

News: Liberia's forest exploitation over the last half-century has ridden roughshod over customary property rights. 4

Perspective: The urban public generally view forest conservation as an unquestionably 'good thing' akin to apple pie, motherhood and soccer. 7

Feature: Are the 'rights of nature' always consistent with human rights? What about organisms such as viruses which can kill people? 8

Around the world: Now that the land is ours we have to take care of it. 11



Agni Boedihartono

Rights-based approaches to forest conservation

Contents:

2 Editorial 3 Livelihoods and landscapes 4-5 News: News on Liberia's Community Forest Rights Law and Colombia's General Forestry Law 6 Legal aspects of the rights-conservation nexus 7 Perspective: Why forest conservation is not good news for local communities 8-9 Feature: Rights-based approaches to forest conservation 10-13 Forest people's rights around the world: Cases from India, Indonesia, Costa Rica and Guatemala 14 Forest programme partners: Rights and Resources Initiative 15 IUCN Commissions: CEL 16 Reviews

This *arborvitae* is the first one produced solely by IUCN and regular readers will notice some changes in both content and style. In addition, from now on, each issue of *arborvitae* will also be available in French and Spanish on our website at www.iucn.org/forest/av

As always, your comments are welcome and contributions even more so!

Readers respond:

If you have a comment on something you have read in a recent issue of *arborvitae*, we'd love to hear from you. You can send a message to: jennifer.rietbergen@wanadoo.fr

Here is an extract of an email we received about *arborvitae* 35:

Dear IUCN,
Please add my name to the circulation list for *arborvitae*. I have recently seen the Dec07 issue on forest conservation tools and thought it was very good. I have just started work at FAO to coordinate the remote sensing component of the next global Forest Resources Assessment 2010 and found the article by Josef Kellendorfer useful to explain the potential for remote sensing tools in short simple terms for a broad audience. Then Jeffrey Sayer also made some good points and a sobering reminder of the limitations of some of these tools. When we have got further underway with the FRA Remote Sensing work in late 2008 or early 2009 we may be able to contribute a short article on the progress that may be of interest to IUCN members and *arborvitae* readers.

Regards, Adam Gerrand



DGIS is the Development Agency of the Ministry of Foreign Affairs of the Netherlands

Editorial

The debate on rights-based approaches (RBA) to conservation that has emerged recently is occurring at a time when conservation thinking is being profoundly challenged. For over 100 years the conservation movement has followed the path set out in the 1872 Yellowstone Act. Its core business has been to ‘set apart [wilderness] as a public park or pleasuring ground for the benefits and enjoyments of the people’ – albeit on many occasions a limited, rather elite, subset of “the people”. While there are those who feel that the RBA debate takes conservation too far away from its ultimate *raison d'être* it is, for better or worse, too late to put this particular genie back in the bottle. The need for conservation to recognise the rights of those people who are most directly impacted by global conservation initiatives makes rights-based thinking not only a question of ethics and social justice but also a practical imperative for saving species and ecosystems.

To be clear, a rights-based approach is not about fulfilling a utopian dream of people and nature living in perfect harmony. When individuals and communities have rights over a particular area recognised and enforced, they may indeed act to safeguard some of its conservation values. But they will only do so

if the right incentives are in place – and whatever happens, there is no guarantee that people will exercise their rights in ways that preserve the ‘non-instrumental’ values, such as species diversity, that conservationists are particularly concerned about.

Local communities are certainly becoming more effective in asserting their rights to negotiate and implement decisions about how conservation and development needs are balanced across their landscapes – and conservationists need to be able to respond to this. Indeed, there is a pressing need to translate the surfeit of current theory about rights-based approaches into the practical realities of resource management on the ground, particularly in countries with weak institutions and limited capacity to enforce agreements. For this to happen, lawyers, social scientists and natural resource managers need to start figuring out how they can collectively support and work with emerging grassroots social movements in many parts of the world, since it is these movements which will be driving the forest rights agenda in their own contexts.

Stewart Maginnis & Jeff Sayer
Stewart is Head of IUCN's Forest Conservation Programme and Jeff is Senior Scientific Adviser to the Programme.



Livelihoods and Landscapes

As mentioned in previous issues of *arborvitae*, IUCN's Forest Conservation Programme is working on a new initiative entitled Livelihoods and Landscapes, which examines if forests can really help to reduce rural poverty and how forests can be more effectively used to balance human and conservation needs. The initiative, funded by DGIS, is not about creating new projects but rather scaling up IUCN's ongoing global forest projects in existing and new sites and building on IUCN's expertise in securing the rights and access of forest dependent communities to forests products and markets for those products.

Ongoing progress and news from our Livelihoods and Landscapes sites will be featured in *arborvitae*, through the eyes of IUCN and its members. In this issue, for example, the following article looks at some of the rights-related issues emerging from a Livelihoods and Landscapes site in Tanzania.

Forest restoration, rights and power: what's going wrong in the ngitili forests of Shinyanga?



Gill Shepherd

The poor women's focus group in Busongo village

Gill Shepherd looks at a sobering case of how forest restoration has helped spark the erosion of rights of the poor.

Various reforms in Tanzania have encouraged the large-scale restoration of small woodlands (*ngitilis*) in Shinyanga region, generating a significant increase in their value. It was estimated in 2003 that benefits from these woodlands added an average of US\$14 per person per month to local incomes (Monela et al., 2005). This is almost double Tanzania's estimated basic needs per capita poverty line of US\$7.6. Communities and individuals have invested some of the increased income in local school buildings, and in paying for school fees and pupils' uniforms. Shinyanga has been much cited as a shining example of village-based forest restoration, not least by IUCN.

However, averages do not always tell the full story. When the Poverty-Forests Toolkit was applied in Busongo village in Shinyanga in 2006, poor women explained to us (in the privacy of their own focus-group) that wealthy men were rapidly acquiring land for private *ngitili* forests (for grazing their cattle) while too little land was being set aside for communal *ngitilis* for the needs of poorer users. Indeed, complete landlessness was now growing among the poor, as poor men also told us.

This is depressing news. Tanzania is one of the few countries in the world with a system of village tenure which allows village leaders

to allocate land between communal and private uses without the need for much recourse to higher authority. The redistributive power of village-level government was one of the best aspects of *Ujamaa* village management carried over and enshrined in Tanzania's village land laws. So landlessness ought not to be possible, and village authorities ought to be taking responsibility for designating land as *ngitili* land for communal users. If the situation in this village is becoming true more widely, it would seem that village leaders are allowing land-grabs rather than carrying out their responsibilities as they should.

This case illustrates the way in which rights-based approaches to forest conservation need to go beyond the creation or enshrining of rights to own, use or sell forest resources. In the case of Tanzania, those rights were already crystal-clear and of long standing. Rights-based approaches must also ensure that people have the ability to *claim* their rights or entitlements and to seek redress when just rights are denied, as is happening here. In this case, village leaders are not acting as umpires as they should, and the poor have no other advocate, so rights give way to power.

As we have seen in Nepal and elsewhere, the creation of improved forest resources creates renewed interest in those resources. Better forests and a better income from them provoke new governance challenges, and helping to strengthen recourse to justice may end up being as important a task for organizations such as IUCN as was supporting forest restoration in the first place.

Monela, G. C., S. A. O. Chamshama, R. Mwaipopo, and D. M. Gamassa. 2005. A Study on the Social, Economic, and Environmental Impacts of Forest Landscape Restoration in Shinyanga Region, Tanzania. Forestry and Beekeeping Division of the Ministry of Natural Resources and Tourism, United Republic of Tanzania, and IUCN. Eastern Africa Regional Office, Dar es Salaam, Tanzania.

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Liberia's Community Forest Rights Law: what will it look like?



IUCN Photo Library © IUCN/Jim Thorsell

A logging truck in Liberia

Liz Alden Wily gives a preview of Liberia's new legal instrument for reinstating community rights in the forest sector.

A history of neglect

While Liberia's natural forest resource has made a major contribution to the country's economic development (providing 20 percent of GDP in 2003), its exploitation has been far from responsible. By the end of the Charles Taylor regime (1997-2003), more than twice the total forest area had been allocated to some 70 (mainly foreign) companies. In addition, timber sales were found to be contributing to arms purchases including support to rebels in neighbouring Sierra Leone. A post-Taylor review resulted in the cancellation of all concessions by President Ellen Johnson Sirleaf in early 2006, and no concessions have been re-issued, pending comprehensive reforms of the forest sector.

In addition, Liberia's forest exploitation over the last half-century has ridden roughshod over customary property rights as rural communities have been denied their right to harvest or use timber, and widespread human rights abuses by concession staff, including rape, have been reported.

Unfortunately, a new National Forest Reform Law enacted in late 2006 did not adequately address forest property

rights. It failed, for instance, to provide for community consent to logging on community lands. Liberia's legislature recognized this concern and committed to developing a Community (Forest) Rights Law. The local NGO sector, with support from international conservation initiatives, has played a prominent role in researching local conditions and drafting the new community rights law. A lead input has been made by the Sustainable Development Institute (winner of the Goldman Environmental Prize in 2006) sponsoring an in-depth analysis of forest tenure by this author (see *So Who Owns the Forest: An investigation into forest ownership and customary land rights in Liberia*, available at www.fern.org.)

The potential for change

Drafting of the new law by a local lawyer working closely with a multi-agency working group began at the end of last year and is nearing completion. A recent workshop in Monrovia elaborated ways in which the final drafting may unambiguously devolve forest governance to the local level, thereby reshaping the role of the central Forest Development Administration as technical adviser and ultimate regulator. The law is designed to empower the many forest-owning communities as lawful managers of their forest assets. The new law would also restructure commercial forest use, discouraging the issuing of overly large concessions and encouraging private sector-community partnerships and community-based forest enterprises. A series of watch-points from international experience were elaborated including the need for simple procedures to maximize uptake and minimize cost, the need to keep user groups and community management entities as constructs and the overriding need to position communities as rights-holders and the sources of conservation and sustainable use regulation, not beneficiaries of state benevolence.

A land rights-based approach within reach

There was general agreement as to the way forward. The final draft of the law was expected to be ready by the end of May this year. Regional participants were particularly forceful in exhorting the Forest Development Authority to take the changed orientation fully on board, warning of the costs of failing to properly democratize forest governance, as seen in their own countries. Adopting a land rights-based approach, they argued, is necessary not just for sustainable conservation and management of forests but also for accountability and equitable economic returns in the sector. They look forward anxiously, they said, to Liberia setting the example in the region where so little tenure based forest governance has been achieved.

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Colombia's new forest law rejected

Eugenia Ponce de León of the Externado University of Colombia reflects on a successful legal challenge to a forest law that neglected community rights.

A successful protest

In January this year, Colombia's Constitutional Court ruled that the country's General Forestry Law, enacted two years ago, was unconstitutional. This move follows an intensive campaign by a coalition of NGOs, environmental and legal experts and representatives of ethnic groups and forest communities, who opposed the law on the grounds that it violated the rights of Indigenous People and Afro-Colombians. As an environmental lawyer, I was closely involved in the opposition to the law. A national policy paper that I wrote was signed by many of the campaigning groups and sent to Congress and to the relevant government authorities. This was in addition to the many letters and petitions sent by a whole range of groups, formally requesting consultation on the law and modification of its articles.

First and foremost, the failure to consult with these groups during the preparation of the law meant that their legal rights had been breached. In addition, the law treated forests as simply sources of wood to be exploited, rather than as ecosystems that provide a wide range of goods and services.

An established protection

Much of Colombia's natural forest is on lands within, or adjacent to, the territories of the country's indigenous and Afro-Colombian groups. Colombian legislation recognizes these communities' property rights over the forests – rights that apply not only to the trees, but to the land itself. In addition, as a signatory to the ILO Convention 169 de 1989 on Indigenous and Tribal Peoples, Colombia is committed to undertaking consultation with these groups “whenever consideration is being given to legislative or administrative measures which may affect them directly” (Article 6). This legal obligation on the part of the government to consult with the indigenous and Afro-Colombian communities had already been confirmed in previous rulings of the Constitutional Court, as an important requirement to enable these groups to become fully informed of emerging legislation and to participate in its development.

A backward law

The enactment of the General Forestry Law represented a major backward step in Colombia's environmental legislation and a threat to the rights of the country's indigenous and Afro-Colombian populations. First and foremost, the failure to consult with these groups during the preparation of the law meant that their legal rights had been breached. In addition, the law treated forests as simply sources of wood to be exploited, rather than as ecosystems that provide a wide range of goods and services. With its overriding emphasis on forest exploitation, the law relegated the issues of conservation, restoration and resource protection to

small, disjointed articles with no legal force. Furthermore, the law abolished controls on the sale of forest products from commercial plantations and made illegal logging of natural forests all the more easy. All this meant that the law entailed a change of vision for the country's forests and the abandonment of their integrated regulation within an ecosystem approach that had been established in Colombia's environmental policies.

Without a doubt, this decision sets a very important precedent for the rights of these groups in Colombia.

A wise decision

For the Constitutional Court, the violation of the ILO Convention was enough to warrant the axing of the forestry law. The Court concluded that since the subject of the law deeply affected the cosmovision of the indigenous and Afro-Colombian communities and their relation with the Earth, there was no alternative but to declare it unconstitutional and unenforceable. Without a doubt, this decision sets a very important precedent for the rights of these groups in Colombia.

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Human rights and forest conservation: what does the law say?



Patrick Durst

Degraded forest land in the Philippines

Annalisa Savaresi Hartmann looks at some legal aspects of the rights-conservation nexus.

Recognition of the relationship between human rights and the environment has been developing in recent years and many government and civil society actors have addressed rights abuses that can arise from environmental degradation. Although the right to a healthy environment is absent from most international human rights instruments, human rights law provides substantive and procedural elements and institutional mechanisms that may be utilized to address environmental concerns. The jurisprudence of international human rights bodies, such as the European Court of Human Rights, clearly demonstrates this possibility.

The impact of forest activities on human rights has on several occasions been sanctioned in the jurisprudence of national and international judicial bodies. By way of example, in 1994 the Supreme Court of the Philippines ruled that the right to a balanced and healthy environment and the right to health entitled a group of Filipino children to stand in court on behalf of future generations to seek the cancellation

of forest logging permits. At the international level, the Inter-American Commission has found on several occasions that deforestation and logging activities may impair the human rights of forest-dwelling communities. Along similar lines, the UN Human Rights Committee has established that the expropriation of lands for timber development may threaten the way of life and culture of indigenous peoples (*Lubicon Lake Band v. Canada*, Communication No. 167/1984).

This approach, however, only benefits the victims of violations of established human rights. If the individual applicant's health, private life, property or civil rights are not sufficiently affected by environmental damage, then he or she has no standing to claim recognition of these rights before human rights bodies.

Another way of addressing the linkages between conservation and human rights is to elaborate tools to integrate human rights protection with conservation. IUCN has promoted this approach by sponsoring the

study 'Conservation with Justice: A Rights-Based Approach', edited by Dinah Shelton and due for publication later this year (see more details on page 16).

Regulations on access and allocation of forest resources must comply with the human rights of all affected subjects. Although these rights are often recognized in domestic constitutions and international human rights treaties, they are rarely taken into account in forest decision-making. As indigenous and other communities enjoy tenure rights over a large and increasing percentage of the world's forests, it is necessary to ensure the protection of their rights. At the same time, however, it must be recognized that the trend towards increased legislation of customary land rights and other traditional rights of forest-dwelling people is not the obvious solution it may at first appear – and indeed in some cases it may even cause more problems than it solves. For example, legislation may reinforce inequitable rights, benefiting only the elite and further marginalizing the weaker members of society.

To date, there is no comprehensive instrument specifically designed to address the links between conservation and human rights. The recently adopted UNFF Non-legally Binding Instrument on All Types of Forests is silent on the matter and merely encourages states to promote the involvement of local communities, forest owners and other relevant stakeholders in decision-making processes. As the priorities of forests' stewards may not align with the ones of conservation, the rights-based approach (RBA) may be a powerful instrument to combine conservation interests with human rights protection. In particular, the adoption of an RBA may ensure compliance with the rights of forest stakeholders while ensuring the preservation of biodiversity and providing a frontline defence against deforestation.

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This article is the first of a planned series of invited ‘opinion pieces’ that will appear regularly in *arborvitae*. The content of these pieces does not necessarily reflect the view of IUCN.

Why forest conservation is not good news for local communities

Janis Bristol Alcorn takes a critical look at what forest conservation has done for local people’s rights.

The urban public generally view forest conservation as an unquestionably ‘good thing’ akin to apple pie, motherhood and soccer. It is a key ‘green’ solution to global climate change. Forest conservation delivers its ‘good news’ through various mechanisms – certified logging, sustainable logging, joint forest management, community-based forestry, payments for ecosystem services, forest reserves and protected areas – almost invariably in forests on lands claimed by local communities.

The urban public does not see the displaced pygmy camps watching certified logs passing on trucks in Cameroon, the uncontacted Amazonian indigenous people impacted by loggers who penetrate their territory to fell illegally-harvested logs to be sold as ‘certified’, or other similar scenes easily seen by outsiders who travel to remote forested areas around the world. The public living in such rural areas, on the other hand, describe themselves as ‘struck by the lightning’ by such projects: hardly good news.

Biodiversity hotspots generally overlap with poverty hotspots. While forest conservation could bring good news for local communities, and indeed is often touted as beneficial for them, these communities bear significant costs and gain few benefits. The costs arise not only from opportunity costs but also from the forest conservation planners’ and implementers’ failures to support the human rights of communities and their members.

Individuals and communities are ‘rights-holders’ who hold universal rights to an indivisible bundle of civil, economic, cultural, political, property, and environmental rights. Conservation agents are ‘duty-bearers’ who have obligations to act to protect human rights directly and to create the conditions for others to fulfil their responsibilities, even in the absence of national legislation or regulations protecting human rights. Human rights abuse allegations associated with forest conservation activities include violation of due process, massive forcible resettlements, extrajudicial killings, destruction of property and farms, torture and other violations of social, cultural, political and economic rights. Globally, over 130 million people are ‘conservation refugees’, having lost their homes and access to resources as a result of conservation interventions. Indigenous peoples are particularly vulnerable to having their prior territorial

rights violated by forest conservation, and increasingly view conservation as a major threat, some even calling conservation an ‘ecofascist’ activity.

Failures to support human rights in forest conservation arise from the Lucifer Effect – not because people involved in forest projects are inherently bad, but because institutions do not provide planners and implementers with the proper guidance to apply as decision-making criteria in complex situations. Most forests are found in remote areas where the national government is not protecting human rights and where there are unclear property rights and weak judicial systems. In such situations, the onus of duty-bearer falls square upon those who are planning and implementing forest conservation. However, external organizations have been implicated again and again in choosing to turn a blind eye or play the game with corrupt governments instead of supporting human rights, choosing short-term solutions over the long road of negotiating benefits for local rights holders via recognition of their customary rights over forests.

In a few countries, such as Mexico, communities successfully conserve their own forests, defending them because they have legal ownership of forests. Yet emergent opportunities for tenure policy-led ‘good news’ conservation in other countries are too often hijacked by international organizations, as in the current case in Liberia, where Conservation International (CI) is lobbying to, in effect, prevent communities’ forest rights from being recognized, by opting for new protected areas and concessions instead of working with local communities for recognition of customary rights. There are, nonetheless, many opportunities to improve the situation. International NGOs have access to national decision-makers that are beyond the reach of communities and local NGOs. Bilateral, multilateral and private donors can leverage change through global programs, such as the Global Forest and Trade Network supported by IFC, USAID, Citigroup, DGIS, DFID, EU and Blue Moon. In this context, donor institutions could review their grantees’ human rights duty-bearer compliance, and develop guidance and disincentives for those who are not assuming their responsibilities.

For references and further information, please see: Alcorn, J.B. and A.G. Royo. 2007. Conservation’s engagement with human rights: Traction, slippage, or avoidance. *Policy Matters* 15: 115-139. <http://www.iucn.org/themes/ceesp/Publications/Publications.htm>

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Agni Boedjhariono

A women's nursery in Burundi

Rights-based approaches to forest conservation

Bob Fisher and **Gonzalo Oviedo** look at some of the issues and contradictions behind the concepts of rights in a forest conservation context.

Rights-based approaches (RBA) to conservation, including forest conservation, are being increasingly advocated – and sometimes contested. This article unpacks some of the issues behind these approaches, many of which are dealt with in greater detail in other articles in this issue of *arborvitae*.

There are a number of different views of rights as they apply to conservation. A great deal of emphasis has been placed on tenure rights – rights to access and use resources – which we will look at in a moment. But first, let's consider some more 'fundamental' rights.

Environmental rights and human rights

The idea of environmental rights (e.g. the right to clean water, or to a healthy environment) emerged primarily as a result of social conscience about pollution and the effects of industrial development on humans. The environmental

rights movement was successful in making the point that, without a healthy environment, the whole spectrum of human rights would be impossible to attain. Indeed, there is a growing recognition that environmental rights are a constitutive element of human rights.

While the notion of environmental rights is important, it has its limitations from the perspective of human rights, human wellbeing and the needs of the poor. The problem is that environmental rights can sometimes be interpreted in ways that undermine human rights. Some of the limitations of the environmental rights agenda are linked with two problematic concepts – intergenerational rights and the rights of nature. Intergenerational rights may mean, in practice, that I have to sacrifice my own rights (e.g. to be free from hunger) for the benefit of my children's rights but this clearly raises difficult questions. Intergenerational rights, while ethically laudable,

...are the 'rights of nature' always consistent with human rights? What about organisms such as viruses which can kill people?

are a problem in terms of human rights and are not justiceable (i.e. cannot be enforced). The rights of nature are even more problematic for similar reasons. For example, IUCN still has a policy which states that '[e]very life form warrants respect independently of its worth to people' (IUCN/UNEP/WWF (1991) *Caring For the Earth: A strategy for sustainable living*). Yet, are the 'rights of nature' always consistent with human rights? What about organisms such as viruses which can kill people? This notion of the rights to nature can be especially damaging for the poor. We would argue that the value of life forms cannot be detached from their worth to people, if we are thinking of a comprehensive framework of rights that support human wellbeing.

With these problems in mind, we feel that a new understanding is needed to address the current mismatch between environmental rights and human rights. The values of environmental rights (the ethics, the recognition of the 'right to a healthy environment') need to be reformulated so that they underpin the right to human wellbeing and all human rights. Human rights related to the environment may include 'cultural' rights, such as the right to cultural practices as they relate to natural resources.

Tenure – rights to resources

The increasing emphasis on rights to access and use natural resources (tenurial rights) is very important to forest conservation. While such rights are often supported on human rights grounds, they are generally discussed from a more pragmatic angle, based on the argument that people will only invest money, time and effort in conservation if they have secure rights which ensure that they will benefit from their investment. The incentives arising from secure access can make a significant contribution to forest conservation, but the theory does need to be qualified in several ways.

First, the assumption that 'secure rights' refers to legally recognized rights does not always match reality on the ground. There is evidence that people will invest (especially time and labour) to conserve and manage forests as long as they feel confident that they will be allowed to do so, even when they have no secure legal standing. For example, where technically illegal forest use has been tolerated by authorities for a long period of time, people may feel that continued use will be tolerated and may therefore be confident enough to invest time and effort. On the other hand, even when rights are legally recognized, a history of interference by forest authorities or private companies may mean that legal rights are not enforceable and people will lack the confidence to invest in conservation.

Second, the existence of regulations limiting access to markets or unduly onerous administrative requirements regulating forest management often undermines the effectiveness of tenurial rights. In other words, tenure needs to be understood in terms of the whole complex of institutional arrangements which govern forest resource use, not narrowly in the sense of legal ownership and access rights.

There is a need for a reality check in another sense here. Secure tenurial rights do not guarantee sustainable use of resources. The exploitative behaviour of some resource users – be they big companies, individual farmers or rural communities – shows that clearly. Nevertheless, sound tenurial arrangements are an important incentive.

One risk of focusing too narrowly on 'secure' (in the sense of legally codified) tenurial rights is that simply recognizing rights legally may be problematic unless done carefully. For example, recognizing communal rights over forests may undermine 'secondary' rights of users such as pastoralists who seasonally use a forest for grazing. Formalisation of rights as individual private property often means the loss of rights held traditionally as common property.

On a national level, insidious codification can be a serious risk. Attempts to codify rights too early can result in loss (sometimes through oversimplification) of traditional rights and can lead to serious conflicts – hardly likely to contribute to conservation. This is a particular risk where legislation is enacted without detailed knowledge of existing local institutions and resource use practices.

Rights to what?

The application of the concepts of rights to the field of forest conservation is complicated by the fact that many official (i.e. national) forest tenure systems focus on 'ownership' of forests as essentially consisting of trees for timber or for strict protection, ignoring, at least in legal terms, the existence and importance of other forest products. More nuanced notions of rights to forest resources would empower communities and other stakeholders to access forest resources.

On the other hand, where communities are granted rights to forest resources, these rights tend to be limited to low-value products. We now call these non-timber forest products to emphasize the diversity of forest values beyond timber, but maybe the older term 'minor forest products' still makes sense in economic terms.

Conclusions

We believe that debate about rights and forest conservation needs to go beyond the pragmatic and instrumentalist idea that secure property rights are a useful tool for forest conservation, to recognize the need for a broader set of forest rights based on notions of human rights and justice.

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Righting the wrongs done to India's forest dwellers



Collecting non-timber forest products can yield an important income for India's forest-dependent communities

Madhu Sarin discusses how a new law is reversing some of the injustices of forest management in India.

In India, large areas of ecologically diverse lands, performing a wide range of livelihood and cultural functions, have been legally classified as state 'forests' through unsound processes and have been brought under centralized, top-down management. Even in those areas where customary law and resource management systems are protected, dominant formal law has been overriding customary systems in subtle ways. The official conceptualization of 'forests' as uni-functional land-use systems primarily for sustained timber production, together with the growing attention to environmental services and exclusionary conservation, have compounded the livelihood and survival crisis of forest-dwelling communities. Urban middleclass environmentalism permeating to the Indian judiciary has brought the crisis to a head through an ongoing public interest litigation case. In the name of safeguarding forests and wildlife, several court orders have de-legitimized diverse traditional resource use and management systems by vesting the forest bureaucracy with exclusive forest management authority. Collection of non-timber forest products (NTFPs) from

all protected areas has been banned since 2000 and in 2002, large-scale brutal evictions of forest dwellers from their ancestral lands was ordered due to their being labelled as illegal "encroachers" on state forests.

The government's flagship Joint Forest Management (JFM) programme has skirted around critical issues of tenure, the livelihood functions of lands classified as 'forest', and the customary resource rights and management institutions of indigenous forest-dwelling communities. The JFM agreements effectively lock communities into unequal partnerships which the forest department can enforce with its legal might while remaining unaccountable to the communities. The JFM programme has been used to convert settled and rotational cultivation, and grazing/pasture lands into tree plantations by claiming such lands to be state 'forests' and indeed, the evictions of forest dwellers from forest lands has often been done with the assistance of JFM committees.

A national 'Campaign for Survival & Dignity' was spearheaded by a loose federation of

grassroots organizations against forest evictions, drawing in other grassroots and political bodies. Their campaign work culminated in the enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Brought into force from January 1 this year, the new law has several radical provisions. It admits the historical injustice done to India's tribal and other traditional forest-dwelling communities due to their land and forest rights not being recognized during the consolidation of state forests. The diversity of both individual and community rights to be recognized include rights over cultivated land, ownership of NTFPs collected from forests, seasonal use of forest lands for grazing by transhumant communities, rights of pre-agricultural communities over their habitat and the right to protect, manage and conserve customary community forest resources for sustainable use. Open village assemblies, instead of government officials, are to initiate the process of receiving and verifying the claims. Village assemblies are also empowered to protect local wildlife, forests and biodiversity and to ensure that the habitat of forest-dwelling indigenous communities is "preserved from any form of destructive practices affecting their cultural and natural habitat". The nodal agency responsible for implementation is the Ministry of Tribal Affairs instead of the Ministry of Environment & Forests. This is in recognition of the fact that it is predominantly ancestral tribal lands which have been classified as state 'forests', often without following the due legal process.

Although vehemently opposed by hardcore wildlife conservationists, the law has created space for finally democratizing forest governance in the country and restoring management control over customary community forests to communities. For the most marginalized tribal communities, recognition of their resource rights will be akin to recognition of their citizenship rights 60 years after independence.

Although the law is still in the very early stages of implementation in some states, and it remains unclear what distortions will creep in during the process, there is already an evident change in the unequal distribution of power between forest departments and communities.

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Guatemala: indigenous management of a protected area



IUCN Photo Library © IUCN / Jeffrey McNeely

Girls in Lachuá, Guatemala

Arturo Santos and **Julian Orozco** of IUCN's Regional Office for Mesoamerica outline how a protected area project involved a radical rethink of the role of local indigenous people in conservation.

The Lachuá Ecoregion consists of 55,000 ha of high biodiversity sub-tropical rainforest in the Northwest region of Guatemala. The area, which encompasses the 15,000 ha Laguna Lachuá National Park, has a population of 11,000 indigenous Q'eqchi' subsistence farmers residing in 55 communities.

Providing a better future through conservation

Traditionally, protected areas in Guatemala were established by central government and managed by understaffed state agencies, often resulting in the neglect of the rights, needs and knowledge of indigenous people. The management of these protected areas focused predominately on conservation and excluded the subsistence needs of the local poor.

The key question was: how can local indigenous communities with high rates of poverty and political and social exclusion, and with the deep wounds of a civil war, have an opportunity to manage their natural resources and conserve the National Park in a sustainable, interactive way?

To answer this question, the National Institute of Forestry (responsible for the management and protection of the national park), the Regional Office for Mesoamerica

of IUCN (ORMA) and the Dutch government joined forces in 1997. They developed a project to conserve the National Park and involve local communities in the management of its natural resources.

The Laguna Lachuá project unites eight government institutions with a team of conservation professionals and – most importantly – the Mayan Q'eqchi' community members, via six local associations. Together these partners have developed a model of integrated participatory land-use to achieve sustainable livelihoods and to address the socio-cultural, environmental, economic and political needs on a regional level. The primary focus of the project activities is local empowerment and community training.

Legalizing land rights

The final goal of the project is that the local communities co-manage the National Park as part of their own property.

When the project started, one of the major problems was that of land tenure. There was considerable conflict, and even violence, between community members regarding land ownership. The project staff worked with the local people and the government agencies to enable communities to legalize

their land tenure and to encourage them to respect the land demarcation of the National Park. As a result of these efforts, land rights for 90 percent of the land area have now been legalized and 50 of the 55 communities now have their land titles. In addition, there is now a good level of respect among the communities for each other's land rights and for the boundaries of the National Park. As one community leader said "*Now that the land is ours we have to take care of it for the wellbeing of our children, and most importantly take care of the Park, because now we are neighbours*". This realization by community members that they are the owners of the land and responsible for land management was a key factor in the success of the National Park and the project as a whole.

Results

So far the project has yielded very positive results:

- More than 500 families have been integrated into the poverty reduction programs;
- Five types of sustainable production (honey, forestry, fruits, handcraft and rural tourism) have led to a 50 percent increase in the incomes of 500 families;
- Business alliances and marketing chains have been developed for national and international markets;
- The deforestation rate has been reduced by 45 percent and there has been a significant reduction in illegal logging and forest fires; and
- Some 35 percent of the total area has a management plan.

During the last 10 years, the area has been declared a RAMSAR site, has been recognized as a model forest, and has won several national-level recognitions and prizes. But more importantly, the whole area is now cooperatively managed by a third-level organization, integrating government and local leaders, that discusses and develops the work plan of the area and promotes the conservation of natural resources and the well-being of the local people.

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When rights don't count: obstacles to community forestry in Central America



Community workers in Honduras debark logs infested with pine bark beetle

Evelyn Chaves of ACICAFOC looks at some of the barriers to communities exercising their forest rights.

Globally, community-based forest management (CBFM) has achieved many successes in terms of the socio-economic and environmental benefits it has brought local communities and indigenous peoples. Nevertheless, the movement towards CBFM has been unable to effectively influence national land tenure policies – the Achilles' heel of sustainable development. Numerous other obstacles prevent communities from exercising their legal rights to manage their forests and use and sell forest products.

Those embarking on community forest enterprises (CFEs) need reassurance that their efforts will reap livelihood rewards for several generations. Yet no matter how well a community manages its forest, land insecurity is an ever-present threat. The case involving the Las Marías community in the multiple-use zone of the Río Plátano Biosphere Reserve in Honduras is a clear example. For more than 70 years the community had been protecting the surrounding forest against fires, pests and illegal tree felling. However, when the government granted logging permits for trees affected by pine bark beetle in a move to contain a major infestation, an individual

suddenly appeared bearing a land title dating back to colonial times. His land rights prevailed over those of the community despite the fight they put up to get recognition of their rights over the land they had so devotedly protected. Fortunately, this story had a happy ending; the community's persistence bore fruit and they were finally granted a forest management contract.

On top of tenure insecurity, CFEs face many other barriers. Banking institutions do not recognize forests or timber, let alone non-timber forest products or environmental services, as acceptable guarantees for credit access purposes. The resulting lack of working capital is something that forest communities must contend with year after year. CFEs also face a never-ending struggle against the conservation-only stance that has been taken up by many decision-makers. This outlook opposes forest management, ignoring the fact that CFEs have proven their ability to be environmentally sustainable. Last but not least, the high levels of red tape surrounding the approval processes for CFEs is not only a discouraging factor for those who abide by

forest laws, but also a breeding ground for illegality and corruption. This is seen, for example, in the problems that the Cooperativa Agroforestal El Guayabo in Honduras has been experiencing. The cooperative has implemented a government-approved management plan and has fulfilled almost all the requirements for FSC certification. Even so, the cooperative has had one of its timber trucks, with all the necessary permits and legal waybills, detained at a checkpoint and confiscated, while a truck transporting illegal timber got through.

As a result of such unfairness, local communities often wonder why they should protect their forests when they lack guarantees as to their land rights and when they have to jump through so many administrative hoops. A large forestry company with financial resources and connections encounters no difficulties in conducting its operations, while communities have to provide assurances in terms of forest management and social and environmental accountability, in addition to meeting certification requirements, even in the absence of economic benefits for their products. They must continually stand up for their rights and beg for permits and working capital.

Despite this gloomy outlook, many communities have succeeded in defending their rights and building successful CFEs. Some of the elements common to successful experiences include: committed, visionary leaders who promote broad-based community participation; benefit-sharing among all members (not just leaders); development of in-house rules and regulations; and strategic partnerships. At ACICAFOC we firmly believe that support for CFEs should focus on fostering the individual and collective values of those involved, building local capacity and consolidating the people's visions and dreams into a productive process.

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Indonesia: putting rights into forest conservation



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Artisanal logging in Sulawesi, Indonesia

Marcus Colchester of the Forest Peoples Programme reviews the challenges of securing community forest rights in Indonesia.

Indonesia's forests are in crisis. The country is now among the world's greatest emitters of greenhouse gases, largely due to the uncontrolled conversion of tropical forests and draining of peatlands, cleared for oil palm and pulp-and-paper plantations. Annual deforestation rates are thought to exceed 3 million ha, while degradation of the remainder is being driven by excess processing capacity in saw, ply and pulp mills, with over 60 percent of the timber for these mills coming from illegal logging.

Forests for people? Indonesia's forests are not just important in terms of conservation, climate change and economic development. They are also home to some 60-90 million people. Indonesia's extraordinary biological diversity is matched by its cultural diversity. The country's 12,000 islands, spread across an arc of sea as wide as the USA, are inhabited by an estimated 500 different ethnic groups, each with its own unique language, culture and traditions. Custom (*adat*) is respected in the Indonesian constitution and orders much of people's social life, especially in rural areas. However, the formal legal framework and current land tenure regime offer people very little security. Less than 40 percent of rural land holdings in Indonesia is titled, a proportion which is declining year on year as new holdings are created faster than the national land office can survey and register them. This means that most lands are held under informal or customary tenures, yet the unclear procedures for recognizing customary tenures are barely applied.

The Forestry Department is even further behind in regularizing rights. To date, only 16 percent of the country's 120 million hectares of forests have been gazetted, meaning it is legally unclear if these forests are 'State forests' or 'private forests' encumbered with rights. This has not

stopped the Department over the years from handing out over 600 logging licences covering over 62 million ha and permitting the clearance of some 7 million ha for timber estates. About 30 million ha of 'forests' have also been permitted for conversion to palm oil and other crops. Most of these concessions overlap customary lands and have been imposed without the prior knowledge, let alone consent, of the local landowners. This has caused a profusion of land conflicts across the archipelago, while crackdowns by security forces brought in by concessionaires have led to serious human rights abuses. Local people, denied justice and legal security, are forced into illegal logging and land clearance to survive.

Indonesia's forests are in crisis. The country is now among the world's greatest emitters of greenhouse gases.

Prospects for change. There are signs of hope. Indonesian NGOs are active in proposing an alternative approach based on securing community rights, freezing the concession system and prioritizing local needs and conservation over exports and industrial supply. The National Legislative Assembly has decreed that the legal framework must be reformed to secure community rights and prevent conflict. Local legislatures are authorized to secure community rights. The UN Committee on the Elimination of Racial Discrimination has called on Indonesia to secure indigenous rights, curb the practice of overriding rights in the name of the national interest and allow communities the right of consent before proceeding with plantations. Private sector consortia, including major pulp and paper companies and members of the Roundtable on Sustainable Palm Oil, have committed voluntarily to respect customary rights and communities' right to consent. Moreover, practical pilot projects have shown that community rights in forests can be secured and the agricultural frontier stabilized by recognizing customary rights and supporting community forestry. A way forward is clear but it will require a major assertion of political will if the government is to turn local successes into sweeping change.

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From hinterland to centre stage: forests, people and rights

Augusta Molnar, Andy White, Arvind Khare and **William Sunderlin** of the Rights and Resources Initiative reflect on the importance of rights and governance as pressure grows on the world's forests.

Years of committed planning towards the Millennium Development Goals are now being overwhelmed by the more pressing political issues of 'security': food security, national security, energy security, and ecological security, including climate change and water crises. Yet these security crises are tightly linked to the same set of underlying problems that gave rise to three decades of global poverty and environment concerns: inadequate recognition of human and civil rights, marginalization of rural and forest communities, widespread rural poverty, and weak, unrepresentative governance institutions. Unfortunately, rather than dealing with these underlying problems, governments and the development community tend to leap from crisis to crisis.

Less well recognized is the fact that many of these challenges converge in the 30 percent of the Earth's surface that is considered forest. Forest areas remain chronically poor and poorly governed, and suffer from conflicts, crises and corruption, often surfacing to national and regional levels. Human, civil and political rights of indigenous peoples, women and other marginalized groups are frequently unrecognized. Over 30 forested countries have experienced widespread violent conflicts in the past two decades, many of which are fueled by inequitable resource distribution and ethnic tensions (see Kaimowitz, David. 2005. "Forests and Conflicts." European Tropical Forest Research Network Newsletter (43/44)).

Limited rights and poor governance exacerbate other global challenges. UNFCCC estimates that at least 20 percent of global carbon emissions stem from deforestation, degradation and land-use change. Worse, a significant portion of the world's most threatening infectious diseases, including Ebola, Yellow Fever, Dengue, Malaria, SARS and SIV, are exacerbated by tropical deforestation, fragmentation, and associated land-use change (see Wilcox, Brett R. and Bruce A. Ellis. 2006. "Forests and emerging infectious diseases of humans," *Unasylva* (FAO) 224, Vol. 57). The fates of forest dwellers and non-forest dwellers are



A young malaria patient. Some of the world's deadliest infectious diseases are exacerbated by tropical deforestation

increasingly intertwined. As productivity of land and local ecology change with climate shifts, forest peoples find their livelihoods and capacity to conserve their forests at risk, while pressures on forest lands for agriculture and industrial use spiral out of control.

Forests have historically been regarded as a hinterland, subject largely to the business and development plans of urban-based political, economic and environmental elites. Social and economic development in forest-rich areas has only recently become a goal of country and forest sector programs and policies. Yet, ironically, it is precisely in the forest areas where the coming drama is being played out and where many challenges have the best chance of effective attention. The rapidly expanding global economy and the booming demand for food, fuel and wood fibre all put mounting pressure on forestlands and peoples. These commodities also compete for the same, diminishing, available land (IIASA estimates that there are not more than 390 million hectares of land into which agriculture or biofuels could currently expand, but quadruple the demand – see Nilsson, Sten. 2007. *The Boomerang – When will the global forest sector relocate from the South to the North?* International Institute of Applied Systems Analysis and Rights and Resources Initiative).

The environment and development communities by and large have not yet adjusted or rethought their approaches to reflect this oncoming collision between the rights and interests of forest owners and the growing pressure from climate shifts and global commodity demand. As pressures on forests intensify, effective mitigation and adaptation to climate change are ever more dependent on clear and strong property rights to protect forest dwellers, encourage adaptive land management and provide a foundation for fair negotiation of changing interests.

Community and social movements are more vigorously advancing their property rights and enterprises. Longstanding conservation and commercial models are increasingly being challenged. Forests, people and rights are entering centre stage. Now that they have arrived we need to rethink and reorganize to support them.

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Reducing Emissions from Deforestation and Forest Degradation: the need for a rights-based approach



FAO, Roberto Faidutti

If not handled carefully, REDD initiatives can have negative impacts on local people's rights and interests

Nii Ashie Kotey and Paulo de Tarso de Lara Pires

(Co-Chairs of the IUCN Commission on Environmental Law Specialist Group on Forest) and **Thomas Greiber** (Legal Officer at the IUCN Environmental Law Centre) reflect on the reasoning behind a rights-based approach to REDD.

Emissions from deforestation and forest degradation are major drivers of anthropogenic climate change. As a consequence, the world community has become increasingly aware of the need to create positive incentives to reduce such emissions, particularly in developing countries where they mostly occur. Two distinct 'markets' may develop such incentives: the post-2012 regime under the United Nations Framework Convention on Climate Change (UNFCCC) which is currently under discussion, and the voluntary retail offset market, which comprises emission reduction projects of parties not yet bound by specific regulations.

While it is important to support both a possible regime for reducing emissions from deforestation and forest degradation (REDD) under the 'next Kyoto protocol' and the further growth of the emerging voluntary carbon market, great care must be taken not to overlook the possible negative implications for local communities and their rights and interests. Each of these two incentive markets has the potential danger of favouring mainly large-scale projects which are by nature more cost-efficient and easier to implement in the short-term. However, such large-scale carbon sequestration activities often fail to achieve conservation with justice by applying a rights-based approach. An attitude focusing mainly on economic considerations, while

ignoring the interests and needs of local communities who heavily depend on the respective forest areas, can pose an obstacle for the sustainability of carbon sequestration projects and therefore the goal of long-term emission reductions.

The reason for involving local communities in, and ensuring their benefits from, market processes is obvious if one recognizes that people's livelihoods and environmental protection are interrelated, fundamental goals of the global community. These linkages are multi-dimensional and reciprocal:

- Failing to avoid deforestation and forest degradation may undermine the interests of local communities whose livelihoods are heavily dependent on forests and their resources. At the same time, avoiding deforestation and forest degradation means safeguarding the main source of livelihoods of many local individuals and groups.
- Failing to consult and include local individuals and groups in the REDD process or voluntary carbon projects may lead to illegal logging and therefore leakage. At the same time, respecting local people's forest-related rights, promoting their participation in REDD and voluntary carbon projects and ensuring equitable benefit-sharing from these activities may help to sustain people's livelihoods and therefore create local acceptance of carbon sequestration projects, leading to less infringements and finally more effective carbon sequestration.

The IUCN Commission on Environmental Law Specialist Group on Forest, which was launched at the beginning of 2008 under the IUCN Environmental Law Programme, plans to analyze the above-mentioned linkages in greater detail in order to provide guidance on how to involve local communities as well as respect their formal and informal rights and social structures, in the development of a future REDD regime or the voluntary carbon market. In this regard, one possible tool is the application of a rights-based approach to conservation. This approach, however, needs to be accepted and implemented by all stakeholders, landowners, communities, loggers, project implementers and governments.

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arborvitae

The next issue of **arborvitae** will be produced in September 2008 (copy deadline end July) and will look at agricultural productivity in forest landscapes. If you have any material to send or comments please contact:

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Just conservation

Available end August from: www.iucn.org/law

The forthcoming IUCN publication *Conservation with Justice: A Rights-based Approach* explores the linkages between conservation and the respect for internationally and nationally guaranteed human rights. The aim is to promote the realization of conservation with justice, recognizing that activities and projects related to conservation can have a positive or negative impact on human rights, while the exercise of certain human rights can reinforce and act in synergy with conservation goals. This rights-based approach (RBA) to conservation parallels the international consensus on taking such an approach to development, forged in the context of the 1996 World Summit for Social Development and elaborated in the Millennium Summit and the World Summit on Sustainable Development.

The publication will be of interest to governments, the private sector, local communities and non-governmental organizations, informing them of the potential contribution of RBA to conservation. The book examines how RBA has been, and could be, applied to develop law and policy on three specific topics: forests, protected areas, and climate change. It is hoped that the publication will serve to facilitate cooperation among the many relevant actors to shape projects towards conservation, while ensuring justice among the various stakeholders.

Movements in the forest

Available from: www.cifor.cgiar.org/publications/pdf_files/OccPapers/OP-49.pdf

A new CIFOR Occasional Paper, *Environmental Governance and the Emergence of Forest-Based Social Movements* by Peter Cronkleton et al., focuses on four successful cases of grassroots movements defending their forest-related rights. The cases include the Association of Forest Communities of the Petén in Guatemala, the Siuna Farmerto-Farmer exchange programme in Nicaragua, the Mamirauá Sustainable Development Reserve in the Brazilian state of Amazonas, and the Brazilian rubber tapper movement in Acre. The paper summarizes the results of a three-year project that included participatory studies by local people from the communities concerned to reflect on their experiences with community forestry and their efforts to win legal access and management rights to their forest resources (as reported in the 2007 companion paper by Taylor et al., *If You Saw It with My Eyes*). The study reveals a similar storyline across the four cases: the emergence of grassroots collective action to defend local livelihoods following attempts by government institutions to counteract chaotic frontier conditions through the imposition of conservation and development initiatives. The cases also share a common experience of significant external assistance having played an important role in supporting the growth of the social movements. The authors coin a new term for these emerging actors – “forest steward communities” – and conclude that,

with appropriate support, these communities can become proactive partners in the management and defence of protected areas.

Good governance to protect Knuckles

Available from: http://cmsdata.iucn.org/downloads/iucn_svbc_knuckles_web.pdf

A new report by IUCN looks at the initial progress made by the Strengthening Voices, Better Choices pilot project in Sri Lanka. The report, *Improving Forest Governance in Knuckles: Dialogue and development for better outcomes* by Nathan Badenoch, documents the background to the project and reflects on the factors behind the successes achieved so far. The project is seeking to repair a situation of a ‘conservation success but governance failure’ that has existed since 2000 when the government of Sri Lanka declared the Knuckles Conservation Zone. The protected area was established on the basis of sound scientific information, but with little or no thought given to the impacts on the local stakeholders. The result was a tense situation between local communities, private landowners and the Forest Department concerning boundaries, tenure, access to resources and livelihood options. In less than two years of implementation, the project has already managed to ease these tensions considerably and build good governance mechanisms – including a local forum for dialogue on forest management and a national-level forum on the wider issues of forest conservation and management policy. While these signs of success are encouraging, the author points out that several issues remain unresolved, including the security of legal rights over land, and it is not certain that the current project activities can be maintained over the long term.

When tenure reform is not enough

Available from: www.recoftc.org/site/fileadmin/docs/publications/Policy_brief/Whose_Forest_Tenure_Reform_Vietnam.pdf

A new policy brief from RECOFTC, *Whose Forest Tenure Reform Is It? Lessons from Case Studies in Vietnam* by Nguyen Quang Tan et al., summarizes the findings of a study on Vietnam’s recent forest tenure reforms and the extent to which they have benefitted local people. The results are mixed: while households have been given specific legal rights over the forest land they have been allocated, they have generally received poorer quality, degraded forests (while the government retains control over the best quality forests). There is also considerable confusion over the exact nature of the rights, and local people still need to ask legal permission from the state authorities before they log any timber or cultivate on ‘their’ forestland. In addition, there is little evidence that legal tenure has contributed to poverty alleviation. Indeed, in some cases it seems that the reforms could lead to increased impoverishment of the poor as the wealthier or the better-connected villagers tend to capture the benefits for themselves. The brief outlines some recommendations for addressing these problems and making the reforms more meaningful and pro-poor.