STRATEGIES FOR STRENGTHENING COMMUNITY PROPERTY RIGHTS OVER FORESTS:

LESSONS AND OPPORTUNITIES FOR PRACTITIONERS

PREFACE

An historic transition in global forest tenure is currently underway. After years of government resistance, community claims to forest ownership are finally gaining momentum and acknowledgement. Many governments are beginning to recognize the ownership claims of indigenous communities and others, and to grant access to lands usurped by colonial powers hundreds of years ago. Now that there is growing opportunity to advance the community rights and forest tenure reform agendas, it is necessary to identify the key strategies for strengthening community tenure. It is equally important to capture and disseminate lessons for practitioners, donors, forward-looking governments and the communities themselves.

In some countries this process of recognizing community rights is well advanced. In Bolivia, the Philippines, Colombia and Canada, for example, court decisions, presidential edicts, and new legislation have in fact granted some communities very strong managerial rights over forests, along with use of these lands. In some cases the rights are strong enough to constitute full, private ownership. On the other hand, in Russia and many countries in Southeast Asia and Africa, the transition towards recognizing and respecting community rights has just begun. And in many countries that have passed new legislation, cumbersome regulations, lack of enforcement and continued policy bias against community property continue to be major barriers.

In places where it is emerging, respect for community property comes in response to decolonization as maturing nation states enter the global economy and devolve control to a more local level. In this process of devolution, local groups, non-governmental organizations (NGOs) and their supporters have been key to the transition. Their efforts have often been waged in direct confrontation with governments. Nations and advocates of sound forest management are recognizing that secure property rights are fundamental to achieve forest conservation, social justice and poverty alleviation. It is increasingly evident that in order to achieve tenure security, substantial legal reform will be necessary.

Local groups, NGOs and their supporters have employed a wide variety of strategies to advance community rights and tenure reform agendas, and these strategies in large part reflect the range of social and political conditions in each country. Given that these groups have been relatively few in number, somewhat isolated within their own country contexts and in possession of limited resources, the lessons learned from them have not been carefully examined or widely shared. Most literature has focused on the role of international NGOs or donors, without enough attention to the complementary roles of local activists and outside catalysts or supporters.

This paper identifies the key strategies used by local groups and NGOs to advance community tenure interests. It draws preliminary lessons for practitioners and innovators. We pay particular attention to the case of forests and community property, although the strategies are largely applicable to other natural resources, and can be used to strengthen other types of tenure. A companion paper entitled “A Place in the World: Tenure Security and Community Livelihoods, a Literature Review” provides an historical review of the literature and conversations concerning property rights. Both papers were prepared at the invitation of the Ford Foundation, which has played an instrumental role in advancing the interests of forest communities in countries around the world. The Ford Foundation, other donors active in the field and the many local groups and NGOs supported by them have dedicated themselves to leveraging structural changes in forest tenure and community livelihoods with relatively scarce resources. These two papers were written to help these actors make more informed decisions regarding the utility and limitations of each strategy, and the conditions under which each is appropriate.

While the Ford Foundation provided the support for this review, the lessons and conclusions are pertinent to other foundations, international aid agencies and governments. Indeed, for these activities to reach

some scale or coherence, increased collaboration and collective action from the diverse actors will be critical. Donors like the Ford Foundation are in a unique position to expand this community of practice.

These papers build upon and complement other initiatives and research projects by Forest Trends. We have completed two related reports: "Who Owns the World's Forests? Forest Tenure and Public Forests in Transition," and "Making Markets Work for Forest Communities." The first reviews the legal distribution of ownership and access in the major forest countries and the second explores the real possibilities of enhancing community livelihoods through forest markets.

We hope that this series of products will help lay the foundation for more targeted action and catalyze new and greater commitment to these critical tenure and market issues. The time is ripe to build a more robust community of forestry practitioners with a clearer sense of common priorities. Genuine progress toward alleviating poverty and conserving the world's forests depends upon it.

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INTRODUCTION: THE PROBLEM OF INADEQUATE AND INSECURE COMMUNITY PROPERTY RIGHTS OVER COMMUNITY FORESTS

Tenure security has recently become a central concern of poverty, forest conservation and human rights advocates alike. Poverty experts now recognize that the world's poor are disproportionately located in rural areas and strongly dependent upon forest resources for their survival. Recent studies indicate that about 80 percent of the extreme poor, those living on less than one dollar a day, depend on forest resources for their livelihoods. One billion people depend almost entirely on forests for their medicinal resources and about the same number depend on forests for their fuel needs.[1] The poor are also directly dependent on the many ecosystem services of forests, particularly watershed services and biodiversity.

More than 100 million indigenous people live in the world's forests. Without recognizing the rights of indigenous and other communities—and enhancing the security of these rights—communities cannot manage their resources as assets. And without full use of their assets, communities cannot achieve their goals of ensuring cultural vitality and economic development.

The forest conservation community increasingly recognizes that forest degradation is not due to local populations' disinterest in protecting or managing resources. It is caused by the historic centralization of control over forest resources, and the resulting problems of enforcing property rights while enabling sustainable livelihoods. Globally, communities in forested areas are more likely to suffer inequities and be subject to conflicts as more powerful actors extract forest resources.[2] Without secure tenure, there are few incentives for these communities to invest in forest stewardship or risk taking action to protect community assets. Forest conservation advocates are also becoming aware that forest-based communities are increasingly being reinstated as significant owners and managers of the world's forests, and that this could dramatically affect the future supply of wood products and biodiversity protection. The human rights community is increasingly aware of the justice dimension of forest ownership and its role in conflict reduction and poverty alleviation, actively supporting the recognition of indigenous and other community rights as a global priority through new national legislation and international treaties.

The problem of insecure forest tenure derives largely from the fact that governments still officially claim the vast majority of the world's forests. This is a legacy of colonial and imperial times when governments legally usurped land from native dwellers and delegated authority to forest agencies.[3]

Forest tenure remains a critical issue in many countries despite the progress that has been made. Put simply, there are two global challenges. First, in many areas of the world, communities do not have rights to their ancestral lands and the resources upon which they depend. In these cases formal community property rights are nonexistent or inadequate, but communities often continue to exercise their customary property rights to some degree[4]. Second, where communities do have some rights, their rights are almost universally insecure. This situation has long fanned popular discontent. Communities around the world have resorted to road and mill blockades, destruction of forests, sabotage and revolts to protest this injustice.

Historically, it has been NGOs, human rights groups and their respective donors who have taken the lead in assisting communities in the quest to gain more secure property rights and reform forest tenure. Governments and their multilateral and bilateral donors have, by and large, maintained the view of forests as a national good. They have focused on urban and agricultural areas, as well as establishing public infrastructure for private individual property rights.[5] NGOs around the world employ a wide variety of strategies to encourage governments to consider community rights and advocate for policy change. These strategies are varied. They range from confronting existing laws with legal activism to collaborating with governments in experiential tenure models, to making governments aware of the practicality of devolving control as a means to achieve efficiency, equity, and a sustainable flow of products and environmental

services. The knowledge and experience gained over recent years regarding these strategies, and the issues and impacts associated with different property regimes, is extensive. Unfortunately, this knowledge has only been shared on a limited basis and the lessons are learned from experience. Given the increasing openness of governments to community property and forest tenure reform, there is an unprecedented opportunity to mobilize new and greater interest in addressing these historic issues.

This paper provides a preliminary review of the key strategies that NGOs and their supporters have used to strengthen community tenure security for their natural resources, especially forests. We start by discussing the current global status of forest tenure. We also present a framework for understanding and assessing tenure security and its meaning in the context of community property. We then describe and assess the key strategies employed by advocates. Finally we conclude by assessing the implications of these lessons and experience for community property advocates, practitioners and donors.

This analysis is based on a series of field visits to India, the Philippines, South Africa, Indonesia and Brazil, where Forest Trends staff met with Ford Foundation staff and representatives of organizations active in advancing community rights. Additional cases from Bolivia, Colombia, Nepal and Tanzania were reviewed. Summary descriptions of key cases from each country are presented in Annexes 1 – 9.

THE SPECIAL CASE OF FORESTS, COMMUNITIES AND TENURE SECURITY

At least 7 percent, or some 246 million hectares, of the world's forest are now recognized as fully owned by indigenous and other communities and at least 4 percent, or some 131 million hectares, has been legally set aside for these groups by governments. These averages rise to at least 14 percent "owned" and 8 percent "set-aside" when only developing countries are included. [6] While these numbers may appear small, community ownership and access has approximately doubled in the last 15 years. Communities own, or have primary access to, a majority of forests in Papua New Guinea, Mexico and China; they either own or access 10 million hectares or more in Brazil, the U.S., Peru, Bolivia and India. It is also important to note that a far greater percentage of the world's forest is actively claimed and/or managed by communities. Recent court cases and activism in Indonesia, Canada and Malaysia—three of the top five wood-exporting countries—are increasing communities' ability to exercise their rights as major forest holders.

Of the governments responding to the need for greater community rights, several, including those of the Philippines, Panama, Mexico and Colombia, have recognized community-based property rights as full corporate private ownership. Many other governments, including those of India and Nepal, are several steps short of granting full private property rights. They are devolving some management responsibility to communities, but the governments are retaining their tenure over community assets. Nonetheless, most practitioners agree that the global trend is to increasingly devolve resource rights to poor people for their greater access and use.[7]

Tenure security remains a critical issue in terms of devolving management responsibilities without legal tenure reform.[8] First, devolution of management responsibilities is considered a positive step, but it falls far short of full ownership, offering many fewer positive incentives for long-term collective action. Second, devolution commonly results in competing ownership claims by varied stakeholders, especially where government retains legal ownership of the land and forest. It is common that overlapping claims and governmental failure to enforce the rules creates an open-access situation—with a consequent decline in forest quality. In those countries where government has long recognized community ownership of extensive tracts of forest, such as Mexico, local boundary disputes may persist from faulty property delimitation. In other countries like Bolivia and Peru, the problem is less about disputed boundaries and more about recognized the inability of communities to get governments to enforce and protect legally

claims. In such cases, forest communities have had informal rights historically and they are too politically marginal to maintain their newly acquired formal rights.

Forests present special problems to those who advocate for more secure property rights for communities. By their very nature, forests are used extensively by different users for very different products and purposes. Some of their benefits are layered and complex, so it is hard to pinpoint or even sort through ownership. Due to the seasonal variation in production, varying groups may have rights over the same products at different times. Not all claimants may be locally-located residents at any given moment. Migratory pastoralists, hunters, rubber tappers and prospectors all may have reasonable claims to use or access a forest and the resources that lie within it. Downstream water users may also claim rights in an effort to prevent deforestation of watershed forests.

In addition, national government or international interests may lay claims on forests' environmental services, recreational values or sub-soil minerals. New markets are emerging for things like the genetic resources of the forest canopy, the carbon sequestration function of trees, landscape beauty, water filtration, soil conservation and biodiversity protection. When the environmental services of forests are added to the picture, the range of potential property rights claimants increases considerably.

A simple example can be seen in the forest above the small city of Lampung in Sumatra, Indonesia. There, the quality of the water supply depends on the quality of an upland forest. That forest has long been zoned a protected area, but in fact since the 1940s it has been an open access resource for rice farmers who were brought to the area as plantation workers. The workers created villages in the foothills of the forest and, as their numbers grew, the workers and their farming families expanded their cultivation into the uplands. This threatened the forest canopy and Lampung's water supply.[9] But in such a situation, who has valid claims to the forest: the state, the town of Lampung or the farmer-workers? This puzzling situation is common and raises complex equity issues about who owns the right to what. It also indicates that complicated deal making and informed law enforcement are needed in order to solve competing claims to a shrinking resource. Law, however, can create restrictions on private property rights through easements, zoning, permit requirements and other requirements. These restrictions enable the deals and otherwise maintain the state's interests in public goods. Private rights are rarely unconditional.

A FRAMEWORK FOR ASSESSING TENURE SECURITY

The term "tenure security" is often understood differently by different people. Similarly, the goal of tenure security is often assumed, but it is not clearly, or commonly, understood. Part of the challenge of advancing community interests in tenure reform is adopting common definitions and conceptions of the problem. This section suggests basic definitions and describes the basic elements of tenure security.

In its most basic form, the definition of tenure security is "a defensible claim to a particular place or thing." This is also the definition of a "property right." The terms "tenure" and "property" are often used interchangeably,[10] while rights are generally associated with responsibilities. These definitions illustrate that there are two basic components to tenure security, the particular "bundle of rights" and the matter of whether those rights are transferable, defensible or secure. We will address each of these components below.

It is important to recognize that the concepts and the debates over property rights have been framed in international discussions and by modern national experts in largely Western terms, with Western concepts of property rights dominating the legal frameworks in many countries, including developing countries around the world. The fact that these legal frameworks often conflict with local, ancestral or customary rights is a major source of the tenure insecurity that predominates today. In many, if not most, developing countries today, individuals and groups operate within a context of "legal pluralism" where the customary

and formal rules often overlap, contradict and occasionally coincide. The challenge of gaining and assuring tenure security is, by and large, a challenge of rationalizing those different sets of rules into law and enforcing that law.

Rights of Ownership and Access

According to Western property concepts, property "rights" can be broken down into rights of "ownership" and "access." In terms of ownership, there are two basic legal categories of property in use in the world today: public and private.[11]

The public category is further divided into two subcategories, lands administered by government entities, and lands allocated to communities or indigenous groups on a permanent or semi-permanent basis. In this latter sub-category, the government retains ownership and the right to extinguish unilaterally the rights of local groups to the entire parcel of land. Under this arrangement, local groups typically are not able to sell or otherwise alienate the land.[12] Although the distribution of rights between government and community is different in almost every country, invariably governments retain some right of access, withdrawal of resources, exclusion, and management. Examples of this type include tracts of government lands "reserved" for indigenous peoples in Brazil and the U.S.; the Joint Forest Management (JFM) schemes of India; and areas covered by social forestry leases and other instruments in Thailand, the Philippines and Indonesia.[13] The villages engaged in the JFM schemes of India, for example, have far fewer rights than the villages with collective rights in China.[14]

The private ownership category is also divided into two subcategories: land owned by indigenous and other community groups and land owned by private individuals and firms. Private ownership is defined as rights that cannot be unilaterally extinguished by the government without some form of due process and compensation. "Owners" of private property typically have rights to access, alienate, manage, withdraw resources and exclude outsiders. It is best represented in countries with Western property traditions by "fee-simple" ownership. Group ownership is simply private land owned by a group. It is often inaccurately called "common" property, when communities usually allocate private rights to households for agriculture and some forestry, while keeping some forest under common management. The group ownership category includes "community-based property rights" in which the state legally recognizes full community authority to define and allocate property rights within its particular area of ownership.[15]

These categories may appear academic, particularly the distinction between private group rights and public "reserves," but the distinctions are important. Private rights are more secure because they are less easily controlled or expropriated by the government. Communities that hold private rights have more leverage when negotiating with governments than those communities with long-term public use rights. The importance of this distinction may become more apparent as the importance of ecosystem services generated by forests grows. Communities with private rights have much stronger claim to the benefits of ecosystem services and other opportunities than communities with rights to public lands.

Rights of "access" allow use of some resources rather than providing clear legal rights to dispose of them.[16] They are, thus, secondary to ownership rights in terms of legal authority. They are defined by terms that are either imposed by the owner or negotiated between the owner and the individual or group desiring use of the property. Rights of access include use rights defined in spatial or temporal terms.

Elements of Community Tenure Security

Community tenure security can be defined as the confluence of factors that allow a community to make decisions as if its rights of ownership or access are secure and cannot be taken away arbitrarily.[17] In this paper we are considering tenure that falls within the two "community" categories of rights described

above—those public lands and resources set aside for communities and those private lands recognized as owned by communities. The issues associated with attaining security for communities with these rights will be similar to those faced by individuals and firms with private land rights, but will differ significantly because of the community dimension. Some of the characteristics and indicators of tenure security are listed in Box 1.

Although the definition and characteristics of tenure security help explain community tenure security, they do not necessarily help understand how to achieve it. Put simply, the key elements or building blocks needed to achieve community tenure security include: effective internal institutions of the community, legal recognition and support of community rights, the presence of independent judicial arbitration systems, effective regulatory mechanisms and institutions, and a supporting political constituency (see Figure 1). The relative importance of these elements will vary from place to place, and only one of them—effective internal institutions—is necessary. As illustrated in Figure 1, these elements connect the property rights officially held by communities to the relative security of those rights. They are all important. However, except for internal institutions, one or several can be absent for tenure to remain secure. The importance of the other elements will depend on a number of factors, including the degree to which the government is generally and sincerely supportive of community rights, and the degree to which the community interacts with modern economic and financial systems. It is important to recognize that tenure and tenure security are social and political constructs. As such, the precise meaning of tenure and the conditions that make it secure will be completely dependent on local context.

Box 1. Characteristics of Secure Community Tenure

1. ***Security requires that there be clarity as to what the rights are.*** Confusion as to one's rights can significantly undermine the effectiveness and enthusiasm with which those rights are exercised.

2. ***Security requires certainty that rights cannot be taken away or changed unilaterally and unfairly.*** In almost any situation, of course, there are circumstances where rights can be taken away or diminished, but conditions for doing so need to be fair and clearly spelled out; the procedures for doing so need to be fair and transparent, and the issue of compensation needs to be addressed.

3. ***Security is enhanced if the duration of rights is either in perpetuity or for a period that is clearly spelled out and is long enough for the benefits of participation to be fully realized.*** If rights are to be in force only for a particular period of time – as in some co-management arrangements or community forestry leases, for example – care should be taken to ensure that agreements are made for at least as long as realistically required to reap the benefits of participation.

4. ***Security means that rights need to be enforceable against the state (including local government institutions) –*** that is, the legal system has to recognize an obligation on the part of the state to respect those rights.

5. ***Security requires that the rights be exclusive.*** The holders of rights need to be able to exclude or control the access of outsiders to the resource over which they have "rights".

6. A corollary to exclusivity is that ***there must be certainty both about the boundaries of the resources to which the rights apply and about who is entitled to claim membership in the group.***

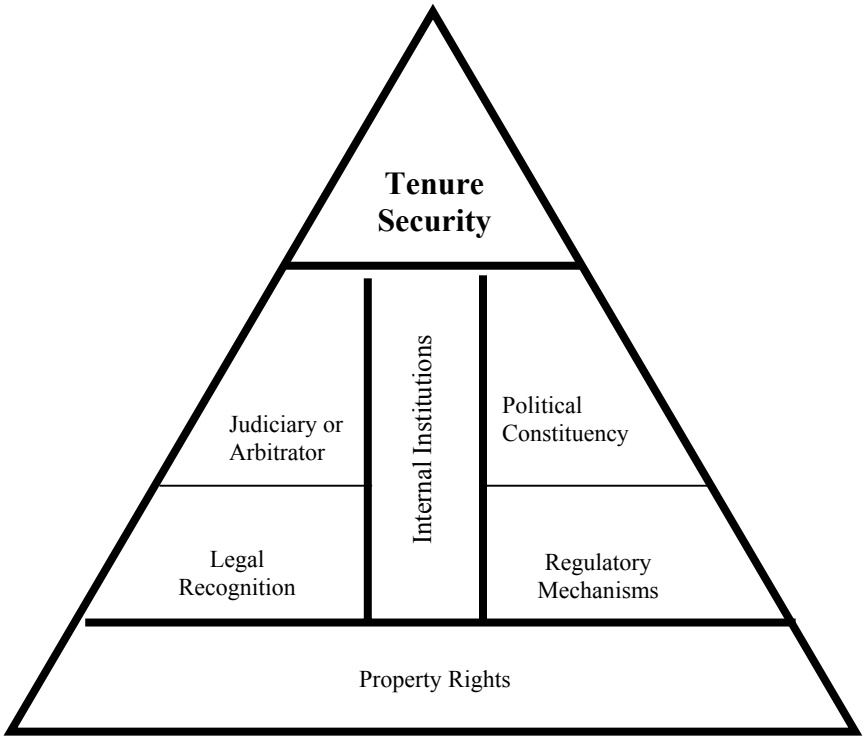
7. Another corollary to exclusivity where co-management concerns government land is that ***the government entity entering into the agreement must have clear authority to do so.*** An agreement should only reflect promises on the part of government that the responsible authority is empowered to fulfill.

8. ***Security requires that the law recognize the holder of the rights.*** That is, the law should provide a way for the holder of the rights to acquire a legal personality, with the capacity to take a wide range of steps, such as applying for credits, subsidies, entering into contracts with outsiders, collecting fees, etc.

9. Finally, and perhaps most daunting, ***security requires accessible, affordable and fair avenues for seeking protection of the rights, for solving disputes and for appealing decisions of government officials.***

Source: J.M. Lindsay, 1998."Creating Legal Space for Community-Based Management: Principles and Dilemmas" .

Figure 1. Elements of Community Tenure Security



Effective Internal Institutions

Community tenure security is strongly influenced by a community's capacity to define and implement its own rules. Communities define their own tenure systems and develop their own mechanisms to monitor and sanction compliance with those rules. These internal institutions are often consensus-based and guided by assemblies that represent households; they may also be dominated by local chiefs or specialized subcommittees of elders or forest users. Historically this tradition was widespread before the rise of nation states and internal governance systems continue to function wherever communities retain collective rights over resources in the world today. In some cases, these institutions create agreements between neighboring communities for common rules on managing wildlife, watersheds or inter-island waters.

As the many scholars and practitioners who have studied so-called “common property” have observed, success is indicated by the degree to which community rules and resource boundaries are accepted as legitimate, are clear-cut and enforced, and communities can practice exclusion, adapt to new situations and deal effectively with external forces, particularly the government.[18] To a large extent local institutions' effectiveness can be measured by their effectiveness in handling internal disputes: disputes over who to exclude, disputes over who gets to make the rules, disputes over resource management rules, and disputes regarding interaction with the government and outsiders.[19]

Where these customary systems interact with formal state systems, security is affected by the degree to which a community acts in a coherent and organized manner, and the degree to which the state recognizes the legitimacy of local rules and enforcement. For example, community success in the Indian joint forest

management (JFM) schemes is influenced by communities' ability to exclude outsiders and ensure internal policing with support from the state forest agency.

Legal Recognition and Support

Although many community property systems have existed for centuries relatively independently or even in contradiction to state law, today there are almost no communities sufficiently remote or sufficiently powerful to establish their customary claims without formal legitimacy or protection.[20] For this reason communities often need to modify, or else fit into, state and international treaty law to protect their interests. Local communities alone, for example, cannot define the rules under which they interact with outsiders, nor can they define the limits of state power. In the context of property, it is necessary for state law to recognize local ownership and access rights, and to identify those with rights to speak for communities. Nonetheless, tenure is a necessary but insufficient condition for good forest management, as illustrated by the case of Papua New Guinea where clear legal recognition of community customary property rights is no guarantee of good forest management (see Box 2).

Box 2. Community Property Rights as a First Step: Papua New Guinea

In Papua New Guinea, 97 percent of land is held under customary ownership and most of that land is forested. While the Constitution lays the groundwork for communities ("landowners") to benefit from forest resources, the legal framework does not establish processes for how people will benefit or who really represents the community's interests in negotiations with logging companies. In Papua New Guinea, the dominant pattern is for communities to sell off mining and timber rights to the highest (or only) bidder, who then extracts the resources in an unsustainable manner. Communities do not have the political power to effectively monitor and fine logging companies that do not follow the prescribed logging procedures, thus damaging waterways. Many analysts claim that most forest communities in Papua New Guinea hope to strike it big with a short-term deal with a big foreign timber or mining company. Environmentalists have found that selling a more sustainable model of development to Papua New Guineans has been a difficult, uphill task. Corruption is a significant problem at all levels of government. Even local leaders strike deals on their own without much or any community discussion (McCallum and Sekhran, 1997). Massive and substantive *de jure* changes in the larger policy framework have had little impact on this situation. (Mayers and Bass, 2001).

Legal frameworks should be designed as enabling tools. With regard to community property, laws should recognize ownership, but then reflect customary rules and provide legal space for locally defined regimes within that ownership.[21] It is also important that legal frameworks give equal support to private community rights and private individual property; a "leveled playing field," so to speak. Unfortunately, there is simply no such legal framework supporting community property in most countries, and where new legal frameworks ignore local property traditions and rights--as in the case of the Dawes Act of 1887 in the U.S.—the consequences are usually disastrous (see Box 3).

Regulations, Regulatory Mechanisms and Institutions

Official manifestations of rights, such as property surveys and titles, can enhance tenure security, and are increasingly important for communities that are engaged in modern markets and formal financial systems. For example, property titles are often required to gain access to credit. Nonetheless, these manifestations are only as meaningful as the real value afforded them by the key social and political actors. Formal adjudication and title registry is a tricky business. Where this process has taken place in the absence of understanding complex natural resources or in the presence of competing claims, well-intentioned surveys and titles have not only failed to deliver tenure security, they actually have increased the levels of conflict.[22]

Box 3. The U.S. Dawes Act: Imposition of Individual Over Group Rights on Native American Reservations

By 1887, most Native Americans had been grouped into marginal lands called reservations. Some reservation land was still managed locally under an indigenous commons property system. Much of this land was also forested. Also by 1887, western expansion of immigrant homesteaders was raising demand for land and timber. Back east, reformers concerned about the fate of Native Americans proposed to assimilate Native Americans into the wider society. They argued that the best approach for doing so was to make out of the often nomadic Native Americans a small-scale peasantry that lived on individualized parcels of land (just like an immigrant homesteader). Reformers who shared this view allied with local economic interests in the West to pass the Dawes Severalty Act of 1887. It divided the reservations into 160-acre allotments for individual tribal members. It stated that after 25 years, certified "competent" allotment holders would be allowed to sell their allotments to anyone. The plan was a fantasy and implementation was poor. Swindling on a massive scale resulted. Consequently, by 1934 when the "New Deal for Indians" announced massive policy changes, Native American tribes had lost two-thirds of their reservation lands due to the Dawes Act. The success of this Act in assimilating Native Americans is widely contested by historians, some of whom it as a misguided piece of legislation that resulted in poverty for Native Americans (Dawes Act, 1887; Miller, 2000; Weisberger, 1999; Pisani, 2001).

Even when a law or policy is in place that establishes community tenure rights, the processes for acquiring the official documents and exercising those rights are often extremely cumbersome and bureaucratic. The political forces opposed to community rights often have sufficient political clout to create administrative procedures and bureaucratic hoops that make it almost impossible for communities to obtain them. For example, in Tanzania, only one small community forest has actually been gazetted officially despite the publicity about Tanzania's progress toward community rights over forests.[23] In that country, the bureaucratic processes necessary to gazette a community forest are almost impossible to achieve. Similar situations exist in Bolivia and Ancestral Domains in the Philippines.[24]

Furthermore, changes in law and regulations can undermine existing tenure security, as in Mexico where changes to Article 27 of the Constitution have made indigenous communities more vulnerable to administrative manipulation that could undermine their tenure rights. Government agencies encourage indigenous communities (*comunidades*) to become *ejidos* (an alternate type of community tenure) in order to access benefits under a government program. According to regulations for implementing that program, community leaders may make the change without consulting an assembly, and the community is often unaware that making that one change to access this minor government program will radically reduce its tenure security.

Independent Arbitration or Judiciary Means

Another key building block of security can be the presence of an independent third party to sift through local claims for various products and resources. This can be a legal system of customary justice, independent courts, a once-removed arm of local government, or an independent arbitrator of some kind. The independent third party must have the skill to come up with locally acceptable solutions to disputes, and decisions must be accepted as legitimate by the state. The arbitrator also must be relatively incorruptible so that people have faith in the system and use it. Also the system should not be weighted to favor the "haves" and politically connected entities, rather than the "have-nots" and powerless groups. Examples of successful and unsuccessful adjudication are presented in Box 4.

Box 4. Arbitration Success in Ukraine and Failure in New Mexico

The Carpathian mountain region of Ukraine is filled with churches, many of great architectural beauty. Many communities sought to revive their churches and make use of them again after the collapse of communism. Unfortunately, the issue of who owned the churches and the land around them was far from clear. Communism and its fall created a welter of competing claims to the land and buildings. This frequently resulted in destruction of church property and other forms of localized protest. A group of academics from various disciplines at the local university banded together into an association and traveled the countryside at the request of communities to research and adjudicate on the competing claims. They were supported by a small grant from a local foundation. Their independent and fair-minded approach was very successful. Dozens of property rights claims were resolved and many churches were preserved in the process (Ellsworth, 1998).

A less positive case of adjudication can be found in New Mexico (U.S.) from the 1850's. When its northern region was annexed to the United States, the indigenous common property regime of the grazing hills was ignored. The land became public property and the government began allocating it to private individuals. This resulted in an uproar of contested property rights. Adjudication commissions were established to resolve the claims. But according to many historians, "corrupt government officials, including judges, sided with rings of unscrupulous lawyers," all of whom used the adjudication process to bilk the locals of all property rights, creating resentment that lasts to this day (Knowlton, 1972).

Political Constituency for Community Rights

Communities often cannot defend their interests alone, particularly when most governments have historically refused to acknowledge their claims. Additional legal, policy and administrative assistance is usually necessary, even if legal recognition has been secured and lands have been demarcated and registered. Local communities and their advocates need a sophisticated understanding of law and the political landscape, along with the ability to lobby and otherwise effectively defend their rights. Peaceful but intense negotiation is one of many strategies that have been used with success in Canada and the U.S. by Native Americans seeking recuperation of property.[25] In many other countries, political action is more effective than legal action due to the lack of rule of law and inadequate justice systems. Legal action, in these cases, is an essential part of a broader political action strategy.

A political constituency for defending and advancing community interests can include communities, NGOs, religious institutions, associations, unions, and other private sector actors. These coalitions are most effective when all actors work toward a common goal, are careful to keep communities informed, seek guidance from community leadership, and otherwise hold themselves accountable to communities. Political coalitions can benefit from the advice and cooperation of interested individuals who cannot be an active part of a coalition, such as people who work within the government bureaucracy or political parties.

Strategic actions undertaken by national and international supporters can also strengthen the political power of the constituency.

STRATEGIES TO STRENGTHEN COMMUNITY TENURE

Many strategies are used by advocacy NGOs, supporting foundations and donors to help put into place the building blocks of community-based tenure security, even when a public decision by government has not yet been made to provide it. The effectiveness of a particular strategy depends on the broader political context and the immediate political moment in which the strategic action is taken. Strategies implicitly address the fact that control over allocating access to land and natural resources is a source of political power. Tenure security changes the political landscape.

While all strategies can be useful depending on the context, no single strategy leads to creating all of the elements of tenure security described above. Also, every strategy has multiple effects and to some degree creates new winners and losers, many of which cannot be predicted in advance. Most strategies work best in combination with each other, not in isolation. In this section we describe a number of strategies that have been used with success by the NGOs and community-based organizations supported by the Ford Foundation and other agents of change, as well as other advocates for community tenure. In each case, the strategy is described and an illustration is provided, along with indications of success, and lessons about the most workable approaches.

Strategy 1: Legal Activism for Community Claims

Public interest lawyers can sometimes use existing laws to support community claims to natural resources, including forests. They can also test cases in court, challenge previous court decisions, provide the legal expertise to write new laws and fully use the alternative dispute resolution mechanisms that exist in many countries. Activist-oriented public interest lawyers have been key players behind legal actions to provide communities with tenure security in Australia, Canada, the U.S. and the Philippines. In all of these cases, the communities in question are indigenous communities with traditional land rights ignored, diminished or abrogated by government until allies were found to help fight their cause in court.

As the Philippines case shows (Annex 4), public interest legal activism can be remarkably effective at improving tenure security. The Philippines' Indigenous People’s Property Rights Act, drafted with assistance of public interest lawyers and NGOs, was promoted in Congress for nearly a decade, and finally passed in 1997.[26] Legal assistance played a critical role after the law was passed, by providing support for the Supreme Court's decision to uphold the law after mining interests challenged it as unconstitutional. While the Act is not regarded in the Philippines as the perfect tool for providing security of tenure, it is a considerable improvement over the prior situation and constitutes a victory for supporters of community tenure.

One of the limits to this approach is the expense it can pose in many countries, especially with prospects of victory slim.[27] Also, in developing countries, the infrastructure of public interest law is often weak and activist lawyers willing to work with marginal communities are few. In fact, in such countries the entire legal activist tradition may be unknown. Corruption is often another problem. In such cases it may be necessary to build the organizational basis for this approach by financing training, salaries and the costs of specific legal casework, as well as supporting judicial reform and anti-corruption measures within the larger society.[28] Training and case mentorship for would–be public interest lawyers and judges may be essential. It can also be very useful to build and strengthen networks of lawyers, as illustrated in Box 5. This kind of support to the public interest law sector is beginning to bear fruit in countries like South Africa, Zimbabwe, India and Indonesia.

Lessons:

- Winning court cases and getting support for new legislation can take many years. Hence, a ten-year horizon of financial support is realistic.

- The opportunity for legal change is often accelerated when bigger changes take place in the country, such as a transition from a non-democratic system to a more democratic one, new elections or a cabinet shuffle.

- Success can be the result of a multi-stranded approach that supports many actors and many players over a long time, using many of the other strategies reviewed here.

- After testing the application of a new law or legal precedent, there is a set of "next generation" issues to work on.

- Legal victory in a specific case may not be enough to provide complete tenure security. Larger changes in the policy and organizational landscape may be needed to implement and guarantee newly acquired rights. Legal advocacy must be part of a larger strategy, not undertaken in isolation.

- Compromise is the nature of rights acquired through legal battles. Failure to achieve the best law or court decision does not mean all is lost. Success comes through a process of building and testing precedents against new cases.

- Legal activists tend to have a big-picture view and may not adequately understand the political field of winners and losers at the local level.[29] Legal activism is most effective when it is linked to grassroots reality.

Box 5. The MacArthur Foundation support for networks of environmental lawyers

In the past decade, the John D. and Catherine T. MacArthur Foundation has supported U.S.-based organizations such as the Center for International Environmental Law (CIEL), the Environmental Law Institute (ELI) and the Environmental Law Alliance Worldwide (E-Law). This support has enabled CIEL to help make the international environmental policy arena better reflect the needs of high-biodiversity countries. ELI has provided training for policy makers on legal issues pertaining to biodiversity. E-Law has maintained an extensive network of grassroots attorneys in developing countries. Most national environmental law groups are also human rights advocates, bringing cases regarding constitutional provisions about environmental rights, development schemes that damage local peoples' livelihoods and the traditional land claims of indigenous people who have been disregarded by national governments. The MacArthur Foundation has supported national organizations such as the Mexican Center for Environmental Law, the Peruvian Society for Environmental Law, the African Center for Technology Studies and Fundepublico in Colombia, among others. These organizations exchange information to develop sound approaches to public interest environmental law, to provide credible and politically sensitive advice for tropical country governments, and to improve independent monitoring and critique of multilateral development institutions such as the World Bank.

Conservation and Sustainable Development Program. MacArthur Foundation.

Strategy 2: Mapping of Community Lands to Document Customary Rights

Many NGOs have adopted the method of participatory mapping as a way for communities to raise their own awareness about the status and value of their resources. It can also build community consensus on organizing to defend tenure security or making a claim for ancestral or historically owned lands. Community mapping has been used successfully for years in a wide range of countries and regions from Canada to Indonesia.[30] In this approach, local or international NGOs usually employ rapid appraisal techniques. Local people supply local place names, land use zones and the corresponding use and access information for the area they are seeking to map. The resulting map is then used as a first step to negotiate tenure rights deals with government agencies and private firms (see Box 6). In some cases, the quality of the map created far exceeds anything officially available, particularly in remote or frontier areas. The popularity of this method is explained by the simple fact that provides concrete information on claims, along with a common, objective basis for discussing whether a specific claim should be considered. A majority of community members agree to the map's content, which pinpoints specific territories, rather than presenting a vague claim like "that place belongs to us" without evidence of community consensus.[31] Signatures from all community households often strengthen the map's legitimacy.

Box 6. Mapping the Sliammon First Nation, Canada

"Through the application of GIS technology, the Sliammon Treaty Society has completed traditional occupancy and use maps [British Columbia, Canada]. One of the most important sources of information for these maps has been oral history interviews completed with Sliammon elders from 1970 through 1999. The purpose of the Sliammon Traditional Use Study was to create a comprehensive inventory of traditional occupancy and use of Sliammon Lands and resources to support participation in a British Columbia Treaty Process and Crown lands Referral Process" (Aboriginal Mapping Network, 2001).

Mapping can be used to demonstrate government corruption, as in the Philippines where an NGO mapped the same areas previously mapped by government teams. The new map demonstrated that government teams inserted their own names as landowners on the maps.[32]

Analysts of participatory mapping caution that it is essential to conduct accurate mapping. It is also important to ensure full participation throughout the community and neighboring communities. Mapping can create local tensions over previously vague boundaries between communities, crystallize existing inequalities, provoke new local disputes, or ignore local visions of space that do not fit on typical dimensions of traditional paper or computer maps.[33]

Supporting mapping often involves paying for training and the organizational costs of the NGOs that provide the training, develop political acceptance for using maps to develop tenure rights and support the legal process of claim-making with the relevant authorities.
Lessons:

- Develop a strategy before mapping so that the map will serve its purpose. Different maps serve different purposes.

- Use the map strategically and with caution. Maps are a powerful political tool, so good political instincts are necessary to use it well.

- Be careful about temporary permits based on claims that are not well substantiated or established. These can lead to short-term behavior by actors who have little confidence that they will gain the rights in the long term.

- Early in the process, evaluate whether or not to involve government. It can become a political hot potato and governments can chose to ban this activity if they perceive it as threatening. Early buy-in is a good idea in some cases,[34] while some activists have been more successful by building momentum for an independent mapping movement before involving government.[35]

Strategy 3: Public Education and Lobbying to Develop a Shared Understanding of the Problem and Solutions

Public education and lobbying can be an effective means of establishing a political constituency for community rights. As passage of the South African Communal Property Associations (Annex 5) shows, well-informed and active groups can influence policy makers and legislatures during critical turning points in a country's history, even when civil society is weak. Niger and Tanzania are examples of countries where this strategy has resulted in substantial overhauls of national forest codes and land laws.

For most developing countries, the critical turning points, when lobbying and public awareness are most useful, occur during a transition to democracy, a change in government, a challenge to a government's legitimacy such as mass demonstrations in the streets, or a power shift bringing reform-minded people to the top of important ministries. Rapid public education at a juncture of this nature often depends on building connections, contacts and awareness across constituencies and amongst journalist and media networks before the critical moment arrives.

During such critical moments, policy agendas are often reopened. Then, people with a cause can typically find willing listeners. Citizens, academics, think tanks, and nonprofit organizations are able to interact with those in power. A common tactic is launching a highly visible public conference on the key issues of concern. These conferences sometimes attract media and public attention. In turn, this attention can influence change in tenure status. A key strategy in this regard is preparing data and materials that clearly quantify and summarize the benefits of the community model of management and ownership—including returns to the environment, returns to the economy, returns to equity and social harmony, and returns to local livelihoods.

Donors have long supported this kind of public education and lobbying, although in the developing world the nature of public education may be different than it is in the United States. In the Philippines, for example, donor-financed consulting reports on community property rights influenced the national debate at the time.[36] In Tanzania, Britain's foreign aid agency, the Department for International Development (DFID), worked with an expatriate consultant to prepare viable tenure legislation palatable to the Tanzanian Parliament.[37] And in the case of Niger described in Box 7, both USAID and the World Bank spent eighteen years sticking with a project to create a framework for property rights security within a new "code *rurale,*" a goal that had once been thought impossible.

Box 7. The Case of Niger's Rural Code as a Form of Tenure Change

Niger's "Rural Code" and its related policy edits allow for recognition of all types of land rights – be they collective or individual. The code provides for all such claims to be mapped as registered. But if there is any local opposition to a specific claim, registration of that claim is suspended until a special land court decision settles the dispute. The process of establishing this new rural code, informing the population about it, creating the policy framework around it, and setting up the implementation mechanisms took 18 years (1986-1998). During this time there was much stop-and-go funding from a variety of donors, notably USAID and the World Bank. Implementation of the code has been very weak, due to the tepid support of traditional authorities for the code, incomplete decentralization, and the very high recurrent costs of running the 11 regional land commissions which are supposed to arbitrate the many disputes that arise when attempting to map out and zone land claims. It was a heavily donor-driven process and was dependent on donor funding for every step. (Yacouba, 1999).

Brazil is a famous case where this strategy was used in combination with civic mobilization at the national and international levels. An alliance with academics, local non-profits and the international environmental community allowed both the indigenous people of Brazil and the rubber-tappers to press their land claims into the international arena.[38] The combined effort of civic mobilization, high-level public education and lobbying positively influenced the national scene such that extractive reserves for indigenous peoples and for rubber-tappers were finally recognized and could be demarcated.

In the case of South Africa's Common Property Associations Act (see Annex 5 for details), success meant having a national organizational and intellectual infrastructure already in place prior to the critical moment when influence at high levels was possible. The Ford Foundation had long supported think tanks, nonprofit organizations and academic centers to do action research on tenure issues. Therefore, a network of academics and organizations already was in place to present legal options to a new government. That network urged the new government to consider common property as one of many legal options for the country. And to their credit, they succeeded.

Lessons:

- Lobbying is the end result of a long-term process of institutional support and building a field of organizations working on the cause. When the moment is ripe, networks of people and organizations must be ready to jump into action with concrete proposals. This implies prior expertise and experience with the tenure issue, and the prior existence of coalitions and networks that can be activated at an important juncture.

- When the moment comes, advocates must have the facts and figures at the ready. This includes sufficient knowledge about the policy positions and possible benefits to successfully advocate for change.

- Legal changes may be only on paper, and not implemented. Other means may be necessary to assure political support for implementation and to solve related problems in the field.

Strategy 4: Supporting Working Groups to Transform a Bureaucracy

Advocates can promote a policy change, but implementation of that change requires changes in the bureaucracy and in the minds of the people who work within the bureaucracy. One theory of social change and learning says that when people acquire new mental models or intellectual ways of seeing or analyzing a problem, they become more receptive to experimentation and changing habits, beliefs and

policy positions.[39] This is the idea behind a common strategy among donors to support bureaucracy-based working groups, or affinity groups, on particular problems.[40] Some also report that merely bringing people together to talk about a subject can lead to action because it focuses participants on an important task or highlights a problem such that it becomes a ministerial priority.[41] Working groups are thus forums where preconceptions, data, new "mental models" and field experiments can be discussed and assimilated.

In the Philippines, a government working group was established with donor support to study innovations in farmer-managed irrigation systems. It was led by a civil servant who was an advocate of such systems. The working group took on the task of creating a setting for ministerial "group learning" about specific field-based experimental projects. These field projects represented a core innovation in the way the irrigation bureaucracy did business. The working group brought about a community of practice on the devolution concept and led to significant changes in the way the Philippine irrigation bureaucracies related to farming communities. Donors in this case paid for meeting costs, study tours, consultants and research for the working group.[42]

Working groups in India for Joint Forest Management (Annex 2) provide another example of support to a working group that included nonprofit organizations and researchers from outside the forest service.

Lessons:

- Working groups are good vehicles for change when the obstacles to reform are not deeply embedded in a political economic context that opposes any change at all. That is to say, it can work for a problem like devolution of an irrigation authority to user groups but may not be useful for dealing with a problem like apartheid in South Africa prior to victory by the African National Congress.

- Working groups are most useful when led by an advocate with authority within a bureaucracy and the desire to innovate. In such cases, it can widen the power of that person within a bureaucracy and create some credibility and freedom to innovate without excessive resistance or sanction.

- The weakness of working groups is evident if credible leadership is lacking. A working group can also create a problem by providing legitimacy for a weak compromise supporting the position of the government, thereby undermining the dialogue promoted by environmental or human rights organizations. Supporters of working groups must have a strategy prepared in case a government attempts this tactic.

Strategy 5: Strengthening Politically Active Coalitions of Cause Leaders, Organizations and Networks

When promoting a cause like community property rights, all vested organizations usually have a role to play. Researchers can provide the data necessary for action. Think tanks and academics can produce policy analyses. Grassroots nonprofits can help communities do mapping and create land-use plans. Community leaders, federations and associations, and sometimes local government authorities, can build grassroots consensus and bring legitimacy to a critical political moment. Activists can lobby government officials and legislators on new ideas and models of how to do things. Training groups can facilitate meetings and strategy sessions among all the players. Public interest law firms can manage landmark cases. And leaders of these groups and organizations can jointly plot ways to keep the issue in the public eye through good marketing and claims on media attention.

Negotiation, research, project management, accounting, budgeting, teamwork, fundraising, public relations, social marketing, lobbying, grassroots facilitation, coalition-building and use of GIS and

participatory appraisal are but a short list of the many skills that can come into play in the reform movement for community property rights. But rare are the individual organizations that combine all these skills. Coalitions need to bring together an array of skills. To be effective, they need to develop synergies and a coherent strategy.

A typical, time-honored strategy is supporting the strengthening of potential leaders, organizing the political constituency, and strengthening the constituency itself through networks. Particularly important in the dialogue involving indigenous peoples worldwide is the formation of horizontal linkages among indigenous leaders from different regions and countries so that they are able to develop their own direct dialogue with decision makers, rather than depending upon NGOs and others for mediation.

Leadership can be supported in a variety of ways. Providing scholarships and training opportunities for promising leaders has proven to be highly effective. It is also important to support opportunities for leaders in small organizations to emerge as they confront real challenges. Similarly, promoting exchange between leaders and organizations within and between countries has proven to catalyze learning and enthusiasm for change. A common pitfall, in fact, is financing capacity-building but forgetting to assist with building space for all parties to enter the dialogue.

This strategy also can include longer-term institutional support to key organizations such as vehicles, computers and Internet access. It can also include long-term core support for a group's operating costs. A good example of the success of this strategy is in Brazil, where the Ford Foundation played a key role over many years in supporting and strengthening the *Instituto Socioambiental* (ISA), a Brazilian organization famous around the world for its authoritative work on the rights and fate of that country's indigenous people.[43]

This strategy can also mean the establishment and training of local networks of cause-related organizations. The most important lesson from such an approach is the need for long-term, flexible funding to an array of local, national and international organizations working on the issue at once. There is a need to facilitate collaboration and learning among them so that a community of practice and an effective political constituency emerges.

Strategy 6: Piloting Working Models That Demonstrate Change

Some important obstacles to change include common arguments and complacency, along with the challenge of getting a viable model off the ground. Pilot projects help demonstrate that it is possible to implement change. They also give government agencies opportunity to experiment with change. Once in place, a model can set in motion a powerful chain of events that creates great national change (see Box 8). This is especially the case when people believe that their place, site, region, or country is so unique that models successful elsewhere cannot possible work in their place or country.

Exchange visits and apprenticeships in places with donor-supported models can be very powerful. When individual communities or ethnic groups realize that they have more options than they realized, they are often mobilized to support change. It may be necessary to link people from very different cultural/political settings so that they can see solutions outside their own political and historical context. This approach also helps to reveal experiences from more economically diverse countries such as Europe and North America, illustrating that options may have little to do with a given country's stage of "development."

Change can also come from innovative government officials who are at the margin of the policies and regulations set by their own institutions. A classic case is India's Joint Forest Management (JFM). JFM began in a situation where government ownership of forests was widely accepted. It started as a local level "innovation" when a forestry official in West Bengal struck a deal with a local community to keep plots out of his timber research in exchange for a share of the community's future timber harvest. The innovation and variations on that first JFM agreement spread in West Bengal and then to other states. As JFM spread, other "foresters at the margin" experimented on their own to create models relevant to their local settings, which advanced the initiative. With help of a donor-supported working group, the idea of a community-bureaucracy joint management agreements spread throughout India.

Box 8: A Model That Worked: A Community Concession in Peten-Guatemala

Environmentalists helped established a national park in Peten, Guatemala called the Maya Biosphere Reserve. Local residents, however, continued to cut timber out of the reserve. A solution was found. With help of the environmental organizations, a buffer zone around the park was established and the small number of residents organized into five community organizations. These organizations were granted a timber concession within the buffer zone. As of 2001, those involved claimed that the community was no longer invading the park to seek timber and that they are, in fact, earning about $500 a year per family in the buffer zone concession. The model is being extended within Guatemala and is often cited as one that other countries might follow. (Jukofsy, 2000).

Another example of building a working model to create change is described in detail in Annex 3. It is the case of a community in Lombok, Indonesia. There, a local NGO pioneered the use of a community forestry concession, first on the tiny scale of 25 hectares. Once the model was accepted, the concession was expanded to 500 hectares and it may be expanded farther in the future. Other NGOs across Indonesia tried similar strategies on the local level. With the recent change of government in Indonesia, the idea of a community forest concession is no longer regarded as ludicrous as it once had been. In fact, the government has issued a decree (Decree 31 of April 2001) to encourage local government agencies to allow such community concessions. Getting a concession to manage a community forest is not viewed as the ideal solution for most Indonesian communities, who are pressuring government to accept full community ownership rights. However, the success of the working model is its effectiveness as a political step toward recognizing communities as corporate entities. When it has been ineffective, it has become a step backwards toward accepting government forest ownership and weakened community tenure security and rights.

Lessons:

- Building a model as a "pilot" for change requires cultivating local leadership and often many years of testing before it is can be scaled up and called a success. It is also important to recognize that reaching a critical scale requires collaboration with governments and other donors.

- To be successful, pilots require research, public education and strengthening cause-related organizations.

- A pilot project has to do more than demonstrate physical benefits in order to persuade opponents that it is acceptable. For example, it may be necessary to show the public that government expenditure will be reduced because the community model will require less policing action.

- An economy of scale is important. West Bengal, Andra Pradesh and Sujhomajari in India all profited from NGOs working in regional context with a core set of communities to advance the model. The

same occurred with Mexico's PROCYMAF (small coordination units with strong technical support to communities).

- Joints exchange visits to pilot projects by government officials and community leaders can stimulate productive discussion and build trust.

- University researchers can play a key mediating role and enable government to accept the changes offered in a pilot model.

Strategy 7: Building Civic Mobilization around a Cause

Civic mobilization is often essential to achieve major reforms. As the Bolivia case illustrates (Annex 6), civic activity can be mobilized by lobbying ministers, holding conferences, and staging peaceful protests and marches to attract media attention.[44] But it relies on sound organizations for sustained support in order to be effective. For example, in Bolivia, an indigenous peoples' organization built broad support for indigenous demands through an arduous and difficult march from the lowlands to the high altitudes of the capital to ask the president to grant them property rights. They sought other legal reforms in the form of a single law that would recognize the integrated rights of indigenous peoples—such as tenure, education, health and human rights. There was no violence and the tactic worked to gain sympathy from media and wider society. Although the government eventually passed a law to enable indigenous communities to claim land rights, many lowland indigenous communities are still struggling for finalization and enforcement of their property rights. Brazil also saw civic mobilization around the cause of the rubber tappers led by Chico Mendez and promoted by international organizations, which led to the creation of extractive reserves.[45] In Indonesia, civic mobilization forced a dictator to resign; subsequently, progress is being made by the Coalition for the Democratization of Natural Resources in its efforts to achieve some of the demands made at the time of the mass mobilization.[46]

Civic mobilization has also been very important to the property rights causes of Native Americans in both Canada and the U.S. A famous case is that of Clayoquot Sound. There, paper and logging companies, such as MacMillan Bloedel and Interfor, had official rights to log old growth temperate rain forests claimed by the Nuu-Chah-Nulth First Nation. Environmentalists disputed the corporate and government plan for the forest. This was followed by nearly 15 years of civic mobilization, blockades, tree-sitting, negotiation and the largest civic disobedience occasions in Canadian history. Finally, it resulted in an alliance of First Nations and environmentalists, as well as the Canadian government's recognition of First Nation rights over their traditional territory.[47]

Lessons:

- Civic mobilization requires community solidarity and commitment at the grassroots level, a network of effective organizations, a pool of activists willing to take substantial risks often in the face of unlikely odds and the strategic ability to seize judicious political moments to advance a cause.

- The role of external supporters differed from those of local NGOs or advocacy groups.

- Donor is most effective when support diverse actors, encourage them to build coalitions and strategize together, and give them the freedom to respond to opportunities as they arise.

KEY EMERGING ISSUES

The bulk of NGO and government efforts to secure tenure, and the bulk of the previous discussion on strategies, focuses on land. But forests provide many different products and services. Along with rights to land and rights to the forest, rights to each of the many products and services can all be different. When this natural complexity is complemented by indigenous knowledge and intellectual property. Few countries have legal frameworks to adequately deal with these issues, as an almost endless set of emerging issues can be imagined.

Among the most obvious and pressing issues are those surrounding the emerging markets for genetic material, preserved landscapes, water filtration, soil and biodiversity protection, carbon sequestration and carbon sinks. Communities have legitimate claims to these products and services and the potential income from them can contribute significantly to incomes and livelihoods. However, these claims will be ignored and overruled unless there is concerted and quick action by NGOs and donors to advance community interests with governments and the private sector. If government does not act, it may even be necessary for private investors entering these markets to pay for independent adjudication of competing claims before marketing any specific service. There is an urgent need to develop and put into practice social and environmental standards for investments in these communities.

At the community end, knowledge about the rights and responsibilities of owned materials and services must be expanded. Additional work is needed in terms of educating and informing communities of their rights, developing legal models for beginning the long process of reforming laws and facilitating networks of community representatives and advocates active in legal reforms.

Peasant and indigenous mobilizations coupled with an increasing interaction between international companies and rural communities point towards a set of trends:

- There is a growing number of international treaties that touch on indigenous rights.
- There is a growing presence of local community stakeholders with their own global representatives.
- NGOS and donors are not automatically accountable to communities. While communities are increasingly voicing their concerns about this, there are no clear solutions.
- War and conflict are spreading in areas where community-based tenure is an option.
- International companies dealing in extractive industries such as oil and mining are moving rapidly to stake their claims in forests all over the world where unclear tenure is still an issue.
- National governments are ineffective in controlling and monitoring environmental and social impacts. Their legal frameworks lack answers to key questions, such as: How should companies relate to local communities and indigenous peoples? What are the legal processes for this? What are the means for resolving disputes? How can communities monitor compliance on their lands?
- There are many transitional democracies in a state of turbulence, creating more opportunities. But communities and their advocates must be prepared to move forward.
- With the increasing trends of decentralization and devolution, local governments around the world are playing larger roles in land administration. Depending upon their capacity and legal authority, this shift could lead to better or worse outcomes.

- Real estate markets are emerging in remote areas and there is increased land speculation as populations grow. Community lands easily disappear as land is sold to investors to build hotels or resort cabins for their own use.

Box 9 presents a set of "counter-strategies" that may reverse the progress made by communities to protect their rights to ancestral territories. Communities, activists and donors must be cognizant of these schemes in order to effectively respond to them.

Box 9. Some Counter-strategies Used by Extractive Companies to Deal with Indigenous Organizations

1. Neutralize government agencies that are supposed to enforce laws.

2. Relate directly to community leaders and give them cash to corrupt them. Damage their relationship with their constituency.

3. Bypass leaders and political bodies and selectively work with individuals in the community.

4. Provide limited information about the project and the legal obligations of the company to the community. During initial phases of environmental impact assessment (EIA), consult without fully informing people of their rights under the law. In answer to questions, give highly technical information that community members cannot understand.

5. Manipulate expectations of the community while hiding information. In the first stage, to get signatures of authorities, behave well and respond to requests as though they will be honored. Then after entering the community lands, give excuses for unkept promises or say it will be done "next year."

6. Maintain paternalistic relationship with community by giving supplies (school notebooks, aspirin) and services (visiting dentist) to keep people quiet about the environmental damage.

7. When communities unite, then divide and conquer. Give favored treatment to some of the communities and not the others.

8. Undermine leaders' credibility and political base. Selectively work with one leader or NGO without following appropriate channels in community government/organizations, and then put community authorities in a position where they have to take responsibility for decisions without knowing the negotiations and information from meetings between companies and political leaders or NGOs

9. Say "nothing is wrong" when confronted with environmental impact evidence, such as fish kills. Say scientifically gathered evidence shows water is clean when impact is invisible to the eye. Refuse to discuss long-term impacts.

The solutions for these problems lie in better relationships between government and community and in strengthening community organization ("internal organization") to confront these problems. For example, Pancur Kasih in Indonesia trains communities in confronting logging companies and informs them about the consequences of confrontation, how to watch out for the ways companies will try to divide them, how to maintain solidarity against the companies, and the legal strategies they can use to assert their customary land rights and laws (force companies to pay customary fines, etc). These are political strategies that "create law" through practice.

Written by Janis Alcorn and adapted from Oyendu Magazine, December 2000, "Las estrategias de las empresas petroleras frente a las organizaciones indígenas".

CONCLUSIONS AND RECOMMENDATIONS

This report has shown that various strategies can be effective to help communities gain more secure property rights over forest resources. While there has been progress and impact, but work must continue due to the scale of the problem of limited community tenure rights and security. More organizations with different expertise must be involved, engaging in the strategies described above and addressing the emerging issues. We believe that recognition of community tenure is urgent where it is appropriate because: 1) deforestation and degradation continue to destroy the natural assets of indigenous and other communities; 2) the growing market for forest ecosystem services is likely to bypass or even hurt local communities unless proactive efforts are made to protect them; 3) governments and societies do not have the financial resources to carry out many of the protection and management tasks currently assigned to them, but which are more cost-effective at the local level; and 4) proposals to undermine community participation or bypass it by establishing extensive commercial forest plantations do not address local livelihoods, sustainability or poverty alleviation. Secure community tenure can help avert these trends. Increasing government openness, along with social and political support for communities, provides an historic opportunity for action.

Building the Community

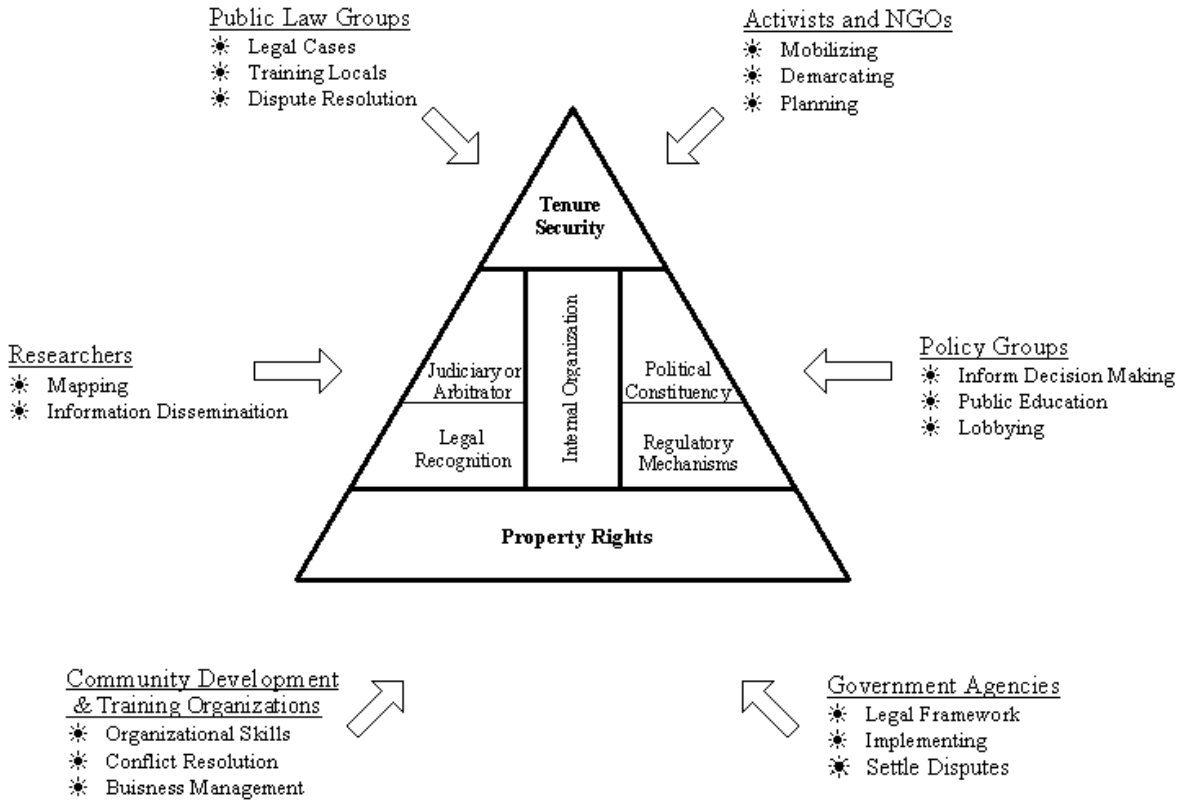
Seizing this opportunity will require the development of a new, much larger and more effective international political constituency and community of practice. As illustrated in Figure 2, critical institutional actors—community federations and associations, public law groups, activists and NGOs, researchers, policy groups, community development and training organizations, multilateral institutions and governmental agencies—each have a critical role in putting into place the building blocks of community tenure security.

This new community should develop and act with forest communities on a new agenda. This agenda could be used to 1) accelerate the transition from access to public forests to community ownership where communities have claims; 2) highlight where private ownership may not be the most appropriate, providing local communities with greater access to these public forests; 3) aggressively explore and develop mechanisms to ensure the protection of community rights in markets for environmental services and genetic materials; and 4) develop and support effective enforcement mechanisms for protecting community property.

To achieve these goals, this new, broader community of practice should: 1) collect data on property claims and ownership at local, regional and global scales. This data is necessary to formulate and advance arguments for advancing community claims; 2) educate government officials and donors on the issues of community rights and the very feasible possibilities for enhancing their livelihoods with tenure reform; 3) link the emerging networks of community tenure advocates to build a concerted international political constituency able to leverage new funds, new technology, and new political openness to expand community rights; and 4) develop new partnerships with governments and selected multi- and bilateral agencies. Achieving substantial change at national levels means that more effort needs to be put into collaborative efforts.

Moreover, at the governmental and donor level there is a lack of awareness about the nature and scale of the property rights problem when it comes to forests. Hence, some funding should be targeted to educating donors and government officials. Each of these approaches helps build the community. Major donors, particularly the Ford Foundation, are uniquely positioned to power this agenda. A summary of action steps are included in Box 10.

Fig.2. Towards Tenure Security: Actors and Actions



Box 10. Opportunities to Advance Community Tenure Security.

- Support anti-corruption and justice reform activities at national levels. Strengthen local and national legal groups by financing training, salaries, and the costs of specific legal casework. Resources to support training and case mentorship for would–be public interest lawyers and judges may be essential.
- Support development of the legal process of claim-making through various actions. Ssupport mapping by financing training and organizational costs of the nonprofits who utilize it to support community-based tenure reform.
- Support direct advocacy and the longer-term process of nurturing organizations so that networks are prepared to jump into action with concrete proposals.
- Convene people to discuss specific tenure issues. This focuses people on an important task or highlights a problem so that it becomes a ministerial priority. Working groups are forums where preconceptions, data, new "mental models" and field experiments can be discussed and assimilated.
- Support emerging leaders. Strengthen leaders and organizations who represent community or indigenous constituents. Providing scholarships and training opportunities should be complemented with opportunities for community leaders to interact with parliamentarians and other political leaders.
- Build successful field models. This requires cultivating local leadership and, often, many years of testing before it is can be scaled up. Avoid promoting pilots that represent the lowest common denominator acceptable to government as this can undermine efforts at more meaningful reform.
- Mobilize civic society. This requires a network of effective organizations, broad grassroots commitment based on a common understanding of the problem, a pool of activists willing to take substantial risks in the face of unlikely odds and the ability to seize judicious political moments to advance the cause.
- Create a global learning network that includes cross-site visits and apprenticeships nationally and cross-regionally. This will raise public awareness, sharpen advocacy strategies, and speed change in countries that have been slow to change.
- Support federations and credit / marketing associations in communities that are attempting to exercise their tenurial rights, in addition to supporting NGOs to build informed grassroots capacity and commitment to the political responsibilities required to maintain tenurial rights.

Building for the Future

As we have stated earlier, tenure security is a critical step, but certainly not the only step necessary to advance sustainable livelihoods and forest management. Where communities have gained more secure rights, such as in parts of British Columbia and in the Amazon, communities and their supporters are beginning to work on "second-generation" issues—those associated with the challenge of converting these newly secured forest resources into assets for social and economic development. While their tenure may be more secure than before, most forest policies favor large companies and landholders over small, and communities continue to face an uneven playing field in trying to compete in forest markets. Many communities have forged ahead despite the policy and business barriers, embarking on a search for sustainable business models. They will need long-term funding and the time to experiment. The political and economic opportunity has never been as open as it is today to effectively respond to this global challenge and to ensure that enhanced tenure security leads to better outcomes for the communities and for the forests.

CASE STUDIES
Annex 1: Demarcation of Indigenous Lands in Brazil

Forest Tenure in Brazil

There are about 360,000 indigenous peoples in Brazil representing 0.2 percent of the national population. Their fate in the modern world has been uncertain and their plight has been an international cause. The government of Brazil has adopted a protectionist philosophy towards its indigenous peoples, creating a separate ministry—Fundaçao *Nacional* do Indio (FUNAI)—to provide specifically for legal, social and health needs. In 1988, a transition to democratic rule brought about political and social changes from which a more vocal and organized civil society emerged. The Constitution of 1988 recognizes that indigenous peoples have the right to live in their traditional manner on their ancestral lands and the federal government has the responsibility of awarding these lands claimed ancestrally. This is a remarkable step forward for the rights of indigenous people. More than half of the claims were fully demarcated and registered by 2001.

The Process of Tenure Reform for Indigenous Forest Rights

Indigenous peoples now have a modest degree of tenure security within these demarcated areas. The claimed territories account for about 12 percent of the country's landmass and are almost entirely concentrated in the Amazon. The government grants the land to one or various groups in areas previously identified as federal property after a claims-establishment and demarcation process. Indigenous reserves give indigenous peoples a place to live and a place to practice their traditional livelihoods, but they are not empowered to use their resources in a commercial manner. This is because the underlying intent is not necessarily to provide indigenous people with a tradable asset base for dealing with the modern world, but rather to provide them with some kind of refuge in the world where they can be free of pressure to change their traditional lifestyle.

Ford Foundation played an important role in the demarcation of indigenous lands. For a decade, Ford funded and supported the NGOs and researchers at the center of the debate. These agents of change (e.g. *Instituto Socioambiental*) modified public perceptions about indigenous living conditions and rights, lobbied legislators to include indigenous rights in the debate for a new constitution, and informed the international community about the urgent need to protect indigenous peoples' habitat. Ford also funded mapping activities, sponsored influential research and symposia by leading academics, such as anthropologist Joao Pacheco at the Federal University of Rio de Janeiro, which signaled to government and the international community the importance of social justice for indigenous communities.

Territories held by indigenous groups are subject to the oversight and managerial authority of FUNAI, a governmental body that oversees the affairs of indigenous people. When a territory is to be demarcated, FUNAI sends an anthropologist who writes an account of territorial use. This information is translated into maps and published in the Federal Journal for public review. Since 1996, a new legal provision allows private landowners in the claimed territory to request compensation for any infrastructure they have built in the area, a procedure that has slowed the process. Documentation for claimed areas is sent to the Ministry of Justice, which must approve the demarcation. If accepted, the land is then physically demarcated with highly visible signs—a tough job since some of the territories are the size of Belgium and some have international borders. When demarcation is complete, the president of Brazil issues a decree recognizing the indigenous territory.

Nonprofit groups are active in assisting indigenous groups to make claims and advocating on their behalf, but resistance from landholders living in the claimed areas is strong. These landholders have pressured the

government to either dismiss claims or slow demarcation processes. Other problems have been noted in the establishment of indigenous territories. Boundaries are very often simply not recognized, being *de facto* indefensible. Land invasion by outsiders—from farmers to gold-miners—is typical, illegal logging is rampant and violence against indigenous people remains common. Some community leaders do not always act on behalf of community interest and unfair business deals are frequent.

Some indigenous groups are already marketing products from their forests, while others retain a more subsistence-level lifestyle. In any case, indigenous groups' conservation of natural resources and knowledge on indigenous plants and organisms has yet to be fairly compensated. Suicide rates among indigenous groups is higher than the Brazilian average, and these groups will continue to be vulnerable to outside diseases and pollution from mining, logging and oil drilling as long as the lands around the indigenous territories remain unregulated.

Looking Forward, Future Challenges

Activists see that gaining tenure security is an essential first step and these problems only highlight the complexity and urgency of the situation. They see that seeking tenure security by mapping and decree is only the beginning of a process. It is an essential and widely applauded first step towards justice, but much work remains to assure implementation and to find economic models that honor the resource itself and the traditions of the indigenous people.

(Abstracted from the following sources: Martin, 2001; Barbosa, 2000; Cowell, 1999; Cardoso, 1999)

Annex 2: India's Joint Forest Management Network

Forest Tenure in India

Joint Forestry Management (JFM) in India is a process in which communities sign agreements with forestry officials to manage and rehabilitate degraded forests. I In exchange, communities gain widely varying, but usually limited, use and access rights to the timber resources and non-timber forest products, depending on the specifics of the agreement. They are also expected to regulate access to the forest of members and non-members. JFM in its current form was started by an official working group in West Bengal that developed an agreement with a local community to manage a forest in the 1970s. Over time, it was hailed as a great step forward in participatory development and the model was expanded nationally. Since then, it has been the subject of a tremendous amount of academic research and activist advocacy.

Course of Events and Implications

The JFM model owes much of its popularity to the fact that it solves a problem of how to regenerate a forest at low cost. It is attributed to have played a key role in stabilizing forest cover in the country. Ford Foundation provided important support for the NGOs that created a national-level JFM network. The JFM network was a country-specific implementation of working groups for aimed at transforming bureaucracies. The idea was started by Ford Foundation program officers in the Philippines and elsewhere in Asia (see Poffenberger, 1988). The India JFM Network case illustrates both the benefits and limitations of the working group strategy for communities to secure greater forest property rights.

In the early years (1989-91), there were meetings of Ford Foundation grantees on specific forestry issues. At that time there were over 50 programmatic grants on forestry and rural development. A large number were concentrated in the states of West Bengal and Haryana, the states with experiments in participatory forest management dating to the 1970s. The Ford Foundation played an important role in organizing a state-wide meeting in West Bengal; the meeting was instrumental in passage of a state government resolution to recognize and promote participatory forestry. The Ford Foundation went on to facilitate state-level working groups in Haryana and West Bengal.

A 1990 workshop in Delhi brought government officials interested in promoting JFM together with numerous researchers together from Haryana, West Bengal and Gujarat together into a nascent JFM network. The central government had also passed a notification in June 1990 suggesting that states should start their own JFM programs. This opened an opportunity to promote JFM nationwide.

If 1989-91 were the years of advocacy at state and national levels, 1991-93 may be termed the years of promoting JFM. A National Support Group (NSG) for the JFM network was established at the 1992 meeting of the JFM network at Suraj Kund, near Delhi. It brought together hundreds of participants to kick start the network with a focus was on starting a dialogue between foresters and NGOs, promoting examples of JFM and undertaking participatory research that highlighted the benefits of JFM on forests and on people. By 1993 itself, the network had been decentralized thematically, to focus JFM research on ecological-economic and institutional research and training. 1993-96 were consolidation years - the research networks undertook participatory research and developed a profile for their work. In 1994, a sub-group to focus on gender and equity issues was formed within the institutional research network. By 1996 the focus had moved to examining "second generation issues;" for example, the impacts of JFM on women and the landless and the role of NTFPs in providing early benefits, as well as the importance of the micro plan for documenting forest dependency and including the interests of diverse forest users with differential bargaining powers.

Since 1997, as regional and state level advocacy have increased, The Ford Foundation, the NSG and key network members have re-examined the role of a national network and regional networking efforts that focus on individual states and regions are being promoted. The frequency of national meetings has reduced and they have been moved from Delhi as well. In the last four years, the last two meetings were held in state capitals. Beyond the few key players who were convinced about JFM and in the network, there has been greater and more broad-based participation by senior forest department staff.

Positive impacts of the network include:

- a dialogue between the previously antagonistic forest department, NGOs and researchers;
- recognition for participation-minded forest officials;
- experience-sharing between stakeholders and across regions;
- jointly determined research agendas and new participatory research across regions, e.g. the Ecological and Economic Research group conducting coordinated research in 12 zones covering about 60 sites;
- enhanced recognition of gender and equity questions in state JFM orders; and
- a brand name. Network membership of a national level network, based in Delhi provided some brand recognition for members and facilitated their dealings with state level bureaucracies, especially at field levels

At the time of inception, JFM was seen as an innovation for many communities who had limited control and *de jure* access to even degraded forests. But as time went on, historians and field workers began to report that in some places, JFM could be a step backward in property rights. Critics believe that JFM distracted attention from the injustice of the underlying property regime in which government progressively claimed ownership of much of India's forest, which was originally managed under viable common property regimes. Some also point out that JFM is a better deal for foresters than communities because it mostly solves a forestry department management problem: how to cheaply regenerate degraded forests. Others argue, with good evidence, that JFM creates new obligations for communities without resolving older claims, resulting in declining property rights for some communities. Those in question are communities that had strong existing rights such as the Van Panchayats in Uttaranchal or the members of Forest Cooperative Societies in Himachal Pradesh. Both institutional arrangements were set up and devolved powers under provisions of the Indian Forest Act of 1927, therefore enjoying stronger property rights than JFM grants to communities.

Looking Forward, Future Challenges

JFM can be seen as a managerial adaptation, rather than a real change in property rights, that limits forest transfers to areas of limited national commercial value and maintains a strong forest department-regulated set of rules. However, some observers suggest that given time, it is possible that the nature of the conversation on JFM may turn to ways in which government can help communities manage their own forests, rather than the current focus on ways in which communities can help government manage government forests. There are new terms entering the dialogue, including Community Forest Management and Participatory Forest Management, in the move towards greater legitimacy for communities' rights and decision-making authority and towards increasing the return from forests for local people. Clearly, the sheer scale of JFM—more than 10 million hectares and 35,000 village groups in about 20 states—means that it is a significant reality.

(abstracted from Agarwal, 2001 and Khare, 2000)

Annex 3: A Forest Concession and Landlessness in Nusa Tenggara, Indonesia

Forest Tenure in Nusa Tenggara, Indonesia

In Indonesia, large-scale forestry began on the islands outside Java in the mid-1960s with the passage of legislation introducing forest concessions. The situation for each island is different, but forest dwellers have increasingly pressed for recognition of their traditional rights to forests within their areas of use, with varied outcomes. On the island of Lombok, Sesaot village is located near Mount Rinjani in Nusa Tenggara, Indonesia. The village is adjacent to a forest of about 6,000 hectares. The forest is part of a watershed supplying the southern part of the island. Much of the forest is degraded because the government's Forestry Department managed the area as a "production forest."

Course of Events and Implications

The government declared the forest logged out by 1953, although the Forestry Department had a tradition of replanting mahogany in the forest as a revenue-earning measure for government. Degradation of the forest worsened. In 1983 the watershed was obviously under threat, so the government reclassified the forest as a "protected area." Local logging was then severely restricted. and the government retained the right to cut the planted mahogany for its own use. The local forestry department even maintained a revenue target of about US$200,000 per year from ongoing mahogany harvests. Local people did not share in that revenue.

In response to village grievances over the new, tight local logging restrictions, the governor of the province declared a buffer zone of 100 meters around the boundary of the protected area. "Within it every village family was granted a quarter of a hectare of forest land to set up agro-forestry activities." Villagers were instructed on planting mahogany for their own use and sale. Coffee was allowed, but the government imposed a 50 percent tax on it. The tax was considered as a rental payment for using the buffer zone. It also served as a way for government to discourage coffee production, which was considered inappropriate to the Forestry Department's agro-forestry model of farming.

Villages did not like either the managerial rules in the buffer zone or the agro-forestry model promoted by government. They wanted to plant coffee and other trees that did not interest the Forestry Department.. Farmers also insisted the coffee tax was unfair; additionally, the canopy created by the mahogany stunted the growth of coffee. It is not clear that the Forestry Department's agro-forestry model was economically superior to the farmer's model (Borsa, 2001). Farmers finally persuaded the Forestry Department to grant them a tiny 25-hectare concession of the protected area where they could try their own ideas for sustainable forest management. In exchange, they offered to take on the burden of protecting the forest themselves, rather than having the Forest Department do it. An NGO , LP3ES, facilitated this and helped the farmers create a coalition of nine farmer groups to conduct negotiations and to organize against illegal logging.

An agreement with the government was reached in late 1995. The farmers agreed on the following: to reforest the 25-hectare concession area and contribute 80 percent of the seedlings necessary; to maintain the existing indigenous trees; to enforce and police the Forestry Department rules about logging; and to accept that the government would retain ownership of the forest. In exchange, the farmers received rights to harvest timber in the concession area and to use the land for agro-forestry style farming. The farmer coalition then decided on a list of those with priority access to the new concession. Their list is as follows, in order of priority:

1. farmers without agricultural land in the previously established buffer zone or village area;
2. "female farmers without husbands, but with children and no job;"

3. members of the nine-farmer group coalition;
4. people aware of the rules established with the Forestry Department; and
5. people willing to do the agreed-upon replanting without technical assistance from the outside.

Fifty-eight families were eventually selected. They worked in groups of four families to do the replanting work in their allotted areas. Most replanted economically viable trees like durian, candlenut, jackfruit and *albizia*. The farmer coalition also organized poaching patrols. It reported illegal loggers to the Forestry Department, but had no legal authority to try cases. This limited the patrols' effectiveness. A few years later, an evaluation reported the survival rate of the newly planted trees as a remarkable 93 percent, with most participants earning the equivalent of about $500 per year from their planted trees.

After some time, the Forestry Department eventually allowed the farmer coalition to fine illegal loggers from within the coalition's own ranks, but outsiders were still tried by the Forestry Department. The coalition found that it was unable to impose strong sanctions and even when violators were turned over to the police after the coalition determined them "guilty-as-charged," accused loggers would still get off lightly. The problem remains unresolved.

The model, however, was considered an overall success in terms of protecting livelihoods and watersheds, so the farmer coalition won the right in 1999 to expand the concession area to an additional 211 hectares of degraded forest. That land was then allocated to 1,240 additional farming families selected from an applicant pool of 1497 families. A local team was established to select families for the new concession area using the variables described above. Once again, management of the additional hectares was regarded as a success. The farmer coalition then incorporated as an association and proposed taking on management of an additional 1,000 hectares of the protected area.

Looking Forward, Future Challenges

As of this writing, the proposal had been rejected by a district officer who did not favor that level of decentralization. But given the number of legal changes and policy movement towards decentralization in Indonesia, it is entirely possible that the group will eventually get its chance to manage the 1,000 hectares. This case shows the importance of building a viable model in the field to prove a project's viability. It also shows the incremental, locally negotiated character of tenure and property rights over forest resources.

(Sources: Most of this case was abstracted from Suryadi, 2001. Material was also obtained from Ellsworth, 2001, Campbell, 2001; Bennet, 2001, and Borsa, 1997).

Annex 4: The Philippines Indigenous Peoples Rights Act of 1997

Forest Tenure in the Philippines

Indigenous communities in the Philippines represent about 16 percent of the country's population. Until recently, these people have had little security of tenure over their ancestral lands. Government agencies allocated resource use rights to concessionaires and mining interests, often ignoring community claims to land and forests.

The Process of Tenure Reform for Indigenous Forest Rights

While researching this situation, an American public interest law attorney teaching at the University of Philippines law school uncovered a legal case dating from the beginning of the 20th century. The case showed that the King of Spain had, in fact, recognized indigenous property rights. This resulted in the overturn of a legal doctrine stating that all land belonged to the crown, or the government, since the moment Spain's representatives set foot on the Archipelago. This legal detective work provided the perfect ammunition that many social justice-minded law students in the Philippines needed to help indigenous peoples in their quest to obtain greater property rights. As these law students graduated, they became public interest attorneys and NGO activists themselves. For ten years, they worked with a coalition of indigenous peoples for congressional passage of the Indigenous People's Rights Act. In 1997, they finally won. Their victory was due to a confluence of factors: a favorable political context with the emergence of democracy; the quality of their legal work; success at building a coalition of NGOs and indigenous peoples' organizations to do the necessary lobbying; the personality of the senator who sponsored the bill; willingness to compromise and "water down" the original bill; and good timing. At first it looked like victory was short-lived, for mining interests quickly challenged the bill. Finally, in a remarkable 2001 court session, the Supreme Court of the Philippines upheld the constitutionality of the act.

The act did not appear out of nowhere. It was built on a significant local history that influenced ideas about the ways in which things could be done. For example, in 1974, an indigenous group established a precedent by getting a communal lease to public forests. Then in 1982, after martial law was lifted, an experiment began with a new tenure instrument called a "Certificate of Stewardship Contract." This paved the way for the Department of Environment and Natural Resources (DENR) to test "Communal Forest Stewardship Agreements" in 1986. The DENR expanded use of these leases in the subsequent year. And in 1990, DENR circulars created a task force to work on the problem of identifying Ancestral Land Domains. In a next step, the DENR created actual rules for accepting and evaluating Ancestral Land Claims. In 1993, a new DENR order recognized Ancestral Domains and provided the basis for the concept of land delineation outlined in the act. As a result, indigenous communities mapped more than one million hectares of their lands. Ancestral Domain claims were submitted to the government, thus pushing for a legal definition of Ancestral Domain. Hence, change built upon change in an incremental fashion.

Looking Forward, Future Challenges

The act is considered by many to be a step forward for more secure community property rights. It provides indigenous communities with a legal basis to make their claims and even requires that communities be informed and consulted before any mining concessions or other projects are started. Yet the act has important limits. Property rights are still weak, as the act merely grants indigenous people *priority use* rights over Ancestral Domains (except in the case of individual farms which can be sold). It also gives local people the responsibility for managing resources, a potentially costly burden. Indigenous communities remain subject to the oversight and decisions of local government and the DENR. This

means that mining interests remain a large threat to effective tenure security. Implementation and enforcement of the act is also thought to be slow and requires considerable political clout at the local and national levels. There is also a lack of organizational infrastructure and specific enabling rules within the governmental agencies responsible for interacting with indigenous communities. In addition, many believe that helping communities make profitable use of the resources they do control is a neglected, and emerging, issue of importance.

Donors played an important role in the long road to obtaining passage of the act. Over many years, they funded and supported many of the public interest law firms, NGOs and indigenous rights organizations that were at its center. They funded field experiments and learning activities for mapping and concession management. They also sponsored influential research, evaluations, and consultancies that signaled to government the importance of social justice for indigenous communities.

(Sources: Perrot-Maitre, 2001; Government of Philippines, 1996; Bennagen and Royo, 2000, "The Ford Foundation in the Philippines"; - interviews with Gary Hawes, Owen Lynch, LRC-KSK Direct Legal Services Team, and Marvic Leonen. "Time Line and Summary Drivers for the Philippines Indigenous People's Rights Act").

Annex 5: South Africa's Communal Associations Act of 1996

Forest Tenure in South Africa

The post-apartheid government of South Africa faced daunting problems with providing tenure security for South Africa's poor, a goal proclaimed in the country's constitution. So-called communal property systems, where they existed at all, had long been exposed to market and political influence from the wider world. After the fall of the apartheid regime, informal renting and trading of land was commonplace. Moreover, the role of traditional authorities was quite different than it had been in the 19th century. These facts meant the communal property systems neither resembled nor functioned like those systems that anthropologists and legal scholars had once described. Artificial homelands had also been created everywhere in South Africa and thousands of people were grouped into them. Overcrowding was typical in some regions. Violent evictions from "white" lands had taken place, and "nature reserves" had been declared in areas previously viewed as common. Many people lived as refugee guests on the lands of another "tribe"—a word that was starting to fail in meaning. Competing claims to land were, and remain, a thorny problem. Given the migratory character of the labor market in South Africa, defining a member of a any given "community" or "tribe" was a puzzle. In sum, the sheer number of people with potentially valid land claims meant that accommodating them all was a monolithic task. These are only some of the difficulties and complexities presented, all of which shrink before the appallingly unequal distribution of land ownership between whites and blacks, which stems from South Africa's apartheid heritage.

The Process of Tenure Reform for Indigenous Forest Rights

With the entry of the African National Congress (ANC) and the contributions of international donors to the country's finances, policy change was in the air. A period of optimism and a lively debate ensued about what should be done and how it should be financed. Scholars with sympathy to the common property school of thought influenced this policy discussion by urging diverse property rights and legal legitimacy for group land ownership. One of many outcomes from that initial period of policy change was the passage of the Communal Property Associations Act of 1996, which allows groups to constitute themselves as associations and trusts, with duly elected boards of directors and officers. Group title can then be granted to such trusts. This is a remarkable achievement.

While in theory this was a simple way to accommodate the great diversity of tenure situations, in practice, implementation of the act has been difficult and success has so far been rare. However, this does not suggest that the act was not needed. Interestingly, implementation difficulties have led reformers to propose ancillary changes to many different laws, as well as organizational changes for the different levels of government to interact with land trusts and groups in order to offer the new land owners adequate policy and service support. A primary difficulty with implementation has been the fact that groups seeking land claims through this form of tenure are unfamiliar with the Anglo-Saxon notion of trusts and the managerial system involving boards of directors. Moreover, the trust solution does not systematically mesh well with the "traditional" systems as they have evolved over time. One researcher reports that trusts offer "inequitable allocation of assets based on self-help, the squandering of opportunity; a disregard for internal rules; and infrastructure and land being left to deteriorate" as well as "failure to follow open and transparent tender procedures. These problems appear to exist regardless of group size." (Pienar, p. 329).

Looking Forward, Future Challenges

In addition to problems with implementation of the Communal Property Associations Act of 1996, the larger issue of land reform in South Africa has been mired in internal debate. One discussion revives the 1930s and 1950s controversy throughout East and Southern Africa about the role of the middle-class

yeoman or “commercial” farmer as a favored beneficiary of land redistribution and individualized property rights. Hence, the character of land reform in South Africa is still uncertain. A lesson here is simply that *de jure* changes must be accompanied by substantial resources to assure implementation and viable field models of success.

(Sources: Cousins, 1999; Adams, 2001; Adams et al, 1999; Ainslee, 2000; Government of South Africa, 1996; Perrot-Maitre, 2001)

Annex 6: Bolivia's Move Towards Multicultural Democracy: Legal Reforms Strengthening Community-based Tenure and Governance of Forest Resources

Forest Tenure in Bolivia

Bolivia is a multicultural society where indigenous people comprise 70 percent of the population. Almost half of the country is covered by forests. During the past decade, social movements have brought radical reforms to Bolivia with the stated purpose of putting the government under the control of the people. These reforms reduced the powers of the president and governmental ministers, creating a robust framework that provides multiple avenues for grassroots political action to achieve full implementation of community property rights. Reforms have been linked with deep public awareness-raising campaigns to inform citizens about exercising their rights. Successful federations have arisen around shared concern for land security because "without land, there is no health, education or economy."

Course of Events and Implications

1953: Following the National Revolution, which destroyed the hacienda system in the highlands, a coalition of miners and highland indigenous communities benefited from the 1953 Agrarian Reform Law, returning lands to indigenous peoples of the Andes. However, the indigenous territories of the lowlands were left open for colonization , logging, and ranch expansion. The law recognized collective property rights. Two different state agencies registered land titles, creating confusion. Land rights did not include rights over forests, subsoil minerals or petroleum.

1980: Indigenous peoples of lowlands began to organize with assistance from APCOB, an NGO dedicated to supporting the rights of indigenous peoples. The Guarani of Izozog in the Chaco, with their strong traditions of self-governance, provided an anchor for the new movement.

1984: *Confederación* de *Indígenas* del *Oriente Boliviano*, or Confederation of the Indigenous Peoples of Eastern Bolivia (CIDOB) was founded under the leadership of Bonifacio Barrientos, Capitan Grande of Izozog. CIDOB began as a confederation of Guarani, Chiquitano and Ayoredoe peoples. CIDOB then joined COICA—the federation of pan-Amazonian indigenous peoples. CIDOB appealed on the basis of pan-indigenous identity to expand and eventually include representatives of indigenous organizations from all of the Bolivian lowlands departments. CIDOB includes a Grand Assembly of representatives from the 34 lowland indigenous peoples (ca 300 people) and a group of directors to coordinate closely with regional organizations (CABI, CICC, CICOL, CPIB, CIDDEBENI, CPIOAP,CIPITCO, CPILAP, etc) and to respond to local community assemblies. The directors' role is to represent peoples' interests and reach out to donors, NGOs, consultants and others to keep base constituents informed. CIDOB does not make decisions, but rather negotiates on behalf of its constituency.

1986: San Antonio de Lomerio initiated the first indigenous forestry project on its community lands with assistance from APCOB, although the state refused to legalize the sawmill. Management plans were made so community-based logging could compete and resist state-awarded concessions until 1996, when the forest first became certified. Over the decade, APCOB, CICOL and communities of San Antonio Lomerio adjusted their forestry and financial management approach to fit communities' culture and expectations.

1990: The March for Land and Dignity took place. Led by Central de Pueblos *Indígenas* del *Beni* (CPIB) and supported by CIDOB, 600 indigenous people from Beni marched 800 kilometers from lowlands to the high altitudes of La Paz to demand recognition of indigenous land claims. The dramatic march was covered by media and achieved public awareness for Bolivia's lowland peoples as citizens seeking their rights. In response, the president signed "Supreme Decree 22611," which created four "Multiethnic

Indigenous Territories" to be followed by five more. However, little concrete action resulted from the decree.

1994: Constitutional reforms laid the framework for real political change to support nationwide community-based tenure under the political leadership of President Gonzalo Sanchez de Lozada with Aymara Vice President Victor Hugo Cardenas. The new constitution recognized the multiethnic and pluricultural nature of Bolivia and included provisions from ILO 169. Article 171 recognizes and protects the social, economic and cultural rights of indigenous people, especially those of the TCO, "guaranteeing the use and sustainable exploitation of the natural resources, their identity, values, languages, customs and institutions."

Popular Participation Law (LPP) was rapidly written by a small team of professionals with strong grassroots connections and awareness about rural problems. Taking advantage of political will behind the movement in late 1993, the law has great legitimacy and helped build a base for a strong democratic system by:

- creating new local government structures, including municipios in all parts of the country, a vigilance council to monitor the functioning of the municipal government and other similar accountability structures throughout government agencies;
- recognizing all civil associations as legal and not subversive, and enabling easy registration;
- giving indigenous communities legal status so they can take advantage of rights under laws;
- reorganizing government bureaucracy to streamline accountability, by reorienting agencies to local demands, instead of demands from within;
- shifting revenue and decision-making to municipal governments; and
- including a strong provision that all laws must conform to LPP and incorporate popular participation so are concordant with LPP.

1995: CIDOB established technical arm, CPTI, which includes GIS system to overlay government land use data with indigenous land claims and illustrate threats to indigenous land rights. CIDOB also analyzed draft laws for potential impact on indigenous land rights. A Decentralization Law provided municipal governments with new resources and powers, establishing a citizens' vigilance committee to hold local government accountable. Implementation was uneven.

1996: The March for Territory, Land, Political Rights and Development took place. It was the second indigenous march to the capital to demand territorial rights. CIBOB and the rural farmers' organization, CSUTCB, joined together to protest the draft land reform bill. CIDOB successfully lobbied to include TCOs in the National Agrarian Reform Law, which also was passed in 1996. The INRA incorporated the nine areas listed in the presidential decree of 1990 and stipulated that 16 other TCOs be granted within ten months' time. However, the INRA process for creating a TCO was burdensome, including multiple steps: 1) petition, 2) profiling, 3) mapping, 4) immobilization, 5) area needs study, 6) legal review of private properties in area, 7) compensation and 8) titling.

In the same year, a new Forestry Law creates a Forest Superintendency to provide professional management and accountability for implementing forest regulations. It empowered local government by decentralizing decision making and allocating forest royalties to enable municipios to establish and manage their own forests. The Forestry Law gives indigenous peoples special rights to exploit forests on their TCOs and prohibits access of timber companies without community permission.

San Antonio Lomerio also received the first "green label" in Bolivia—a first for any South American indigenous community. Certification was used as strategy to exclude outsiders from indigenous forests.

1996-2000: Izozog, Lomerio and Urubichu unilaterally declared themselves "indigenous municipal governments," moving forward their agenda for political semi-autonomy. Izozog linked its TCO claim with support for Kaa Iya National Park and built an alliance with WCS, an international conservation NGO. The UPAS law was drafted by the Ministry of Sustainable Development and CIDOB to recognize the autonomy and special participation of these units, separating them from the problems of political parties participating in local elections. This allowed local governments to focus on local problems and solidarity for maintaining land rights. Some communities created "*mancomunidades*" to serve as representative governments spanning several municipalities and controlling the TCO territory under a single government, rather than fragmented under several local government administrative units. Another strategy involved "Unidades de Gestion" to unite TCO under a single government by redrawing municipal boundaries to coincide with TCO boundaries. Indigenous communities negotiated with oil companies who extract oil from their lands with widely varying degrees of success. Colonists invaded some areas under TCO claims.

2001: Beni called another march protesting slow action on TCOs and the president sent emissaries to assure them that progress will be made. The developments offer possibility of a new trust fund, similar to that already created for rural farmers, which will support economic, social, cultural and political development for indigenous people. implementations of social control of justice system began, including Ombudsman, a Constitutional Tribunal and a citizen's review of sentences with process for resolution of issues. Of 20 million hectares put under TCO claims in 1996, only 2 million hectares achieved full TCO status by mid-2001. Four of 16 territories mentioned in the INRA--with promise of being titled within ten months after law's enactment-- had been titled. In the same year, the Izozog TCO land claim was contested by powerful ranch interests.

Looking Forward: Future Challenges

The Bolivian forest sector policy reform experience is one of the few detailed major exercises in developing countries to rationalize the management of the country's forest resources in consonance with wider changes in the total system of government. Seven million hectares of forests are under sustainable forest management plans and now the country is a world leader in tropical forest certification, with some 800,000 hectares of forest resources certified. Advances in the institutional field are remarkable, with the replacement of a corrupt and inefficient public forest administration by a professional and transparent one. Significant advances also have occurred in decentralization and devolution of responsibilities and decisions about forest resources management to rural communities. At least 14 enterprises now have access to some 1.4 million hectares with clear property boundaries and ownership rights. Notwithstanding, the reform initiative has faced numerous obstacles. For example, the institutional consolidation of the superintendence has failed in certain regions, financing is a serious problem and issuing of land titles has been slow.

It is hoped that in the future, Bolivia will continue to work toward implementing this reform, perhaps revising the fee system to reflect the variety of concessionaires and communities, ensuring penalties can be enforced to control the targeted actors, ensuring that more companies can vertically integrate, making sustainability more feasible and encouraging the continued civil society participation to inspire effective decentralization.

Sources: Martinez 2000. Birk 2000. Healy 2001, Kaimowitz et al 1998. Alcorn field interviews Aug, 2001.

Annex 7. Group-Title for Colombia's Afro-Colombians: A Time-line
(Case Abstracted from Ng'weno, 2000)

Forest Tenure in Colombia

There are about 420,000 indigenous peoples in Colombia spread across 27 administrative departments.[48] Since 1990, there has been a movement to guard the rights of indigenous peoples to their traditional territories and protect them from outside settlement and integrationist policies. In 1995, based on changes to the nation's constitution, Colombia allowed indigenous groups and Afro-Colombian communities to register their rights to territories they have historically occupied. Titles to land have been granted by the Colombian Institute for Agrarian Reform (INCORA) to 404 communities and the indigenous "cabildos," or traditional governing authorities of its territory.[49]

Course of Events and Implications

This timeline illustrates the almost random nature of change and the way in which many elements can coalesce at critical moments from unplanned directions. In this case, some of the factors include a receptive World Bank mission newly infused with the goals of a new operational directive (originally written to protect the Yanomami in Brazil), a group of activist NGOs representing the affected communities (which were already aware of their options and fighting for the land rights), an earlier model of success in their own country and a moment of government willingness change after significant changes in their own constitution.

1880: Law 89 of Colombia passed. It granted indigenous people the right to create their own form of internal government, known as Indigenous Councils, and the right to hold property in the form of *resguardos*. *Resguardos* have complete rights of property over their lands within a specific jurisdiction.

1900'-1950's: Most land was a public forest reserve under direct state administration allocated to companies as huge rubber concessions, sugar cane and banana plantations. This period ended with expansion of ports on the Pacific coast and finalization of roads and railroads connecting mountains to the ocean.

1961: Agrarian Reform Law # 135 of 1961 passed. It recognized indigenous peoples' full rights to property in traditionally occupied lands.

1960's-70's: Many new highway and dam projects and big forest and mineral concessions proposed.

Late 1960's: INCORA implemented law #135 of 1961 and titled 73 *resguardos* with one million hectares.

1970's: Indigenous communities began to pressure the government to convert "reserves" to *resguardos.*

1980's: A majority of "reserves" were converted to *resguardos*. Afro-Colombians began to imitate the success of the indigenous activist groups with a "reserves-to-*resguardos*" strategy to secure claims to land, much of which was forested. During the same period, Colombia followed a policy of "opening" to foreign investment in the Pacific Rim frontier. There was a consequent increase in commercial extraction of timber and in agro-industrial operations. Parallel to this, the main thrust of World Bank policy in Colombia was promoting private-sector development consistent with the "opening" goal of the Colombian government.

1985: A Tropical Forest Action Plan was proposed to provide economic and social benefits of forests for rural population instead of large companies only.

1988: Regional Autonomous Corporation of Choco signed accord "20" granting an indigenous group (ACIA) 800,000 hectares of land in a nonbinding, unofficial agreement that became a district model of success.

1990: Indigenous people, mobilized by protests against the celebration of the 500th anniversary of Columbus, worked to elect two delegates to the national Constituent Assembly. A coalition of Afro-Colombian and indigenous groups was created to lobby for constitutional changes. The most influential Afro-Colombian group that emerged was *El Movimiento Nacional Cimarrón*.

1991: Significant changes were made to the constitution. Under the changes, Colombia recognized ethnicity as part of the Colombian state and created the possibility of collective territorial rights for ethnic groups. In the same year, the World Bank found itself with an operational directive to protect the interests of indigenous groups, an outcome of the international outcry over the tragic situation of the Yanomami people of Brazil.

1992: In Yanaconas, Colombia, the World Bank project review team, with the above-mentioned operational directive in mind, met with communities to explain a new land titling initiative within a proposed natural resource management project. Indigenous and Afro-Colombia groups rallied at the meeting to demand collective title rather than individualized title. The tactic was effective and the National Planning Authority agreed to guarantee the articulation of "Transitory Article 55" giving Afro-Colombians collective rights to territory. The World Bank project was modified to add regional committees and a "policy and strategy development" component designed to find a way to help make group title a reality.

1993: New Agrarian Law #70 passed. It guaranteed Afro-Colombians collective rights to territory. In same year, a World Bank appraisal mission proposed that land rights be clarified. The loan for the natural resource management project proposed the previous year was approved and the titling process for groups began.

June 2000: Thirty-seven collective titles for black communities were created, affecting 1.6 million hectares and 17,770 families.

Looking Forward, Future Challenges

Colombia's model provides a number of interesting lessons for countries with similar populations. The reform has been most effective in the lowlands and in places where overlaps between protected areas and indigenous territories provide double protection against settlement pressures from outsiders. The upland areas continue to face challenges from ranchers and farmers and the government and INCORA have not had the capability to demarcate and address conflicts over land rights. The recognition of Agro-Colombian collective property rights is being mirrored in other countries, such as Honduras, with increasing acceptance by the surrounding society. Basing legal change on a new constitution provides clear legitimacy for implementing the reform in a consistent manner.

Annex 8: Nepal's Forestry Law of 1993 Changes Property Rights: A Timeline

Forest Tenure in Nepal

Despite a long relationship between local communities and the forests surrounding their agricultural settlements, the Nepali government historically appropriated all forest lands as public and kept discretionary control over all products and management decisions. Then, formal legal devolution of rights in 1957 began a process of restoring local management institutions and systems, even under increasing land pressure from a rapidly growing population. Tenure reform did not clearly establish the rights of community and user groups to forest products, and recently the parliament tried to pass laws re-establishing strong government control. This was fought by newly emerged associations of forest user groups. There is strong support within the government to continue the decentralization process, despite commercial interests' position against this.

Course of Events and Implications

Events in Nepal illustrate that an innovative legal framework remains hard to implement and under threat from those who oppose it. Despite efforts to organize them at the federative level, user groups remain politically weak. The lesson is that the legal changes remain part of a longer-term, bigger struggle for security. Tanzania is also a case where this may be true. Many people trivialize the changes in Nepal, pointing out how they did not bring the desired effect. On the other hand, the legal changes such as the Forest Act may provide a dormant tool for communities until a different political climate emerges.

Prior to 1957: Most forests were managed under a welter of indigenous common property systems, some of which were more effective than others at sustainable use of the timber.

1957: Private Forests Nationalization Act brought forests under government jurisdiction.

1961: Forest Act passed with various amendments to the 1957 version, none of which substantially affected forest nationalization.

1967: Forest protection and Special Arrangement Act also amended, without substantially changing the 1957 situation.

1976: The National Forestry Action Plan was laid out but only partly implemented.

1978: The government laid out the "Panchayat Forest Rules" and "Panchayat Protected Forest Rules" to try to reverse deforestation resulting from the nationalization of forests in 1957. This allowed local Panhchayats to create a management plan and take over some of the management of their forests. Despite the new rules, implementation emphasized replanting trees. At the same time, the World Bank paid for a community forestry project in 29 hill districts, eventually expanded to an additional 14 districts.

1965-1979: Nepal experienced a loss of 38,000 hectares of forest cover. Landlessness and the government's inability to enforce size limits on earlier land reforms forced landless people more and more into the hills in search of places live and cultivate.

1980: The Panchayat Rules were amended again to include more community forestry concepts, but implementation continued to emphasize replanting.

1987: First "National Community Forestry Workshop" was held with forest department and project staff.. Significant donor support for reform was expressed.

1988: A master plan for the forestry sector was completed, proposing complete overhauls of the Forestry Acts. Reformers proposed that forest "user groups" should have greater rights over forests, emphasizing the need for massive retraining of the entire staff of the Ministry to allow for user-group management of forests.

1990: New "Forestry Development Rules" and "Leasehold Forestry Rules" were enacted and the Forestry Bill of 1990 passed. Innovative and consistent with the recommendations of the master plan of 1988, the act contains guidelines for handing over forest management to user groups.

1993: The Forest Act of 1993 formally enshrined the concept of user group and community forestry in law. District Officers became able to hand over any part of the national forest to a user group for conservation, use and management. Communities were able to sell and distribute their forest products.

1998: About 4,466 user groups were legally recognized and 293,000 hectares of national forest were handed over. While the Forest Act was seen as a great innovation, implementation was difficult due to the weak ability of the forest departments to build managerial capacity within user groups, as well as distrust of government, inadequate financing, increased local disputes about benefit sharing and leadership and actual membership of the groups.

2001: Proposed amendments to the Forest Act were designed to return land to control of Forestry Department and require user groups to give away 65 percent of their earnings to the government. Widely seen as an attack on the act, the proposed provisions also called for giving forest areas to foreign concessions. The search for more government revenue was the primary drive behind the proposed amendments.

Looking Forward, Future Challenges

The debate on the respective rights of the nation and forest users continues, particularly in the lowland Terai where the commercial interests are greatest. Nepal is an interesting case because of the diverse use of the forest resource—to support agriculture, for timber and non-timber products, and to protect water sources and provide other environmental services. Experiments in different parts of Nepal are designed to strengthen local institutions and associations for communities and user groups. The focus also includes maximizing returns to forest users, in the form of cash income, new enterprises and subsistence products. Nepal continues to be a model for other countries in South Asia, which have handed over forest management rights to a lesser extent than in Nepal. The challenge for users is preventing the government from reestablishing its control when the value of the forest increases.

Sources: (Forest and Communities.org; Mahapatra, 2001; Shrestha, 1998; Shrestha, 1999 and Britt, 1998).

Annex 9: Tanzanian Land Policy Inspired by Models of Success
(Abstracted from Wiley (2000), Wiley and Dewees, (2001), and Palmer et. al. (2000)

Forest Tenure in Tanzania

Tanzania is the southernmost country in East Africa, with a rich forest estate providing a variety of products and services, including fuelwood and numerous non-timber forest products, and more recently tourism resources. These forests are under considerable pressure for conversion to other uses and from repeated forest fires. Since 1995, more than 1,000 Village Forest Reserves have been created by communities and more than 40 National Forest Reserves are coming under working co-management arrangements.[50]

Course of Events and Implications

1970-early 1990's: Tanzania's forest management model followed a typical South/East African approach. In this classic African situation, most land was considered public property. A government forest bureaucracy sometimes zoned public land and declared it protected or conservation land, regardless of community claims or customary use rights. Community involvement in forest management was limited to occasional efforts to protect forests, replant, or make ill-managed community woodlots. Unique to Tanzania, however, was the presence of artificially created "villages" from Tanzania's years of experimentation with socialism. These villages were given strong legal rights. Village Councils are elected and recognized as legal entities in Tanzanian law. They can hold property, sue and conduct legal transactions. Village Councils can also zone village-owned land as common land. The notion of the village as a legal governance entity is rare in Africa, as villages are usually part of territory administered in the colonial tradition by a central government.

1984: Duru-Haitemba forest was proposed for gazettement as a Forest Reserve. The bylaws of the affected district declared the area as protected, meaning local people could no longer use it or harvest timber. However, implementation did not take place.

1989: A discussion on the need for widespread legal tenure reform began within ministries and among experts and donors working in Tanzania. This resulted in the creation of a technical committee in the Ministry of Lands to look into urban land policy.

1991: The urban land policy commission was expanded to look into national land policy. A twelve-member commission of inquiry traveled throughout the country to carry out its investigations.

1991-2: Government forestry agents cleared the Duru-Haitemba Forest boundaries and installed beacons. Affected village residents reacted with "resistance" (the nature of this resistance was not specified in documents consulted). External arbitration was sought. The arbitrator advised trading forest use rights for the "taking" of public land and its classification as a protected forest. Negotiations with affected villages halted reclassification of the land and discussions continued for several years.

1993: The Land Commission of 1991 made its report with no support from the government. A position paper drawn up by the Ministry eventually was based on the commission's report. No public consultation on land tenure issues occurred.

1994: The forest land of Duru-Haitemba was returned to the affected villages with recognized Village Title Deeds. This solution was "discovered" in part because the affected villages were being supported by a donor project to survey and demarcate village areas at the same time the dispute over Duru-Haitemba forest took place. In the resulting agreement, each village zoned its part of the forest and closed some

areas for restoration. Management rules were set up. After a local magistrate ruled against some villages on some management issues, the affected villages instituted village bylaws to clarify forest management rules.

1995: All 9,000 hectares of the Duru-Haitemba forest were under the management of the affected villages. A National Land Policy was approved in Parliament.

Since 1995: Duru-Haitemba forest management rules were continually modified and updated in incremental, local problem-solving arrangements.

1995 – 1998: Five villages around Mgori forest in a different region followed the earlier model discovered at Duru-Haitemba.

1996: A draft bill for a new Land Act was prepared by a British government-funded expatriate consultant. This angers members of the earlier land commission. The consultant's Draft Land Act not circulated.

1998: Very limited public discussion took place and the proposed Land Act was finally allowed at the end of the calendar year. Local academics praised the bill for giving attention to the security needs of women and squatters, the village administration concept, the acceptance of commonages and the recognition of customary law. However, the bill is criticized for continuing to require government approval for nearly every step and every local change.

1999: Village Land Act #5 and the Land Act #4 were both quickly enacted in February of the year with full support of Parliament. These laws divided Tanzania into village land, reserved land, and government land. Customary land law was also recognized. The laws provided for adjudicating, recording, registering and issuing titles for customary rights. Village Councils managed village lands. Commonage also was accepted as a legitimate type of land.

2000: A new draft Forestry Bill was designed to add community forests as type of forest classification. Cumbersome regulations for establishing community forests limited expansion of the Mgori model. The Land Acts of 1999 came to be seen as extremely difficult to implement due to lack of political will within the affected ministries. The Ministry of Lands claimed the new Land Acts would require decades to implement. Experts on the scene questioned whether the Ministry would bother advising villages on using the act for community benefit or simply ignore the new laws and continue top-down land management and "business as usual."

Looking Forward, Future Challenges

This case illustrates the usefulness of successful field experiments when reform emerges as a possibility. It also shows the limitations of many worthy "top-down" changes promoted by donors, as well as the limitations of change through models without strong civil society associations. Such change can provide necessary legislative framework, but bottom-up activism and a dense network of civic organizations and interest groups may be necessary to make the changes operational and to make them stick over time. Tanzania is an unusual case in its region, in terms of communities' strength with registration and the rights to elect their own local governments in the form of the Village Council. As the decentralization process unfolds in Africa, Tanzania will provide interesting lessons on the role of governance in effective forest management.

Sources: (Palmer, Wiley, and Adams, 2000; Wiley and Dewees, 2001; Wiley, 2000)

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[1] World Bank Forest Strategy, July 30, 2001.
[2] Klubnikin and Causey, 2002.
[3] Bloch, 1966; Cooper, 2001; Rampey, 2001 and Poffenberger, 1990.
[4] Indonesia is a typical example where the Constitution recognizes customary rights and laws when they do not conflict with national interest. UUD/Constitution 1945, Article 18B. Point (2). Second Ammendment 1999.
[5] World Bank, March 2001. See World Bank land policy paper and web-site review for excellent overview of the history of land administration efforts: http://wbln0018.worldbank.org/essd/rdv/vta.nsf/Gweb/landpolicy.
[6] These figures only cover data available for the 30 most forested countries in the world, which represents, however, 93% of the world's forest cover. White and Martin, 2002.
[7] There are times when devolution can be a step backward. See for example the India case annexed to this report. It describes some regions in India where communities had stronger use and access rights prior to devolution in the form of "joint forest management".
[8] The term devolution as defined by Arun Agrawal and Jesse Ribot and extracted from Maniates 1990 refers to "the increased empowerment of local organizations with no direct government affiliation' such as NGOs, private bodies, corporations, community groups, etc.". (Agrawal and Ribot, 2000).
[9] Ellsworth, 2001; Team of Environmental Studies Center of Lampung University, 2001.
[10] Bromley and Gibbs, 1989.
[11] See Lynch 2000, and White and Martin 2002
[12] Of course, all governments retain the right of "eminent domain" to unilaterally "take" lands and rights to select portions of private holdings when deemed in the public interest to do so. The difference here is that in the case of public "reserves" the government can unilaterally extinguish all rights to the entire parcel of land allocated to local groups.

[13] Agrawal and Ribot, 2000.
[14] White and Martin 2002.
[15] Lynch, 2001.
[16] Bruce, 1998.
[17] Bromley, 1998.
[18] Ostrom, 1986.
[19] Bruce, 1999.
[20] This first sentence is paraphrased and much of the content of this section was informed by Lindsay. 1998.
[21] In particular, Lindsay recommends the following three principles in designing community property laws: "(1) legal regimes should allow flexibility in deciding what the objectives of management should be and the rules that will be used to achieve those objectives; (2) Flexibility is required in regard to how state law handles the recognition of local groups; and (3) Flexibility is needed in the definition of management groups and areas of jurisdiction." Op.cit. 1998.
[22] See, for example, cases in Migot-Adholla, 1991; and Knox, Meinzen-Dick and Hazell, 1998.
[23] LEAT, 2001.
[24] CIDOB, 2001 for Bolivia; and Gatmaytan, 2001.
[25] ILO, 1998.
[26] Bennagen and Royo 2000
[27] ILO, 1998.
[28] Ford Foundation, 2000.
[29] Li, 2001.
[30] Eghenter, 2000.
[31] Aboriginal Mapping Network, 2001.
[32] Bennagen and Royo, 2000.
[33] Lynch, 2001 ; Bennagen and Royo, 2000.
[34] Stocks, 1998; CACRC, 1998 and on-going CACRC mapping diagnosis for Honduras (Global Environment Facility-financed).
[35] Kalimantan success in keeping low profile and not telling government, built national community-based political momentum before government could ban community-based mapping.
[36] Perrot-Maitre, 2001.
[37] Palmer, Wiley and Adams, 2000.
[38] Cardoso, 1999.
[39] Eddy, 1985.
[40] Poffenberger and Seymour, 1989.
[41] Klein, 1961.
[42] Korten, 1988 ; Korten and Carner, 1984.
[43] Martin, 2001.
[44] Birk, 2000; Healy, 2001.
[45] Cardoso, 1999.
[46] Alcorn, Bamba, Masiun, Natalia and Royo, 2001.
[47] Langer, 2001.
[48] Colchester, MacKay, Griffiths, and Nelson, 2001, pg. 29-30.
[49] White and Martin, 2002. *Who Owns the World's Forests*, pg. 11.
[50] Wiley 2002.