted farmers who practiced swidden agriculture *(kaingin)* in the forest management area. During the peak of its operation, the company employed around 3,000 workers, mostly migrants. Mansaka-Mandaya indigenous people in the region were offered menial jobs hauling wood on a daily or contractual basis. When the licence expired, most of the migrants decided to remain.

While Valderrama Lumber held the licence, the Mansaka-Mandaya people maintained *de facto* access, withdrawal and exclusion rights based on customary claims but could not legally harvest or sell timber. They had their own institutions and customary rules governing forest use. Indigenous communities subdivided land for members and actively attempted to protect their forest from intrusion by other groups. Each family held small plots, usually about 10 ha, for swidden agriculture. These rights could be inherited by relatives and outsiders could gain access through intermarriage. Problems

and conflicts were resolved by the council of elders. These informal institutions eventually clashed with formal rules used by the state to allocate forestlands. Some indigenous people practicing traditional farming systems began to be arrested by Valderrama Lumber and DENR. However, conflict diminished as the logging company offered jobs to indigenous people, who became more dependent on income from the company's timber extraction activities.

The denial of local peoples' legal rights to forest resources began to shift when, in 1989, DENR established the Community Forestry Program to provide upland farmers legal access to forests and financial benefits from these resources. Under the programme tenure was given to qualified community organizations through a community forest management agreement granted for a period of 25 years, renewable for another 25 years. In 1995, the Philippine government shifted the national strategy for sustainable forest management to the Community Based Forest Management Program. In this programme the government granted the right to occupy and manage certain forests and forestlands to community organizations by awarding forest management agreements. The big difference from the previous arrangement was that the government granted local organizations forest resource rights that previously had been held by industry. In other words, this entailed a shift from individual to collective rights. However, lacking the economic and political power of timber companies, community groups often struggled to enforce their rights. Also, because rights were limited to legally recognized local organizations, the reforms fell short of broad recognition of rights for individual local inhabitants. In fact the state's bureaucracy was unprepared for the paradigm shift and most of its old staff has had a hard time embracing its new function. Decision-making has remained centralized. Moreover, policies emanating from the national government tend to restrict rather than assist the cooperative.

Valderrama Lumber's timber licensing agreement expired at the end of 1994. With its departure, DENR became concerned that the forest would become an open access area without strong community organization to channel local use and benefits from forests. In response, DENR introduced the idea of forming a cooperative, with support from USAID. In 1995, a proposal was presented to local governments within the former concession area. Members of the Mansaka-Mandaya people initially did not agree with the idea, thinking that they would lose access to their landholdings. However, they eventually embraced it after DENR representatives carried out an educational campaign. The migrant workers who had stayed after the company pulled out were also potential cooperative members.

The Ngan Panansalan Pagsabangan Forest Resources Development Cooperative was formed and registered with the government in 1996. Later that same year, it was awarded a management agreement covering 14,800 ha of forestland outside the towns of Compostela and New Bataan. In 2004, this region had a total population of 8259 (approximately two persons per ha). The cooperative has 324 members, who together with their families represent a minority in the region (about 13 per cent of the total population). Former migrants make up 60 per cent of the membership and local Mansaka-Mandaya

indigenous people the rest. Most indigenous people, therefore, continue to lack formal rights to forest resources.

Migrants formed the core group that took over forest management for the cooperative because of the skills they had developed while working for Valderrama Lumber. Day-to-day operations of the cooperative are primarily handled by experienced former employees. Representatives from the Mansaka-Mandaya people have participated in decision-making and occupy a majority of seats on the cooperative's board of directors. Some also work during the harvest as sawyers.

The cooperative's bundle of rights (see Figures 3.6 and 3.7) is basically the same as that held by the company. However, in practice, the situation is more contentious because of the government's oscillating policies regarding management rights and the cooperative's lack of political and economic power to exert influence on the government bureaucracy. Under community-based forest management, the cooperative is allowed to extract timber provided it develops a management plan (called a community resource management framework), prepares a medium-term plan projecting the timber volume to be harvested over five years and applies for an annual resource use permit.
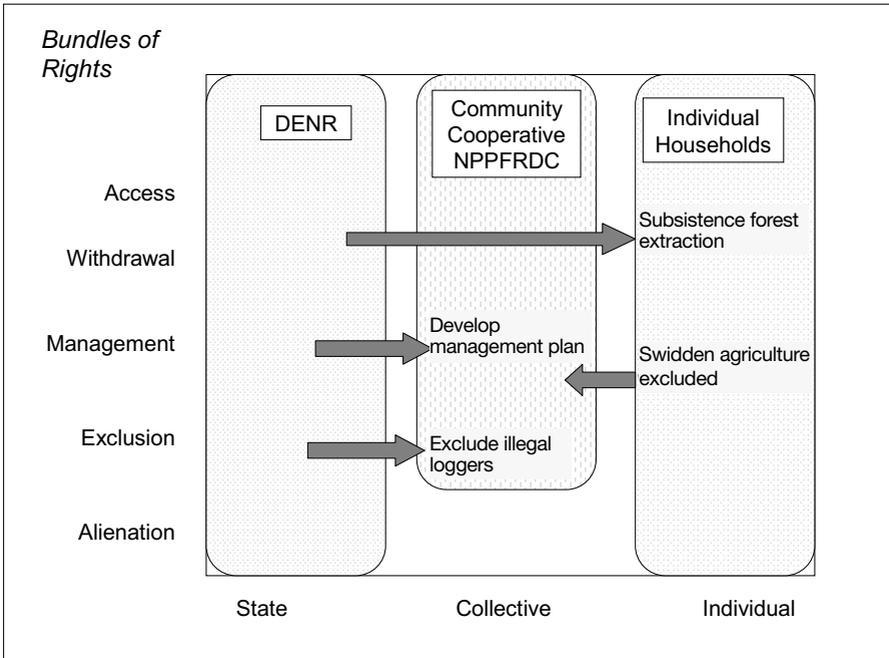
Source: prepared by author

Figure 3.6 *Forest property rights shift for communities in the Philippines*
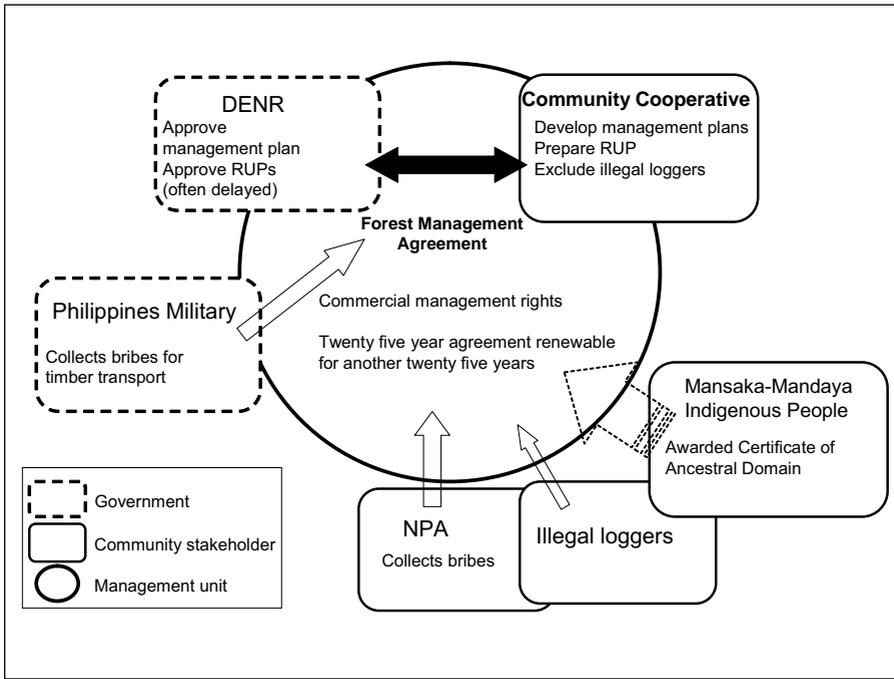
Source: prepared by author

Figure 3.7 *Co-management for communities in the Philippines*

However, the permit application process is tedious and entails high transaction costs: approval can easily take more than six months and costs almost US$5,000.

Despite the long and costly process, the permit is valid for only one year, counted from the end of the previous resource use permit operation. This has meant that, after delays, an approved permit is valid for less than six months. In addition, since 1998, DENR has issued three national suspensions of resource use permits. For instance, in 1998 DENR suspended all permits based on the allegations of abuse by a few community organizations and in 2006 DENR cancelled all existing community management agreements in eight regions, again because of charges of non-compliance or violations by community organizations (Pulhin, 2006). These suspensions applied even to well-run community organizations like the Ngan Panansalan Pagsabangan Forest Resources Development Cooperative, which was not given an exception despite its SmartWood certification.

The suspensions of resource use permits have eroded community members' motivation and commitment to protect and manage their forest (Guiang and Castillo, 2007). The uncertainty also takes a toll on the Ngan Panansalan

Pagsabangan cooperative's management and exclusion rights. Funds for forest development and protection depend on profits generated by the timber harvest and if delayed management activities suffer. Despite suspensions and delays in permit approval, DENR did not adjust the operational plans' development targets, placing greater pressure on the cooperative. In fact, the arrangement transfers most of the transaction costs and risks to the community cooperatives. Although the Ngan Panansalan Pagsabangan cooperative has suffered financially, it has sustained its activities without relying on external assistance. It has been able to innovate and make adjustments. On several occasions, it adopted a per board foot salary, paying workers based on the overall volume extracted per day multiplied by a given rate for each type of work. It has also implemented mass leave for all regular staff and workers whenever a resource use permit is suspended or awaiting approval.

Because the cooperative lacks the power and influence of the company, it also has to contend with other stakeholders who have moved into the power vacuum. Several groups now claim rights to resource use in the area, including the military and the New People's Army, a rebel group that considers the forest management area its base. From time to time, the cooperative must pay bribes to the military, the rebel group and DENR, just to secure the safe passage of their timber products and avoid delays in the transportation of logs. Because the cooperative does not have the money to hire security guards, illegal loggers have been drawn to the site. These illegal loggers harass the cooperative's staff and in some instances have used threats of violence to intimidate the cooperative and assert their *de facto* withdrawal rights.

Many residents see little difference between the cooperative and Valderrama Lumber. This may be true at the organizational level, since many former employees are members. However, the cooperative lacks the company's financial resources. In addition to the problems posed by policies of the national government, it experiences difficulties in complying with its obligations for forest development, rehabilitation, timber extraction and forest protection. The tenure rights of Mansaka-Mandaya indigenous people improved as their organization, the Kaimunan ng Lumad Compostela, was awarded a certificate of ancestral domain title over an extensive area that includes the concession controlled by the cooperative. Once the cooperative's 25-year concession expires, it will need to negotiate forest management rights with the indigenous organization that holds title, and it is not clear how this will work.

Bolivia: Indigenous rights in lowland communities

The Bolivia case study provides an example of forest tenure reform that devolved management rights to indigenous communities, opening opportunity for commercial management of forest resources. For some, the changes have generated substantial benefits; for others, the regulatory framework and difficulties in complying with conditions set by the state agencies have limited their chances to participate.

A series of reforms in the 1990s changed the bundle of tenure rights available to Bolivia's indigenous people. The tenure reform law (known as the 'INRA law'

for the institution it created, *Instituto Nacional de Reforma Agraria,* National Institute of Agrarian Reform) recognized a type of communal property called a TCO (*tierra comunitaria de origen,* original community land) that offered rights and decision-making powers to indigenous populations. At the same time, a new forestry law transferred management rights to indigenous people within TCOs. These reforms opened up forest management opportunities that could provide indigenous people with new sources of income. But as our case study illustrates, onerous regulatory frameworks and inefficiencies created bottlenecks in the co-management arrangements with governmental agencies. As a result, benefits have not been as extensive as anticipated and some indigenous people interested in commercial forest management have been unable to participate.

To examine how the devolution of forest management rights affected indigenous people, the case study considers Guarayos communities in Bolivia's Santa Cruz department (Cronkleton et al, 2009). The Guarayos TCO covers much of the Guarayos province's 29,433km^2. At the time of the TCO's creation, the region had only 31,577 inhabitants (INE, 2001). However, the construction of an interdepartmental highway has opened the region to outsiders, leading to a population increase. The influx has produced an ethnically mixed population and the indigenous population struggles to maintain the security of its property.

Prior to the reforms, most indigenous people in the region lacked formally recognized property rights. Lands and forests around villages were controlled as *de facto* communal lands, with households granted individual rights to cultivate small plots. The state owned forest resources and, technically, much of the land in the region. Some rights were allocated to private property owners or industries but generally not to indigenous people. Indigenous people had *de facto* control over their agricultural plots and struggled to defend communal lands around villages, where they informally claimed access and withdrawal rights for subsistence purposes. Indigenous people were denied formal rights over forests; the state instead granted management rights to a select group of timber companies through long-term contracts giving them exclusive rights to forests resources. These contracts superseded competing property claims of communities or private property owners and indigenous farmers were denied the ability to exclude timber companies from their lands.

The 1996 INRA and forestry laws transferred rights to a broader range of stakeholders and shifted the bundle of rights available to indigenous people (see Figure 3.8). The new rights were collective within TCOs. As defined by the INRA law, a TCO is a communal property that covers lands traditionally occupied and used by the indigenous populations. TCOs are inalienable, indivisible, non-reversible, collective and non-mortgageable as well as tax exempt. Within these communal properties, the internal distribution and use of resources, access and withdrawal rights are determined by residents' *usos y costumbres* (uses and customs), although they are still required to follow agrarian and forestry regulations. Forest management rights for subsistence resource use were devolved almost completely, again defined by customary
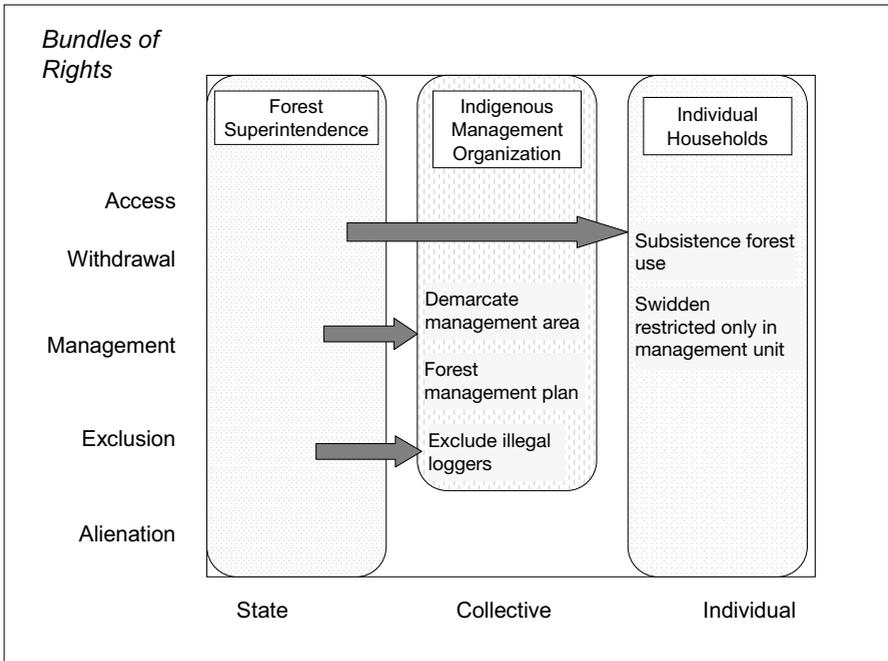
Source: prepared by author

Figure 3.8 *Forest tenure rights shift in Bolivia*

practice and with little involvement by state agencies. However, for the commercial use of forest resources, management rights were allocated only with approval from the state's Forest Superintendence.

Gaining approval for management rights from the state was a time-consuming and costly process. For approval of management rights, indigenous people needed to form management organizations and document their uncontested control over the designated forest management unit with approval from the Guarayos indigenous organization (COPNAG). They also needed to carry out an inventory and develop a management plan that conformed to the government's technical norms. Reaching the approval stage could take months or years and cost thousands of dollars. After approval, the indigenous organization had to submit an annual operating plan to be permitted to harvest and then submit an annual harvest report.

Although the forestry law was intended to promote sustainable forest management, the legislation also recognized that rights holders would harvest timber as part of forest conversion for agricultural purposes. Therefore, exceptions were included through mechanisms that provided one-time authorizations for the sale of timber from agricultural areas, amounting to commercial withdrawal rights. Technical norms were created for logging
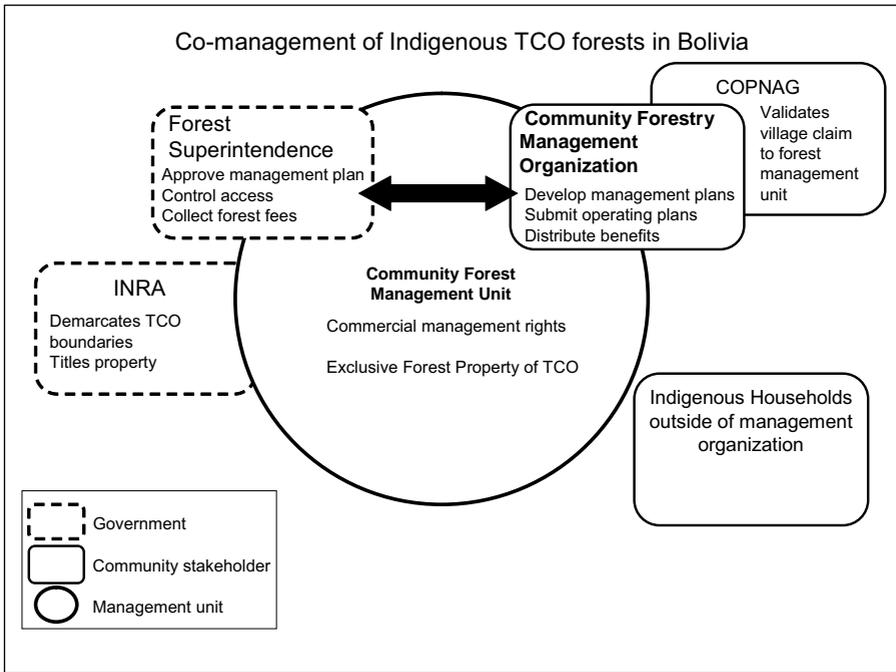
permits during agricultural conversion and other small-scale operations that were administratively simpler and not subject to the same rigorous enforcement as general forest management plans. These alternatives were not supposed to play a major role in the sector, but as indigenous people encountered bottlenecks to forest management, they turned to less sustainable alternatives like forest conversion.

When the Guarayos TCO demand was presented in 1996, the government determined that the property should cover 1.3 million ha (VAIPO, 1999). Titling has been slow and after a decade it is still not complete, particularly in areas near the highway with higher population densities and more frequently contested property claims. Although progress in remote areas has been rapid, this was little consolation for indigenous people who do not have their lands defined and are under pressure from other stakeholders. In response to the slow process, Guarayos groups embraced community forest management as an alternative that would help them control communal forests and provide another opportunity to generate income.

To gain management rights, indigenous communities in the Guarayos TCO had to seek assistance from NGOs that could provide technical support and subsidize the costs of preparing management plans. Although the TCO is supposedly a huge, indivisible communal property, management units were developed at the village scale. To date, seven communities have gained approval for general forest management plans in Guarayos covering some 150,000ha of forest. The management plans benefit approximately 250 indigenous households directly with wage labour and profits from timber sales. Even though timber companies had already removed the high-grade timber, significant volumes of alternative species with commercial value remain. When these communities harvest and sell timber, they can potentially generate tens of thousands of dollars in gross income.

The co-management arrangements (see Figure 3.9) with the government have created disincentives for the community forest management groups. The communities bear a high proportion of the transaction costs and risks of the system, and the government agencies have not fully met their responsibilities for supporting community rights and restricting illegal and unsustainable timber management. For example, of the seven community forest management projects, three have struggled with encroachment by outsiders. Requests for assistance from INRA and the Forest Superintendence to defend their management units and reaffirm their exclusion rights have gone unanswered. Because of the slow titling process, it has been difficult for some communities to control uncontested forest areas near their settlements. One of the original seven community groups found that a large portion of their forest management unit had been claimed by a private landowner. The community fought to keep their plan but eventually abandoned their effort. Two other CFM projects have had to continuously battle encroachment on their forest management unit by colonists and ranchers.

Indigenous people outside these groups or in other communities have found it difficult to take advantage of the management rights. They needed

Co-management of Indigenous TCO forests in Bolivia

COPNAG
Validates village claim to forest management unit

Forest Superintendence
Approve management plan
Control access
Collect forest fees

Community Forestry Management Organization
Develop management plans
Submit operating plans
Distribute benefits

INRA
Demarcates TCO boundaries
Titles property

Community Forest Management Unit
Commercial management rights
Exclusive Forest Property of TCO

Indigenous Households outside of management organization

Government
Community stakeholder
Management unit

Source: prepared by author

Figure 3.9 *Co-management in Bolivia*

uncontested forests, which were not always available. Furthermore, NGOs promoted forest management in large areas of high-quality forests, yet many indigenous families live in areas with fragmented and degraded forests and could not benefit from the NGO subsidies and assistance. As a result, increasing numbers of indigenous households have relied on alternative mechanisms – land clearing and logging permits – that provide one-time withdrawal rights but are less sustainable.

Exercising all of their rights has not proved as easy as expected for Guarayos families. The right of exclusion required that the government define the area over which the right applied. The titling process has been long and drawn out and the area claimed by the Guarayos people was ethnically mixed, meaning that outsiders and other competing stakeholders were already within the claimed area. The state had to determine which competing claims would be recognized and only then, when contested claims over areas were resolved, would the area be turned over to the TCO residents. The size of the territory limited the ability of indigenous people to enforce their right of exclusion and their claims were not backed up by state agencies or courts. As the state advances with the titling, it has given preference to private land claims and

even given priority to timber industries. The government's response to land invasion has been ineffective and illegal land sales and fraudulent transactions have taken place.

Discussion and conclusions

The four cases presented here show how community forest management projects were shaped by the manner in which management rights were transferred. In these cases the transfer was partial, creating management arrangements where responsibilities and decisions were shared by government and local stakeholder groups. Even though tenure rights granted to communities allowed customary decision-making mechanisms to guide subsistence management activities, commercial management was different, and state agencies retained major roles. The tendency to give rights and then take them back through regulations illustrates not only a tension between conservation and development agendas, but also a lack of confidence in community stakeholders. It also reflects the fact that the poor could be vulnerable to manipulation by outsiders without government oversight. The controls are intended to stop illegal resource use, but the cost of these measures often falls disproportionately on the community groups attempting to comply with the law. Illegal loggers, by definition, have incentives to avoid governmental controls, while community groups must demonstrate compliance.

What management rights were transferred and which were retained by the state? In all four cases, the state retained ownership of the forests (i.e. alienation rights) and offered some management rights and responsibilities but always retained a role in the process. In each case, the ability to exercise management rights required that community-level stakeholders carry out specific tasks to gain authorization. The state maintained control of management by requiring compliance with planning formats, technical standards and organizational models and administrative procedures. The granting of management rights was conditional and, in three cases, temporary. Non-compliance with the system could mean that local user groups would lose their rights. Nonetheless, within these co-management systems, significant power and responsibility were transferred to local stakeholders. All the groups could and did make operational decisions about their forest use; however, in all cases they were required to stay within established parameters.

In all four cases the regulatory framework guiding the community forest management models created barriers to participation, such as high technical standards, costly and time-consuming procedures and other requirements. Although the state offered co-management opportunities, these were beyond the reach of many households that lacked capacity and access to subsidized support. In only one case (India) did the state take most responsibility for the transaction costs, but this was for small, degraded areas. In all cases, the community groups required external assistance to take advantage of new rights to forest resources. Usually, assistance allowed them to comply with technical standards related to sustainability. After passing the hurdle of high startup

costs, the community groups could usually maintain their role within the co-management arrangements, although they frequently confronted obstacles from regulators.

Who was ultimately granted the management right? In these four cases, governmental agencies required local people to form specific types of organizations to take responsibility for collective rights. Community stakeholders could make decisions about who participated and how. However, they frequently adopted standardized models introduced by the NGOs subsidizing the startup costs. By insisting on the formation of local organizations, the government could be assured that a specific entity (and individuals) would be responsible for management actions. It was also assured that the necessary institutional arrangements were present before it devolved the rights. One unintended consequence of the formation of management organizations is that these new organizations could overlay previous existing organizations (see Chapter 4), displacing or excluding other stakeholders. In India, those who were excluded were often the poor and most dependent on the resource.

In general, the communities received forests that had already been logged or were otherwise degraded. However, the forests still had commercial value that made the investment in management practices worthwhile. The degradation was an incentive for the government to extend the possibility of management rights and introduce co-management schemes. In all four cases, the community forest management models were successful in improving forest governance and decreasing destructive practices.

The partial devolution of management rights through co-management systems had several trade-offs:

- Giving up some legal control over resource use decisions allowed the government to gain greater cooperation from local stakeholders. Because community-level stakeholders gain benefits by complying with official rules and guidelines, they are more likely to have vested interests in maintaining forest resources.
- The increase in benefits for community groups comes with increased responsibility and obligation. In some cases, the burden of new regulations and intrusion by government outweighs the benefits of participation for some local people.
- Devolving rights to some groups means that other groups and individuals are excluded. In fact, if there is no preexisting competition over the resource, granting exclusive rights is rather meaningless.
- Co-management is a process, and monitoring and reflection are required to continually update and improve the system. State forest bureaucracies are often rigid or unwilling to evaluate or adjust regulatory frameworks, but flexibility is necessary. Balancing the need to address local contexts without dissipating policy frameworks into myriad locally specific rules is a challenge.
- The temporal nature of some rights transfers allows the state to maintain control but creates tenure insecurity. Because the state can rescind the

management rights, long-term investments based on the assumption of continued benefit streams can be risky.

A central finding is that the partial retention of management rights by the state creates persistent, significant barriers to the adoption of community forestry and in some cases it has limited the benefits to local participants. In the worst cases, state regulations introduced to guide decisions become rigid frameworks that limit the kinds of choices that can be made, which in turn inhibits adaptation. Mechanisms are needed to facilitate dialogue between state agencies and communities to consider more local input into the design and revision of regulations.