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DEVOLUTION OF FOREST RIGHTS AND SUSTAINABLE FOREST MANAGEMENT VOLUME 1: A REVIEW OF POLICIES AND PROGRAMS IN 16 DEVELOPING COUNTRIES

PROPERTY RIGHTS AND RESOURCE GOVERNANCE PROJECT (PRRGP)

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5.1 FOREST OWNERSHIP DISTRIBUTION PATTERN IN ASIA

Asia is moving more slowly toward devolving rights over forests than Latin America, but somewhat faster than Africa. For the eight Asian countries[1] with tropical forest included in the 2010 RRI/ITTO study, the land area over which communities and indigenous people exercise full ownership rights increased only very slightly, from 143 Mha in 2002 to 146 Mha in 2008. The area of land in public ownership but reserved for use by communities and indigenous went from 12 Mha to 18 Mha, an increase of 45 percent. However, the overall percentage of land in this category (four percent) remains small. A substantial percentage of Asia's forest estate (25 percent) is owned by private individuals or corporations but the majority (68%) is in state ownership.

A caveat to interpreting RRI/ITTO's data on forest ownership in Asia is that the study likely underestimates both the amount of public land reserved for community use and the amount of land owned by communities. The study did not include the Philippines, where much forested land is either managed by communities under Community-Based Forest Management Agreements or held by Indigenous Peoples under Certificates of Ancestral Domain titles. Additionally, the study pre-dated implementation of India's 2006 Forest Rights Act, which provides a mechanism for formal acknowledgement of ownership rights for members of scheduled tribes and other traditional forest dwellers on up to four hectares of forest lands per household, and for unspecified areas of collectively held lands.

In the following sections, the authors examine the experiences of five Asian countries (India, Indonesia, Nepal, the Philippines, and Vietnam) with forest governance devolution during the past several decades. This section begins with a brief overview of the regional forest cover change context, which differs significantly from those of Africa and Asia. Trajectories that each of the case study countries have taken toward devolving management and/or ownership rights (and responsibilities) over state forest lands are described, and then compared using a "bundle of rights" analysis. Where sufficient data is available, there is a brief assessment of the record of each approach with respect to its ecological and livelihood outcomes.

[1] The countries are Cambodia, China, India, Indonesia, Malaysia, Myanmar, Papua New Guinea, and Thailand.

5.2 FROM NET DEFORESTATION TO NET AFFORESTATION: A REGIONAL FOREST COVER TRANSITION

Unlike Latin America and Africa, the Asia region as a whole is experiencing an expansion in forested area. According to the FAO's 2010 global forest assessment, Asia's annual rate of change in forest cover between 2000 and 2005 was estimated at +0.48 percent (FAO, 2010). Although the rate of expansion decreased to 0.29 percent for 2005–2010, it remained positive. Much of the region's growth in forest cover is driven by afforestation taking place in China, which experienced a net gain in forest cover of nearly nine million hectares between 2000 and 2010. However, a number of other countries, including Bhutan, India, the Philippines, and Vietnam also experienced substantial expansion of their forested area. Additionally, although Indonesia reported a net loss in forest cover during the 2000s, its deforestation rate has fallen substantially from what it was in the 1990s.

The 2010 FAO global forest assessment indicates that Asia also differs markedly from Africa and Latin America in the extent to which its forest cover consists of planted forests. Plantation forests comprise nearly 21 percent of Asia's total area under forest cover, compared with only 2.3 percent in Africa and 4.7 percent in Central and South America. Plantations in China, Indonesia, and Thailand are primarily industrial plantations, and were generally established to produce either timber or rubber (McKenzie et al., 2004). In contrast, two-thirds of India's plantations are categorized as non-industrial plantations that were initially established as fuelwood plantations, although many are now harvested for construction wood or pulp (ibid.). Since the early 2000s, interest in developing oil palm (*Elaeis guineensis* Jacq.) plantations has expanded in countries such as Indonesia and the Philippines in response to increased demand for biofuels (ibid.). Interest in establishing plantation forests has also grown during the past decade with the implementation of the Clean Development Mechanism program (ibid,) and, more recently, projects related to REDD+.

While the FAO's data on forest cover change are indicative of a trend toward more sustainable forest management in Asia as a whole, they must be interpreted cautiously as regional statistics mask substantial differences in deforestation rates among countries. For example, forest cover change rates remained negative in Cambodia (-1.22 percent), Laos (-0.49 percent), Mongolia (-0.74 percent), and Malaysia (-0.42 percent) between 2005 and 2010 (FAO, 2010). Moreover, national-level statistics that indicate an overall expansion in forest cover can obscure substantial differences in forest cover change rates at the sub-national level. Additionally, significant declines in primary forest cover can occur under net afforestation scenarios if plantation rates are sufficiently high.

Given that the forest cover change transition in Asia coincides with widespread efforts in the region to devolve governance over state-owned forests, it is useful to explore the question of whether improved ecological conditions in these areas are linked to the re-allocation of rights to forests. Although providing a definitive answer to this question is beyond the scope of this project, a systematic review of the major forest governance devolution approaches Asian countries have taken during the past two decades allows us to identify tentative relationships between forest conditions and forest governance attributes, as well as between forest governance attributes and livelihood outcomes.

5.3 PATHS TO FOREST GOVERNANCE DEVOLUTION IN ASIA

Two major pathways to forest governance devolution are represented among the five case study countries. India, Indonesia, Nepal, and the Philippines have focused on devolution approaches that emphasize delegating or transferring rights and responsibilities over state forest land to communities or indigenous groups, and in some cases where rights' transfers are partial, sharing revenues generated from sales of forest products. A variety of approaches has been implemented in these four countries, including community-company partnerships on industrial forest concessions (Indonesia), community-based forest concessions (Indonesia), and forest leaseholds (Nepal); benefit-sharing types of co-management schemes (India, Nepal); co-management schemes where communities retain 100 percent of forest product sales revenues (Philippines); co-management schemes where communities are granted rights just short of ownership (Nepal);

formal recognition and titling of Indigenous Peoples or customary forest rights (Philippines, potentially Indonesia); and titling of already-existing, but long-ignored, statutory rights to forest land (India). Vietnam has emphasized approaches to devolution that delegate or transfer rights and responsibilities over state forests to households and individuals. The two most commonly used approaches in Vietnam include long-term forest land allocations to individuals or households and long-term contracts to households or individuals permitting them to use and protect degraded forest lands. However, there has recently been pressure from ethnic minorities in highland areas of Vietnam to expand investments in communal forms of tenure on forested lands.

Co-management arrangements come in a variety of forms, and include JFM in India; Community Forestry (CF), pro-poor Forest Leaseholds, Collaborative Forest Management, and Buffer Zone Forest Management in Nepal; CBFM and Memoranda of Agreements in the Philippines, and *Hutan Kemasyarakatan* (Community Forests [HKm]) in Indonesia. As in Africa, co-management schemes in Asia consist of arrangements in which the centralized forestry department (through the provincial or state-level forestry department) grants communities some forest rights. Generally the rights granted are limited to rights of access and subsistence use but occasionally commercial use rights are granted as well, particularly for NTFPs and, more rarely, for timber. Co-management schemes in Asian countries often include benefits-sharing arrangements where a percentage of revenues from the sale of commercial timber (or other nationally managed products) is shared between the national government, the community-level forest management entity, and (sometimes) local-level government entities. The granting of use rights and the sharing of benefits from forest product sales are designed to provide economic incentives for communities to take on the responsibilities of restoring and maintaining forest cover on degraded state-owned forest lands (Dahal and Adhikari, 2008).

5.4 INDIA: FROM JOINT FOREST MANAGEMENT TO RIGHTS RECOGNITION

5.4.1 JFM: INDIA'S EXPERIMENT WITH CO-MANAGEMENT

JFM became official policy in India in 1990 when the Ministry of Forestry issued a Circular outlining the rights of local communities to use and manage forest lands (Sarin, 2003). All of India's states have since adopted JFM and approved guidelines for its implementation (Kishwan et al., 2007). The 1996 *Panchayat* (Extension to the Scheduled Areas) Act (PESA) strengthened and broadly institutionalized the implementation of JFM by devolving some powers over forest lands to tribal community villages and councils in Scheduled Areas (Kishwan et al., 2007). Initially, JFM was applied only on degraded forest lands; it has since been expanded to include healthy forests (Sarin et al., 2003).

As of 2007, more than one million JFM groups managed roughly 22 million hectares of forest land (Kishwan et al., 2007). The rights over forests granted through JFM agreements vary by state; in general, JFM groups nominally have full rights to NTFPs except for those that are categorized as "nationalized" products (e.g., tendu leaves, sal seeds, and bamboo, among others) (Kishwan et al., 2007). In all states, JFM groups also nominally receive a share of the revenues from timber harvested within the forest they manage; the percentage varies from state to state and ranges from as little as 20 percent to as much as 100 percent (Kishwan et al., 2007).

JFM areas are managed through microplans which must conform to silvicultural prescriptions of the state Forest Department's working plan for that area (Sarin et al., 2003). The Memoranda of Understanding governing JFM areas are for five years with an option to renew (Sarin et al., 2003). The organizational forms that JFM groups take, their legal status, their autonomy relative to the Forest Department, their management conditions, and the types of land they operate on vary by state (Sarin et al., 2003). For example, in Orissa and Uttar Pradesh, JFM groups can acquire co-management rights over revenue lands (i.e., commercially valuable forests), while in other states they are only allowed to manage degraded forests (Sarin et al., 2003).

Tenure insecurity is relatively high for JFM land, as the program exists only by executive order and can be rescinded at any time (Government of India [GOI], 2010b). Moreover, the extent to which JFM is truly a "joint" endeavor is questionable, as evidenced by the following conclusion from a recent fact-finding study related to the implementation of the 2006 Forest Rights Act: "…the 'jointness' in JFM is seriously limited in the field, with day-to-day decisions being controlled by the forest official who is usually ex-officio secretary of the committee and also by larger decisions (regarding planting, harvesting, etc.) being controlled by the FD [Forestry Department]" (GOI 2010b, p. 138).

The same study also found that FD control over planting decisions continues to emphasize the planting of fast-growing exotic species, often with adverse impacts on grazing, fuelwood, and NTFP resources. Full rights to forest products are rarely given, even when promised; often, JFM committees do not receive their share of timber revenues.

Sarin et al. (2003) found that corrupt FDs in Orissa, Madhya Pradesh, and Uttarakand undermined village efforts to enforce harvesting and encroachment rules by granting use rights over JFM lands to economically more powerful users. In areas with strong traditional community management systems, village forest management committees generally have been successful at keeping out encroachers from other villages or pastoralist groups and in ensuring that their own members follow the rules (Sarin et al., 2003). In communities with weakened traditional systems, however, villagers have struggled to enforce their rights with respect to outsiders and have also experienced difficulties in getting their own members to adhere to forest use rules (Sarin et al., 2003). Relationships with state FDs are often tense, and obtaining assistance for enforcement may require villagers to pay a bribe, which deters many villagers from seeking enforcement assistance from the state (Kashwan, 2003). In some areas, villagers have formed forest village federations to enhance their ability to mount non-violent protests and hold forestry officials accountable to the law (Sarin et al., 2003).

Data on forest quantity and quality gains attributable to JFM are limited and it is difficult to disentangle the effects of other contributing factors (Véron and Fehr, 2011). However, case studies indicate a general pattern in which modest ecological gains occur in areas where community forest governance systems are still operational (Agrawal et al., 2005). In general, JFM has had a modest positive impact on rural residents in general, but marginalized groups (such as women, members of tribal groups, landless villagers, members of lower castes, and the less well-off) typically derive fewer benefits (Agrawal et al., 2005; Balooni, 2002; Paul and Chakrabarti, 2010).

The National Committee on the Forest Rights Act (GOI, 2010b, p. 138) summarizes JFM's utility in the following manner: "…these programmes were largely conceived of and implemented as tools for getting some local participation in pre-defined goals of conventional silviculture or conservation by extending some concessions or offering some wage labour benefits." The Committee concludes that JFM in India has done little to expand the rights of communities to manage and use forests. Joint Forest Management Agreements are likely to be phased out in much of India as community forest rights claims under the 2006 Forest Rights Act (discussed later in this chapter) become registered (GOI, 2010b).

5.4.2 STRUGGLES OVER IMPLEMENTING INDIA'S 2006 FOREST RIGHTS ACT

In 2002, the Indian Forest Department sought to strengthen its JFM program by forcibly evicting long-established forest users from areas covered under JFM agreements (Bose, 2010). The evictions catalyzed a concerted effort on the part of the dispossessed peoples to acquire formal titles affirming individual and community rights to forest land and resources, and resulted in the passage of India's Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act in 2006 (ibid.). This Act does not grant new rights; instead, it provides a mechanism for members of scheduled tribes and other traditional forest dwellers to obtain individual and community titles to forest land or resources based on customary claims (ibid.). Box 5.1 provides a list of the major rights recognized in the Forest Rights Act (FRA) 2006.

Forest dwellers are defined as people who are presently primarily residing in forests or forest lands, dependent on those forests for their livelihoods, and who either have been residing in the area for 75 years or are a member of a Scheduled Tribe for which the area was set aside (GOI, 2006).

Box 5.1: Major Rights Recognized under India's 2006 Forest Rights Act

- Communal rights of forest ownership.
- Customary rights of access to collect, use, and dispose of non-timber forest products that have been gathered within or outside village boundaries.
- Customary rights to grazing lands and water bodies.
- Rights to traditional use areas by nomadic and pastoralist peoples.
- Community rights to biodiversity, intellectual property, and traditional knowledge.
- Individual and household rights to cultivate and occupy up to four hectares (for lands cultivated as of December 13, 2005); these lands can be given in inheritance but not sold or transferred.
- If there is irreconcilable conflict between human habitation and wildlife conservation, a resettlement package must be provided and holders of titles have the right to free prior informed consent regarding proposed resettlement areas.
- Management rights, including the right to protect, regenerate, and conserve traditional community resources; however, rights holders also are required to protect wildlife, forests, and biodiversity and manage such resources in a sustainable manner.

Source: GOI 2006, Forest Rights Act

The Ministry of Tribal Affairs is responsible for implementing the 2006 Forest Rights Act (Sarin and Springate-Baginsky, 2010). Exclusion rights are vested in the *Gram Sabha*, which Sarin et al. (2003, p. 6) describe as "the body of all adult voters of a self-defined community." The rights recognized under the 2006 Forest Rights Act are heritable, but cannot be alienated or transferred. Importantly, particularly given the uneven support of India's Forest Department, the rights can only be extinguished by the State with written consent of the *Gram Sabha* and after preparation of alternatives and a resettlement package. The Act specified that an elected Village Forest Rights Committee, acting through the broader-based *Gram Sabha* (rather than the more restricted decision body, the *Gram Panchayat*), recommend to the government who has valid rights claims. However, the implementation rule enacted in 2008, gives *panchayati*, as well as Revenue and Forest Department, officials veto power over the acceptance or rejection of claims (Kothari et al., 2009).

As of September 2010, a total of 9.1 million titles (all but about 7,000 for household claims) had been issued covering a total of about 12 million hectares (GOI Ministry of Tribal Affairs, 2010). Most of the communal titles were for very small parcels of land and were claims for titles to village development rights (e.g., for school yards, cemeteries, and other infrastructure), rather than community forestry right titles. A study of the FRA's implementation progress attributed the low number of claims for community forest rights titles to ignorance of the law's provisions on communal titles and deliberate efforts on the part of forestry officials to prevent communities from acquiring such titles.

> The primary reason why very few community forest rights claims have been submitted is simply that there has been no effort on the part of the implementing agencies to spread awareness about the CFR provisions, and no willingness on the part of FD to allow the kind of transfer of control that is proposed under the FRA. In other words, the CFR provisions have simply not been given a fair trial to draw the conclusion that communities are not interested. Where there has been active facilitation or an absence of active obstruction, there are in fact very many claims (GOI, 2011b, p. 1).

The process of titling customary rights to state forest land in India remains embroiled in controversy (Sarin, 2003; Kishwan et al., 2007). Forestry Department officials in 11 of India's 27 states had not even started implementing the Act in late 2010 (GOI Ministry of Tribal Affairs, 2010); and nine petitions challenging the FRA (four by retired foresters and five by conservation groups) have been filed in the courts (Kothari et al., 2009). Controversies have arisen even where the law is quite clear about customary use rights. For example, the FRA explicitly includes bamboo among NTFPs use rights, yet many state forestry officials continue to require villagers to develop management plans and obtain licenses to harvest bamboo (Narain, 2010). To add to the confusion, the FRA includes provisions that are contradictory with other forest-related laws, such as the 1927 Indian Forest Act, the 1972 Wildlife Protection Act, and the 1980 Forest Conservation Act (Sarin et al., 2003; Véron and Fehr, 2011).

Although the 2006 FRA provides a legal basis for members of scheduled tribes and other traditional forest dwellers to exercise use, management, and exclusion rights, in practice, those rights remain precarious due to stalling on the part of the state Forest Departments in implementing the Act (Sarin and Springate-Baginsky, 2010), and due to the forest dwellers' weak economic and political position relative to outsiders, such as irrigation companies, mining concerns, and real estate developers (Dash, 2010; Alam, 2011; Choudhury, 2011). A recent report issued by a Joint Committee to evaluate India's progress with implementing the FRA concluded that "the implementation of the FRA has been poor, and therefore its potential to achieve livelihood security and changes in forest governance along with strengthening of forest conservation, has hardly been achieved" (GOI, 2010-FRA, p. 10). Key weaknesses in the implementation process are listed in Box 5.2.

Box 5.2: Key Weaknesses in India's 2006 FRA Implementation Process as Identified by the FRA Joint Committee

- Failure in some states to include women, members of scheduled tribes, and other traditional forest dwellers on Forest Rights Committee as required by the FRA.
- Failure to include nomadic pastoralists and "pre-agricultural" groups in FRA implementation activities.
- Eviction of forest dwellers prior to verification of their rights under the FRA.
- Forced relocation of forest dwellers from protected areas without following FRA procedures.
- Issuance of illegitimate deadlines for filing claims (the FRA specifies no deadlines).
- Rejection in some states of nearly all claims without sufficient grounds.
- Rejection of claims in areas earmarked for mining or plantations (FRA claims take precedence over such activities).
- Rejection of community forest rights claims overlapping with JFM lands (FRA claims take precedence over JFM rights).
- Use of remotely sensed images to measure claims without ground-truthing measurements.

Some of these weaknesses can be attributed to lack of training and misunderstandings on the part of Forestry and Revenue Department officials, but many are deliberate attempts to discourage rights claims or harass potential rights claimants. The Joint Committee was particularly critical of state officials' hesitation to encourage the filing of community forest rights claims, as members of the Commission felt that such rights represented an important step in a much-needed devolution of forest governance from the centralized state to local communities.

The Joint Committee recommended a number of measures for ensuring that forest rights claims are adequately addressed. Key recommendations included:

- The need for India to reconfigure its forest governance system, and specifically "restructuring institutions and arrangements at higher levels to ensure compatibility with lower level structures, transparency and accountability" (GOI, 2010b, p. 144).
- More intensive training of forestry and revenue department officials, as well as local leaders, in the legal requirements and procedures for assessing claims and granting titles under the FRA.
- On-going monitoring of progress in implementing the FRA to ensure that its provisions are abided by and that government officials act in good faith to expedite the assessment of claims and issuance of titles.
- Intensive outreach to nomadic pastoralists and pre-agricultural groups to ensure that they have an opportunity to title their claims.
- Reconstitution of Village Rights Committees that do not include women, members of scheduled tribes, and other traditional forest dwellers as representatives.

Expediting implementation of the 2006 FRA has taken on new urgency with India's recent launch of the "Green India Mission" (GIM) under its National Climate Change Action Plan. The GIM initiative calls for restoring forests on 20 million hectares over the next 10 years, with the goal of sequestering 50–60 million tons of carbon dioxide annually by 2020 (GOI, 2010). The strategy envisions that local communities will play a pivotal role in planning, implementation, and monitoring programs undertaken under the GIM initiative.

5.5 THE PHILIPPINES: FROM CO-MANAGEMENT TO INDIGENOUS RIGHTS RECOGNITION

5.5.1 COMMUNITY-BASED FOREST MANAGEMENT: THE PHILIPPINES' EXPERIMENT WITH CO-MANAGEMENT

The Philippines' 1987 Constitution vests ownership rights to forests in the public domain, as well as all natural resources other than agricultural lands, in the state. At the national level, the agency with primary responsibility for managing forest lands is the Department of Environment and Natural Resources (DENR) (Guiang and Castillo 2006). In the 1980s and 1990s, DENR implemented several new types of forest agreements aimed at devolving a larger share of rights and responsibilities to forest communities.

In the Philippines, roughly 5,500 communities now manage 5.97 million hectares under co-management arrangements known as Community-Based Forest Management Agreements (CBFMA) (Blaser et al., 2011). By contrast, only 783,000 hectares of land are managed under Integrated Forest Management Agreements, the DENR's standard timber concession instrument (Blaser et al., 2011). DENR Administrative Order 22 of 1993 and Executive Order 263 of 1995 provide the legal basis for CBFMAs. Under CBFMAs, the DENR grants rights and responsibilities for forest management to communities for 25 years, with an option to renew for another 25 years (Pulhin and Tapia, 2009). Issuance of a CBFMA is conditional on the completion of a DENR-approved management plan.

To obtain use rights to timber, CBFMA holders must apply for a Resource Use Permit (RUP), which is a lengthy process. The permit is always potentially subject to unilateral suspension or cancellation (Pulhin and Tapia, 2009). Moreover, CBFMAs are subject to unilateral cancellation by DENR and thus are relatively insecure as a form of tenure (Pulhin and Tapia, 2009). Nonetheless, CBFMAs protect the land from being allocated to other users, providing communities a measure of tenure security that they did not previously have (Pulhin and Tapia, 2009). Moreover, CBFMA holders enjoy a number of other privileges they previously did not have, including the right to extract resources other than timber for subsistence use or sale, rights to farm, and the right to transfer use rights to the area covered under the agreement to family members (see Box 5.3).

Box 5.3: Privileges granted to CBFMA holders in the Philippines

- To occupy, possess, utilize, and develop the forestlands and its resources within a designated CBFMA area and to claim ownership of introduced improvements.
- To allocate to members and to enforce rights to use and manage forestland resources within the area in a sustainable manner.
- To be exempt from paying rent and forest charges.
- To be properly informed of and consulted on all government projects to be implemented in the area.
- To be given preferential access to assistance in the development and implementation of the CRMF (Community Resource Management Framework), RUP, and AWP (Annual Work Plan).
- To receive all income and proceeds from the sustainable utilization of forest resources within the CBFMA area.
- To enter into agreement or contracts with private entities or government agencies.

Source: Ballesteros (2001, p.17).

CBFM in the Philippines is first and foremost a biodiversity conservation strategy and is based on the assumption that "by stabilizing the livelihood of upland communities they will become partners in biodiversity conservation in the remaining natural forests" (Lasco and Pulhin, 2006, p. 51). Studies of the environmental outcomes of CBFM in the Philippines generally point to strong gains in environmental outcomes, including lower rates of illegal logging and less destructive forms of swidden clearing (Lasco and Pulhin, 2006; Pulhin and Tapia, 2009). Perhaps the strongest indication that CBFM in general is environmentally sustainable is the Philippines' recent shift from being a site of net deforestation to being a carbon sink (Blaser et al., 2011).

The livelihood gains from forest governance devolution, however, are much less apparent. Many more forest community members now have legal access to resources on lands formerly administered solely by the state (Pulhin and Tapia, 2009; Arguiza et al., 2010). This likely has the positive effect of decreasing stress for many forest users, whose daily activities are no longer criminalized. However, it is unclear whether the incomes community members earn from harvesting these products legally differ substantially from what they used to earn when harvesting products illegally (Pulhin and Tapia, 2009). Devolution projects associated with reforestation or other donor-funded conservation or forest enterprise development projects have provided community members with short-term improvements in earnings. That said, it is unclear how sustainable these gains will be once donor support disappears (Guiang et al., 2001; Pulhin and Tapia, 2009).

Difficulties with enforcement for CBFMAs are chronic and pose an as-yet-unresolved issue, in large part because the DENR and local government units lack the resources, the political will, or both to carry out their enforcement responsibilities (Guiang and Castillo, 2006). The lack of political will and general inability to manage effectively or fairly is reflected in Philippines' relatively low World Governance Indicator scores, most of which are negative (World Bank, 2011). A recent review of corruption in the Philippines' forestry sector concludes that the "effective enforcement, regulation and monitoring of environmental policies is undermined by rent-seeking system of securing permits, licenses and concessions to exploit natural resources" (Mayo-Anda, 2011).

5.5.2 RIGHTS RECOGNITION IN THE PHILIPPINES

At the same time that CBFM emerged in the Philippines, Indigenous Peoples and tribal groups living in more heavily forested and remote areas expanded their efforts to gain recognition of the customary rights to land and resources that colonial regimes had appropriated from them a century or more earlier. In the Philippines,

indigenous rights efforts were closely bound up with the overthrow of the Marcos regime in the late 1980s and a generalized movement toward decentralization. The "push-back" on the part of the nations' Indigenous Peoples during this period resulted in the passage of the Philippines' Indigenous Peoples Rights Act in 1997.

In the Philippines, the right of indigenous communities to possess and own the land and resources located within their demarcated ancestral domain is formally recognized under a Certificate of Ancestral Domain Title (CADT) (Walpole and Annawi, 2011). The legal basis for the recognition of these rights is the 1997 Indigenous Peoples Rights Act (IPRA). IPRA does not grant rights, but rather recognizes pre-existing claims. Importantly, IPRA also recognizes the rights of Indigenous Peoples to self-governance and cultural integrity (Asian Development Bank, 2002). Box 5.4 lists the major rights included in the Indigenous Peoples Rights Act.

Box 5.4: Rights Recognized by the 1997 Philippines' Indigenous Peoples Rights Act

- Right of ownership and possession over resources within their ancestral domains.
- Right to develop, control, and use lands and natural resources in areas they traditionally occupied.
- Right to develop their own rules governing the use and extraction of resources (but contingent on state approval).
- Right to stay in territories.
- Right to regulate entry of migrants.
- Right to resolve conflicts according to customary law.
- Right to transfer ancestral land or property to other members of the Indigenous Peoples' group associated with the CADT, with state approval (through the National Commission on Indigenous Peoples).
- Right to be informed and consulted on all government projects prior to their implementation (i.e., free prior informed consent).
- Right to clean air and water within their ancestral domain.

Source: Ballesteros (2001, p. 25–26).

The law also lists responsibilities of CADT holders. These include maintaining an ecological balance and restoring denuded areas (Asian Development Bank, 2002). Critics of the Indigenous Peoples Rights Act have observed that this language places a land management burden on Indigenous Peoples that are not placed on other holders of titled land (Walpole and Annawi, 2011). Additionally holders of CADTs are required to develop a DENR-approved Ancestral Domain Sustainable Development and Protection Plan (Arguiza et al., 2010). This requirement is time-consuming and costly as many DENR local offices refuse to recognize the plans as permits and require that CADT holders obtain harvesting licenses (ibid.).

Certificates of Ancestral Domain Title convey permanent and exclusive use rights to the community to which it has been granted, and thus offer a relatively high degree of security to their holders (Walpole and Annawi 2011). Indigenous Peoples are further protected by a provision of the IPRA that requires free, prior and informed consent of indigenous communities whose lands are affected by outside actions, such as the allocation of mining concessions (ibid.). However, the free, prior and informed consent (FPIC) process written into the law is rigid, complex, and follows a time schedule that makes it difficult for many Indigenous Peoples to fully participate (ibid.). Although the process for delineating CADTs is slow, nearly 7.1 million hectares of public domain forestlands are now held by indigenous communities under certificates of ancestral domain title or are the object of such claims (Blaser et al., 2011).

The capacity of indigenous communities to enforce the rules on their own also varies greatly. On Palawan, for example, the Alangan Mangyan people's still-functional traditional "environmental police" system has enabled it to develop effective enforcement for its Certificate of Ancestral Domain Claim (CADC) area (Arguiza et al., 2010). Other Indigenous Peoples in the area have greatly weakened collective action systems and are experiencing difficulties with enforcing rules over their CADCs (ibid.). Indigenous communities increasingly have been able to enforce their rights over forests against more powerful economic actors, such as mining and timber companies, by working with well-connected international organizations or forming their own political action networks (Pulhin, 2002). Since 2009, Code-REDD, a network of Filipino civil society advocates, has taken steps to demystify REDD+ for forest community members in general (Code-REDD, 2011). Code-REDD has recently pressured the Filipino government to recognize community rights in its national REDD strategy and to engage in consultation processes at all levels of decision-making.

5.6 NEPAL: MULTIPLE APPROACHES TO CO-MANAGEMENT

The federal government in Nepal owns all forest land; however, it delegates management over a large percentage of this land to local communities through several different types of co-management schemes. The three most common co-management approaches are Community Forestry (CF), Buffer Zone Community Forestry (BZCF), and Collaborative Forest Management (CFM) (see Box 5.5). Nepal also has a pro-poor Forest Leasehold (FLH) program that provides groups of low-income rural households access to degraded forest lands (see Box 5.6). Although FLH is a lease arrangement rather than a co-management arrangement, the authors include it in the discussion below because it was designed to address the benefit distribution inequities often associated with co-management systems.

5.6.1 COMMUNITY FORESTS IN NEPAL

As of 2009, the Nepalese Forest Department had delegated management over approximately one-fourth of Nepal's forests to local communities or groups of households in rural areas under its Community Forests program (Ojha et al., 2009). In 2009, 1.6 million households, representing 32 percent of Nepal's population, were members of Community Forest User Groups (CFUGs), and more than 14,000 CFUGs operated within the nation.

Under the CF program, the state retains ownership rights but delegates its management authorities and grants use rights to CFUGs that are formally constituted and registered. The CFUGs have legal standing and are responsible for developing their own management goals, activities, and rules governing the use of the area in their charge. The CFUGs keep 100 percent of the revenues obtained through the sale of forest products. However, they have to pay a tax on any products sold to non-members. Additionally they are required to dedicate 25 percent of their forest management revenues to community development.

Although CFUGs have considerable autonomy compared to JFM groups in India and CBFM groups in the Philippines, their management and use plans still have to fit within guidelines established by the District Forest Officer (DFO). Historically, the CFUGs have had a great deal of freedom in how they organize themselves internally, a feature that has frequently been cited as an important element in their success (Ojha, 2009). However, Community Forest Guidelines issued in 2008 have sought to standardize these structures, and it is unclear what effect this standardization will have on CFUG operations (Ojha et al., 2009). Another important factor in the success of the CF program was the early emergence of the Federation of Community Forest Users, Nepal (FECOFUN), a nation-wide NGO whose members are drawn exclusively from forest user groups (Timsina, 2003). FECOFUN seeks to raise awareness among forest users about their rights and to advocate on behalf of forest users in policy deliberations (Andersen, 2011; Timsina, 2003). As the largest civil society organization in the country, and with thousands of forest user groups behind it, FECOFUN exerts considerable influence in the nation's forest politics.

Nepal's Community Forest program is generally considered to be a highly successful co-management program. In a recent study of environmental impacts of CF in the middle hills area of Nepal, Pandit et al.

(2011, p. 351) conclude that "community forestry has brought a positive change in local environment and slowed the accelerating rate of deforestation and forest degradation." Pokharel et al. (2007, p. 15) summarize the quantitative studies that have been done on the environmental impacts of CFs, noting that "All these have indicated positive changes—in regeneration status, canopy density, biodiversity, basal area, etc.—as a result of forest handover to CFUGs."

Pandit et al. (2011) also identified social and economic benefits associated with CF, including an expansion in social capacity through regular decision-making and management activities and investments in local development such as potable water, trail and road improvements, and rural electrification. An earlier study of 2,700 households from 26 CFUGs found that 46 percent of poor members had increased their well-being in part through CFUG livelihood support and capacity-building activities, and the average household income had increased 61 percent (Ohja et al., 2009). Benefits tended to occur at the household rather than individual level (Ohja et al., 2009). Anderson (2011), however, notes that benefits from Community Forests are sometimes skewed in favor of wealthier households and against women, indigenous communities, and casteless *dalits*.

The CFUGs have also shifted over the past 20 years from being largely donor-supported to providing the majority of their operating costs through forest revenues, an indication that they are likely to prove sustainable in the long term (Ohja et al., 2009). Participation in forest management, development of a strong and widespread community forest network, clear legal standing, and independence from the government forest department have been key factors in the success of Nepal's community forestry program. As a result, "CFUGs have become durable institutions supported by an active and vibrant network of CFUG federations, all contributing to the sociopolitical sustainability of community forestry in Nepal" (Ohja et al., 2009, p. 25).

However, in 2010, the Government of Nepal drafted a bill to amend the 1993 Forest Act to return some of the powers given to the communities back to the government (Sunam et al., 2010). Proposed changes include expanding the role of the forestry department in CFUG forest planning, harvesting, and marketing activities; requiring CFUGs to contribute 50 percent of their forest revenues to the national treasury; and restrictions on tree-felling (Sunam et al., 2010). After facing strong resistance from FECOFUN and other civil society organizations in early 2011, the amendment is presently on hold.

Box 5.5: Co-Management Approaches Used in Nepal

Community Forestry: This program was authorized under the 1993 Forest Act, which allows the DFO to transfer management of portions of a national forest to CFUGs. Community forests are intended to be managed for the community's collective benefit. CFUGs develop their own management plans, which must be approved by the DFO. Once the plan is in place, CFUG members can protect and manage the forest included in their plan. They have considerable leeway in forest use activities, including rights to harvest, sell, and distribute products, including timber. However, at least 25 percent of the revenues generated through forest product sales must be invested in forest improvements and conservation.

Buffer Zone Community Forestry: This program was authorized under the Wildlife Conservation Act of 1993 which declared that parks can establish buffer zones and allow communities to manage, extract, and sell certain forest products according to guidelines established by the Park Warden. Additionally, restrictions are placed on how forest revenues are spent (for example, 40 percent must go to conservation activities), and the Park Warden has unilateral powers to restrict forest uses. Buffer zone community forests are meant to be managed so as to permit community members to use forest products while conserving biodiversity.

Collaborative Forest Management: This program began in 2000 under a cabinet decision within the Ministry of Forest and Soil Conservation and was developed to provide a mechanism for expanding co-management of national forests to the rich forests in the Terai region. Users only have access and withdrawal rights and share the profit of any products with the government. Unlike Community Forestry, CFM seeks to involve both nearby and distant forest users, and is coordinated through a District Forest Coordination Committee.

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5.6.2 COLLABORATIVE FOREST MANAGEMENT: NEPAL'S EXPERIMENT WITH BENEFITS-SHARING

Nepal's CF program is among the few co-management initiatives in developing countries to eschew a benefits-sharing model, in which a portion of forest revenues are typically shared between the community and the forestry department, and sometimes local governments, and instead favor a model that allows communities to keep all forest revenue. This unusual provision was linked to the condition of the forests that were the object of Community Forestry initiatives during its early years. Most Community Forests were badly degraded sites, and it was expected that communities would need to invest substantial effort and funds into re-planting, enforcing grazing and farming restrictions, and in building terraces and check dams to reduce soil erosion rates. By letting communities keep all of their forest revenues (except for 15 percent tax levied on products sold to non-members), and by granting the CFUGs considerable management powers, the Nepalese

government hoped to provide sufficient incentives for people to engage in forest protection and conservation. The strategy was successful, and as CFs spread across the country, pressure built up for the Ministry of Forests and Soil Conservation (MFSC) to include some of the country's high-value forests, which are located primarily in the Terai region (Bampton et al., 2007).

In 2000, the revised Forestry Sector Policy made provisions for allocating out blocks of high-value forests in the Terai through CFM. The MFSC approved operational guidelines for initiating CFM in the Terai in 2003. CFM differs substantially from CF and much more closely resembles JFM in India or CBFM in the Philippines. Rather than being run by user groups, the CFM areas in the Terai are managed by a committee dominated by the local forestry department. Additionally, 25 percent of the income from CFM areas is to be allocated to local government units (Village Development Committees and District Development Committees); while the remaining 75 percent is to go to the national government (Bampton et al., 2007). Although community members have use rights to firewood and fodder, income from the commercial sale of forest products is only of indirect benefit to them, and they have little voice in how CFM areas are to be managed (Brampton et al., 2007). The decision-making structure of CFM committees is laid out in an MFSC directive that leaves no room for adapting the structure to local circumstances (Bampton et al., 2007).

Bampton et al. (2007) critique CFM on a number of grounds, including that its institutional structure is too rigid, the DFO exercises too much control over decision-making and implementation, and the communities bear an unfair share of the costs of protecting and improving forests in return for limited benefits. Whereas CF has as its goal the management of forests for the collective benefit of communities, CFM is designed to provide revenues for local governments and the national treasury: "One principal aim of CFM is to ensure that local governments, bypassed by CF also receive benefits from Terai forest management for funding local development activities, while central government continues to receive significant revenues, as it has throughout history, from what is still considered a national asset for the greater benefit of all Nepalese (Brampton et al., 2007, p. 33)."

The CFUGs in the Terai have resisted the establishment of CFM in the Terai on the grounds that CFs have already proven their efficacy and that creating a new forest management structure is unnecessary (Bampton et al., 2007; Bhattarai, n.d.). However, proponents of CFM argue that CFs have historically struggled to avoid elite capture and to provide distant users equal access as proximate users (Jamarkattel et al., 2009). They assert that CFM's more inclusive multi-stakeholder committee structure is more likely to address these concerns. Because CFM has only recently begun to be implemented on the ground, data comparing the ecological and livelihood outcomes of CFM and CF are not yet readily available.

Box 5.6: Forest Leaseholds

In 1993, Nepal created the pro-poor Forest Leasehold program to address the shortcomings of CF with respect to equitable distribution of benefits. As of August 2011, approximately 6,700 groups of households with 62,745 member households managed leasehold forests (LHF) on 62,745 acres in Nepal. The average LHF is 5–10 hectares. To qualify for the program, potential leaseholders must own less than 0.5 hectares of land and make an annual income of less than 2,500 rupees (about $50 US).

Leasehold forestry's aim is to "raise the incomes and improve the living conditions of poor families, while restoring degraded forests" (Singh and Chapagain 2005, p. vii). Leasehold groups are given long-term exclusive use rights to degraded forest lands under 40-year lease, renewable for an additional 40 years. All benefits from the forest go directly to the leaseholders.

International donors provide loans for householders to make conservation investments, such as planting trees or building check dams. Extension support is provided by the Department of Forests, the Department of Livestock, the Agricultural Development Bank of Nepal, and the Nepal Agricultural Research Council.

Ecological outcomes of LHFs: In some areas, LHFs have experienced increases in ground cover, species diversity, and tree density; but in others, forest cover has diminished as a result of overgrazing.

Livelihood outcomes of LHFs: Many user groups experience an improvement in their economic status and food security. Often this is not linked to an increase in income but rather to money saved by not having to buy fuelwood, fodder, and other basic household inputs. Additionally, the reduced time it takes for householders to gather firewood or forage frees them to get other tasks done.

Enforcement is a major challenge for most LHFs. Many LHFs are located on lands that have historically been de facto open access for a wide variety of users. Poor households often find it difficult to keep other users out of their leasehold, a problem that is exacerbated by the leaseholders' generally lower social status.

User groups have tackled this problem in several ways:

- In the Makwanpur district, one user group decided to parcel out their forest block to member households, with each household responsible for conserving its area. This solution reduced enforcement issues but it increased equity issues as the quality of the forest varied greatly.
- In Bhagawatisthan, eight user groups who were unable to agree on rules finally formed a federation, or inter-user group. Each group has a representative on the inter-user group. The inter-user group reached agreement on use rules and quickly put an enforcement program in place.

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5.7 INDONESIA: INCHING TOWARD CO-MANAGEMENT AND CUSTOMARY RIGHTS RECOGNITION

Indonesia appears to be moving along the same forest management and governance trajectory as India, Nepal, and the Philippines, albeit much more slowly. Like the Philippines, Indonesia made forest exports a key element in an export-led economic development strategy. Like India, the Indonesian government maintained domestic wood prices at a level much lower than international market prices as a means to attract foreign investment. However, unlike the Philippines and India, Indonesia has a high net deforestation rate; and it only recently has begun to experiment with forest governance devolution (Blaser et al., 2011).

Under Suharto's dictatorship, Indonesia's Basic Forestry Law of 1967 vested ownership of all forest lands in the state, legally dispossessing more than 100 million people of their land rights. However, the Indonesian Forestry Department lacked both the political will and the capacity to manage the country's forest resources sustainably. Instead, Forest Department officials granted concessions to forest products companies with little regard for the environmental or economic impacts of harvesting activities. Changes in forest policy did not take place until the "*Reformasi*" movement removed Suharto from power in 1997. As part of subsequent reforms, the Basic Forestry Law was revised in 1999 to allow for the creation of "customary forests" and "special purpose management areas." Forests managed under these designations provide forest dwellers with limited use and management rights but the land and resources remain the property of the state. However, neither tenure type has been widely applied.

The two major types of community-based tenure arrangements that have emerged so far in Indonesia include Community-Based Forests (*Hutan Kemasyarakatan* [HKm]) and Village Forests (*Hutan Desa*). Community-Based Forests provide groups of farmers with 35-year contracts to manage selected production or protection forests and rights to harvest forest products. Village Forests enable village-based institutions to obtain a 35-year lease to manage and protect state forestlands. Although Indonesia has many customary tenure systems operating at varying levels of functionality, the centralized government has strongly resisted efforts to implement legislation that would recognize customary ownership claims to forest resources.

The forest tenure situations depicted in Boxes 5.7 and 5.8 illustrate how perceptions of the strength of pre-existing land claims influence community members' willingness to enter into the new types of community-based forest management contracts. In Sumber Jaya (described in Box 5.7), most inhabitants had only recently settled in the area and had not yet developed strong claims to the surrounding forest. For them, the HKm agreement represented a major improvement in tenure security and access rights to resources. In contrast, the inhabitants of the Krui area in west-central Sumatra (described in Box 5.8) have long-standing and well-established customary claims to the *damar* agroforests, which are the products of their long-term management activities. Not surprisingly, the inhabitants of Krui are reluctant to engage in a contract that fails to acknowledge them as having full ownership rights over those forests.

Box 5.7: Devolution of forest governance in the Sumber Jaya area of Indonesia

Sumber Jaya, in the Province of Lampung, covers an area of about 550 km^2, about 50 percent of which is classified as private land, 40 percent as protection forest, and 10 percent as national park. Most residents moved to the area from Java in the 1970s to grow coffee, both on private land and protection forest. Farmers create coffee gardens by burning and clearing forest, planting upland rice for a few seasons, and then planting a combination of coffee, fruit, and timber trees. Without tenure security, farmers are likely to maintain coffee monocultures.

In the early 1990s, a public hydro-power company established a hydro-power plant on a tributary of the Tulang Bawang River and claimed that deforestation reduced stream flows. Hundreds of farmers were evicted from the area between 1991 and 1996. In 1997–1998, the World Agroforestry Centre began collecting data for use in land use negotiations between villagers, NGOs, and the public power company.

In 1999, the first community forestry (HKm) agreement was established between 478 coffee farmers and the Forestry Department, covering 362 hectares of protection forest. The contract stipulated the types of trees (timber and fruit) and density of trees (at least 400 per hectare) that farmers had to plant with their coffee trees. Between 1999 and 2006, another 19 HKm contracts were negotiated, covering 130 km^2 and including 6400 farmers. The initial HKm contracts were for 5 years, with the likelihood of extension for another 25 years. The contracts allowed farmers to harvest and sell coffee and fruit, but did not give them the right to cut and sell timber trees. Farmers could transfer their land use rights only to other group members (Arifin et al., 2009).

The World Agroforestry Center's research showed that the Forestry Department's assumption that deforestation reduced water flows into the Way Besai power plant was wrong (Verbist et al. 2005). In fact, conversion of the land from forest to coffee garden increased stream flow and thus the amount of power that could be generated by the run-of-river facility. Since the HKm contracts were negotiated, fire has become less of a problem, as farmers with more secure tenure may be more likely to control their use of fire when clearing land (Suyanto et al., 2007).

Arifin et al. (2009) found that farmers strongly favored the HKm contracts over the alternative of contested tenure. They abided by the terms of the contracts, increasing the number of timber trees in coffee gardens and reducing forest clearing (Kerr et al. 2008). However, the contracts have had little impact on incomes since farmers do not have the right to cut timber trees.

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Devolution of forest governance is still an incomplete project in Indonesia. The Worldwide Governance Indicators for Indonesia suggest that the trend from 1996–2008 was toward improved governance, but corruption and political instability continue to plague the country. There are three major challenges with devolution of forest tenure in Indonesia:

- Many areas that were designated as state forest land during the Suharto era are either devoid of tree cover or are considered to be the private property of individual landowners.
- It is a challenge to identify and implement the most appropriate system of devolved governance. In some areas, it is clear that customary systems are most appropriate, while in other places, more democratic systems may be more appropriate.
- As the cases in Sumber Jaya and Krui indicate, it is a challenge to implement social forestry in a way that is effective and efficient across such a large and diverse country as Indonesia.

The total area in Indonesia under community tenure arrangements remains very small. Contracting arrangements are cumbersome and developing a successful contract usually requires the involvement of NGOs or research organizations. As a result, most forest-dependent people still have very weak *de jure* rights to land and forests, and the *de facto* property rights situation varies greatly over time and space. Immigrants who have recently settled and cleared land in forests of Indonesia still have very uncertain land rights, facing high risk of eviction (Arifin et al., 2009).

Box 5.8: Contestation of Forest Tenure in the Krui *Damar* Agroforests of Indonesia

From the air, the *damar* agroforests in the Krui area of Sumatra appear to be dense primary forests. Examined up-close, however, they prove to be highly productive and diverse forest gardens. The *damar* systems are established by clear-cutting, then planting rice for a few years, and then planting a mixture of trees that yield a range of products–coffee, timber, fruit, resin–over the next 40–50 years. Within 10 years of clear cutting, the forest gardens resemble secondary forests; within 20 years, they appear to be primary forests. The agroforests harbor an amazing amount of biological diversity while generating good returns for the local residents. The *damar* system is at least 100 years old, and local residents have strong customary rights to individual plots of land (Michon, 2000).

During the Suharto era, the *damar* agroforests were declared state forest land that should be used for timber production. In the mid-1990s, when the Forestry Department signaled its intention to grant a timber concession to a forest products company, the World Agroforestry Centre and local NGOs took steps to stop the concession from being granted. After many months of intensive negotiation and lobbying, the Indonesian Minister of Forestry issued a Historic Decree in 1998, recognizing the Krui *damar* agroforests as a special cultural preserve (KdTI). Under this designation, the government could not re-allocate timber harvesting rights to a forest products company. In all, 290 km^2 of *damar* agroforests in the Krui area were designated as a KdTI-area and the local people were acknowledged as the only beneficiaries from management of the area (Kusters et al., 2007).

While the Historic Decree was an important victory for the Krui people, they did not sign the agreement in which the government recognized the validity of the special designation given to the area. They believed that the original zoning of the area as state forest was erroneous, and they were not satisfied with the special designation, or with any other social forestry designation. For these long-term residents of the area, the only acceptable solution is that the land be rezoned from state-held forest land to private land. As far as could be ascertained, this contested situation still continues (Kusters et al, 2007).

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5.8 VIETNAM: DECOLLECTIVIZATION AND MOVING TOWARD PRIVATIZATION

Vietnam's recent forest management history and approaches to forest governance devolution differ substantially from the patterns associated with India, Philippines, and Indonesia. Until the mid-20th century, the country's mountainous regions were extensively covered by forests, and sparsely populated by ethnic minority groups practicing traditional forms of agriculture. After Vietnam gained its independence in 1954, the newly independent state nationalized its forests and the State Forest Enterprises (SFE), a state entity, managed them primarily for commercial timber. Intensive bombing by U.S. forces and widespread logging by communist insurgents during the war of 1959–1975 destroyed a large portion of Vietnam's forest. In the post-war period, large-scale deforestation continued, as millions of people resettled upland areas and cleared large areas of forest to produce commercial crops such as coffee, pepper, sugar cane, rubber, and cassava.

The Land Law of 1993 played an important role in reducing deforestation by providing households with secure access to state-held land through long-term lease arrangements. With more secure land rights and

support from extension services, farmers have tended to intensify crop production on lands already under cultivation while planting trees on more marginal lands. The 1991 Forest Protection and Development Law together with a series of decrees issued during the 1990s laid the foundation for transferring rights over forest land to households and groups. Vietnam's forests are divided into production, protection, and special use forests (Thang et al., 2010; Tran and Burgers, 2012). Production forests are managed for commercial use, including timber harvesting, and typically are degraded areas for which the State wishes to provide incentives for individuals or groups to reforest. Protection forests are meant to protect critical land or water sources and NTFPs and timber harvest on these forests is restricted to domestic use. In the 1990s, protected forests were managed by SFEs, but since 2004 households or groups can also manage them. Special use forests are set aside for conserving special values. They include areas with exceptionally high biodiversity or threatened and endangered species, high tourist value, or cultural and historical heritage sites. Most special use forests are under state control, although there is movement toward giving communities a greater role in their management (Tran and Burgers, 2010). Protected forests and special use forests both have Forest Management Boards who decide how forest land will be allocated. The Forest Management Boards are established and funded by the state.

Vietnam has emphasized two types of forest governance devolution – forest land allocations (FLAs) and forest land contracts. Both were designed primarily to encourage reforestation. With forest land allocations, the state transfers extensive rights to households or groups to production forest land on a long-term, renewable basis. Recipients of forest land allocations are given Red Book Certificates (RBCs) that spell out their rights and obligations (see Box 5.9). Communities and households that hold RBCs have exclusive access to land and NTFPs, selected access to agroforestry products, and partial access to timber products. With forest land contracts, the state enters into contracts with households or groups to pay them for reforestation and protection activities on protected, production, or special-use forest lands. The rights to forest land contracts are less extensive than for FLAs, and they are of more limited duration.

The FLA program has clearly been successful at expanding the involvement of non-state actors in forest management. By 2007, more than 1.1 million Red Books had been issued to users of forest lands, covering more than one-quarter of Vietnam's forest area (Nguyen and Sikor, 2011). Forest land contracts are also extensively used. Despite confusion about how the benefit-sharing procedures are supposed to work, more than 6 million ha had been contracted out under Vietnam's protection forestry programs by 2005 (Clement and Amezaga, 2009).

Initially it was unclear whether the forest laws permitted communities to acquire forest land allocations or enter into forest land contracts. To remove this confusion, the Land Law of 2003 recognized communities as potential holders of land and the 2004 Forestry Protection and Development Law stated that communities could be recipients of forest land allocations or contracts. However, Vietnamese law still does not recognize communities as legal entities, placing community forest land allocations and contracts on a shaky footing. In 2006, Vietnam initiated a pilot program to test out community forest management on a localized basis in 64 villages distributed in 10 provinces. However, a broader scale effort to implement community managed forests has yet to materialize, and only a small percentage of forest land (1%) is currently managed by communities (Nguyen and Sikor, 2011).

Box 5.9: Experiences with Devolution in Dak Lak, Vietnam

Vietnam's experiences with forest devolution started in Dak Lak Province (FAO, n.d.). Between 1999 and 2002, 249 hectares of forest land in Buon Diet were allocated among 3,243 individual households, 10 household groups, and 24 communes. The households received RBCs, which specified their rights and obligations. Long-term use rights included: 1) an unspecified, limited area of land for cultivation; 2) a 20-year timber quota for housing construction; 3) at maturity, a six percent share of the after-tax value of commercially logged timber for each year of protection; and 4) exclusive collection of NTFPs, with exemption from resource taxes. Holders of RBCs had to acquire prior approval from the state to clear land and harvest timber; they also had to maintain and protect the forest for which they had responsibility.

For non-RBC holders, devolution meant that in some cases villagers continued to use and make new claims to forest resources through customary tenure systems but without the legal support enjoyed by RBC holders. In other cases, villagers who depended on forest resources as their primary source of livelihood were excluded from areas they had previously used. In both cases, pre-existing social-political-economic inequalities and the potential for inter-ethnic tensions increased (Nguyen, 2006; Sikor and Nguyen, 2007).

Two divergent sets of institutions govern access to productive resources in Dak Lak: local, customary institutions and state institutions. Local, customary forest institutions tended to favor local leaders and the indigenous Jarai ethnic group at the cost of recent migrants (Nguyen 2006). Of particular importance was the reciprocal mutual relationship between local leaders and the two major state institutions, the SFE and the local Communal People's Committee (CPC). The SFE provided economic and political benefits and locally-based state officials protected the forest. State organizations placed a higher priority on forest protection than livelihoods and equity and were characterized by top-down decision-making and implementation. The commune-level CPC selected villages to participate in devolution; the local SFE official decided the specific area of forest to be allocated and the number of recipient households; and village officials selected RBC recipients. Local state officials and their relatives were the main recipients of RBCs. Thus devolution of forest rights and responsibilities continued the bias against migrants as all local state officials were of the indigenous Jarai ethnic group.

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Still, there are several questions about the effectiveness and equity of community forest management in Vietnam. In particular, the example of Dak Lak Province's experience with Forest Land Allocations presented in Box 5.9 raises questions about the risks of elite capture of the benefits of community forests. It also raises questions about the degree to which the state still exercises control over forest use decisions on allocated lands. With each revision of the Land Law and Forest Land Allocation policy undertaken since 1996, household and community rights to land and forests have become more extensive. However, each policy change has been incremental and pragmatic and there continues to be considerable uncertainty about the actual rights of community groups relative to Forest Management Boards and the State Forest Department.

Phung (2011) conducted a study of local perceptions of the FLA policy in Tay Ninh's two forested districts in 2010–2011. He suggests that the weaknesses in the forest policy revisions are that they have been minor and they have focused only on establishing pragmatic, livelihood-based evaluations of legitimacy by local people. While pragmatic legitimacy may be necessary to get a forest devolution policy started, it is not a sufficient foundation for long-term local support. Specifically, if used in isolation, the pragmatic approach is likely to undermine the deeper, stronger cornerstones of legitimacy of the FLA policy: a belief that it is necessary, inevitable, plausible, and predictable. Currently in Tay Ninh Province, locals believe that the FLA policy is

good for the environment but not good for livelihoods. To change this belief, actions need to be taken to address more thoroughly long-term livelihood needs and include more local participation in decision-making.

5.10 FOREST GOVERNANCE DEVOLUTION LESSONS FROM ASIA

5.10.1 FORMAL RECOGNITION OF STRONG OWNERSHIP RIGHTS MAKES A DIFFERENCE

Perhaps the most important lesson to be derived from Asia's experience with forest governance devolution is that tenuous use rights and weak benefit sharing models only go so far toward providing the security and financial incentives needed to invest in forest improvements and protection at landscape-scales. Vietnam's experiences indicate that providing households with strong rights and security of tenure to agricultural holdings can yield long-term and positive conservation and livelihood benefits through the creation of an enabling environment for agricultural intensification. However, Vietnam's successes have largely been associated with forest plantations and it is unclear how well this approach does in natural forest contexts.

The record of co-management approaches in India and the Philippines is mixed. These co-management initiatives have contributed to the growth in area under forest cover that both countries have experienced since the 1990s. However, their livelihood gains are less clear and many co-management efforts are heavily dependent on external funding for their continued functioning. Both JFM in India and CBFM in the Philippines are structured in ways that devolve only limited rights to lower levels of governance, and with the proviso that forestry officials can rescind those rights at any time. Additionally, the legal foundation of both programs is extremely weak, as both are authorized under administrative decisions or executive orders, rather than being authorized under statutory law.

Nepal's experience with Community Forestry, however, indicates that under the right conditions, co-management approaches can have positive ecological and livelihood outcomes. Key conditions for positive joint outcomes appear to include:

- Forest tenure systems that provide user group members with an adequate share of benefits relative to the costs of forest management;
- Presence of well-organized user groups with strong connections to national and international networks who can advocate on their behalf; and
- Supportive government policies and forest departments at both local and national levels.

5.10.2 BUILD ON LOCAL INSTITUTIONS, BUT RECOGNIZE THEIR WEAKNESSES

A common weakness of top-down co-management efforts is that they tend to impose organizational structures that are new and lack legitimacy, rather than working through existing institutions. It is no accident that the most successful co-management groups in India are located in areas where FDs were amenable to letting local institutions take on CBFM. Likewise, the success of Nepal's CF program in its early years was due in part to its flexibility in how communities organized themselves. Even so, evidence from the Dak Lak case in Vietnam points out some of the risks associated with building on customary institutions when those institutions include built-in biases against other ethnic groups or more recent arrivals to the areas. Local institutions also may favor wealthier households, intentionally or inadvertently. Programs such as Nepal's pro-poor Forest Leasehold system can help address such inequities by providing rights to forest resources through programs deliberately tailored toward low-income households.

5.10.3 RECOGNIZE THE LIMITATIONS OF BENEFITS-SHARING

Another common weakness of co-management efforts in the Philippines and India is that the benefits-sharing aspects tend to be dysfunctional for a variety of reasons, including: because the forests are so degraded that revenues are too limited to be of much use, because the collection and distribution of benefits lacks transparency, or because the percentage of benefits shared is insufficient relative to the costs, even when forests are in good condition. The success of Nepal's CF system (in which user groups retain 100 percent of the revenues from their forests) compared with the relatively poor performance of its CFM program (in which benefits are shared among the user groups, the state forestry service, and local governments) illustrates the importance of focusing on maximizing the benefits to communities. Co-management schemes have met with the most success in areas where the resource base is in relatively good condition (so there are benefits to be had), communities have functional local enforcement systems (so that the benefits are maximized), and the system for distributing benefits is both fair and transparent (so that benefits actually get to the people with a claim to the forest).

5.10.4 FOREST GOVERNANCE AND OVERALL GOVERNANCE GO HAND-IN-HAND

An on-going problem in India and the Philippines is the high transaction costs associated with obtaining management plan approval, illicit requests that holders of JFM and CBFM agreements pay for permits or permission to transport products, and chronic corruption at all levels of interaction with forestry agents. However, these costs are not unique to co-management approaches; rather, they are systemic weaknesses in both countries' overall governance systems. Without measures to increase efficiencies of market transactions and decrease the share of benefits forest users lose to bribes or unnecessary permit costs, the benefits of devolving rights will not be fully realized.

5.10.5 HAVING A RIGHT IN LAW ISN'T ENOUGH; SAFEGUARDS ARE NEEDED TO ENSURE RIGHTS CAN BE EXERCISED

Both the Philippines' and India's experiences with implementing rights recognition legislation indicates that merely having a right in law isn't enough; it is equally important to have an environment that permits the exertion of that right. In both countries, forest user group networks and alliances between forest user groups and more powerful external social actors, such as international human rights organizations, have played a key role in ensuring that the rights that forest dwellers have acquired through law can be fully exercised.

In comparing the implementation processes for India's FRA with the Philippines' IPRA, one notable difference between the two is that the FRA implementing rule effectively places the state FDs in the role of deciding which claims to approve, whereas in most areas of the Philippines the decision is made by the National Commission for Indigenous Peoples, an office created specifically to deal with ancestral domain claims. As India's Joint Committee on the FRA noted in its fact-finding report (GOI, 2010), FD officials have little incentive to approve claims as doing so diminishes their control over potentially valuable resources.

5.10.6 IMPORTANCE OF RECOGNIZING THE EXISTENCE OF PRE-EXISTING CUSTOMARY CLAIMS

A key feature of JFM (or any sustainable forest management approach) is that implementation typically involves restricting who can use forest lands and resources. In India, this often has entailed evicting forest users labeled as "encroachers," including individuals who have long-established subsistence plots or agroforestry cropping systems on protected forests. In the 1990s, the practice of evicting encroachers led to numerous incidents of armed conflict in Madhya Pradesh, a state where the FD had never had a strong presence, and where, in consequence, many members of scheduled tribes had continued to farm their customary holdings. Investigations of these conflicts indicated that the leaders of JFM projects in the area typically had not consulted with members of scheduled tribal groups when establishing forest management plans. The projects' failures to acknowledge long-standing and pre-existing customary use rights threatened

the livelihoods of tribal group members, sparking violent resistance. An interesting contrast to this approach is the decision by the Agra-Dumagat people in the Aurora Province of the Philippines to invite migrant settlers and local government representatives to participate in land use planning for their titled Ancestral Domains, even though they are not obliged to do so (Amos, 2003). The Agra-Dumagat opted to be inclusive of their neighbors in order to reduce fears on the part of settlers that they would lose their access to forest resources once the Agra-Dumagat obtained a CADT to their traditional territory.

5.10.7 IMPORTANCE OF IDENTIFYING THE LEVEL TO WHICH RIGHTS SHOULD BE DEVOLVED

The cases from Indonesia and Vietnam highlight the importance of identifying the right level to which rights should be devolved. Under pressure, forest agencies may assent to devolving management rights to the community level as a way of maintaining overall control, but individuals and families may in fact expect full ownership rights. In the two case studies in Indonesia, one community has accepted social forestry contracts, while the other has resisted them. In Vietnam, existing policies favor rights allocation to individuals and households; but by essentially privatizing what were once forest commons, such policies may inadvertently disfavor less wealthy community members and newcomers to the area. There is need for policy makers to identify more clearly an appropriate balance among public, communal, and private interests in forest management.

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