Forest tenure

Emerging trends and lessons

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Global Issues in Governing Natural Resources

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1. Clarifying what we mean by tenure (reform)

2. Global trends and regional differences

3. Community tenure rights – new analysis

4. Lessons learned
Variety of understandings of “tenure” across the world

More than just ownership – a “bundle of rights”

- Access
- Withdrawal
- Exclusion
- Management
- Alienation

Central to questions of management and benefits
What do we mean by forest tenure reform?

A legal process changing the rights in the bundle of rights to natural resources (land, trees, other)

Often the process begins as result of a major shift: intense social pressures, natural disaster or political commitment.

Often long and contentious processes
Trends in Forest Tenure - Global

- Administered by Government: 79% in 2002, 73% in 2012
- Designated for use by communities & Indigenous Peoples: 1% in 2002, 3% in 2012
- Owned by communities & Indigenous Peoples: 9% in 2002, 12% in 2012
- Owned by individuals & firms: 11% in 2002, 12% in 2012

Note: The countries included here cover 85 percent of the world’s forests.
For full details see: www.rightsandresources/tenuredata.
Trends in Forest Tenure – Developing Countries

- Administered by Government: 72% (2002), 60% (2012)
- Designated for use by communities & Indigenous Peoples: 3% (2002), 6% (2012)
- Owned by individuals & firms: 7% (2002), 9% (2012)

Note: The countries included here contain 80 percent of the total forest estate of developing countries. For full details see: www.rightsandresources/tenuredata.
Forest tenure distribution

**Africa**
- Administered by Government
- Owned by communities and Indigenous Peoples
- Designed for use by communities & Indigenous Peoples
- Owned by individuals & firms

**Asia**
- Administered by Government
- Owned by communities and Indigenous Peoples
- Designed for use by communities & Indigenous Peoples
- Owned by individuals & firms

**Latin America**
- Administered by Government
- Owned by communities and Indigenous Peoples
- Designed for use by communities & Indigenous Peoples
- Owned by individuals & firms

**Sources:** Sunderlin et al. 2008; ITTO/RRI 2009. Includes best available data as of December 2011 from 36 of the world’s most forested countries, representing 85% of world forests."
What explains the diversity?

Rights-based, economic or forest management-based rationales

Latin America: Social mobilization, especially Indigenous Peoples

Africa: Colonial relics (concept of *terra nullius*), state-custom conflicts, decentralization

Asia: Diverse, but much reform in China, Vietnam
Big changes in “community” and “Indigenous Peoples” forest tenure over past several decades

Through titles, management conventions and licenses

What rights in the bundle do these communities enjoy?
75% of the forests in developing countries
86% of the regimes established after 1992

Source: Forest tenure database. See www.rightsandresources.org/tenuredata.
Rights in each regime

Source: Forest tenure database. See www.rightsandresources.org/tenuredata.
Key findings

- 95% of regimes restrict community use of forest resources.

- Just over half of the tenure regimes (32 of 59) recognize the rights of Indigenous Peoples and communities to access, commercial exploitation, and forest resource management. But in all cases these rights are contingent on compliance with state mandated management plans and/or the stipulations of licenses.

- 36% of the surveyed tenure regimes do not recognize the right of Indigenous Peoples and communities to exclude others from their forest lands.

- 66% forbid them from alienating their lands or their rights to forest resources (through lease, use as collateral, or sale).

- In over half of the regimes (34 of 59), rights are recognized for an unlimited period.

- In 40 of the regimes, the government must comply with due process and provide adequate compensation should it decide to revoke a community's rights.
Regional findings

• Latin America has the highest percentage of regimes guaranteeing the rights of access, commercial exploitation, and forest resource management.

• In Asia 31% (5 of 16) of those regimes communities only have the right to use timber resources for subsistence needs. Tenure reforms in China and Viet Nam not only recognize communities’ rights to forest resources but also increasingly facilitate, if not encourage, the allocation of forest land to households.

• Since early 2000, countries in Africa have established laws recognizing the rights of Indigenous Peoples and communities to forest resources. In 35% (6 of 17) of the surveyed regimes established by national legislation, rights cannot be implemented due to a lack of supplementing regulations that clearly define the recognized rights and the processes by which such rights maybe allocated in practice.
Exclusion rights by region

FIGURE 3: Do national laws that recognize tenure rights permit Indigenous Peoples and communities to exclude outsiders?

- **Global**
  - Yes: 36% (21/59)
  - No: 58% (34/59)
  - To be determined: 4% (3/59)
  - Case by case: 2% (1/59)

- **Latin America**
  - Yes: 24% (6/25)
  - No: 72% (18/25)
  - To be determined: 4% (1/25)

- **Asia**
  - Yes: 29% (5/17)
  - No: 71% (12/17)

- **Africa**
  - Yes: 18% (3/17)
  - No: 59% (10/17)
  - To be determined: 24% (4/17)

Legend:
- Yes
- No
- To be determined
- Case by case

Notes:
- Regimes established by constitution or law but lack subsequent law or regulations defining the extent of rights.
- Extent of rights defined on a case by case basis by individual agreement.
- Note: Rounding errors acknowledged.
Area under the regimes by region, 2012

228mHa or 32% of the countries’ forest area

151mHa or 34% of the countries’ forest area

15.9 mHa or 5% or the countries’ forest area

Africa

Latin America

Asia
Lessons learned from tenure reform processes

Who has an interest?
- Government and customary authorities
- Citizens
- Special interest groups: women’s associations, etc
- Private sector
- Right-holders

What is the objective of reform?
- Recognize rights gained through historic occupation?
- Realign production systems?
- Reflect reality?
- Change reality?
- Tenure security for the poor?
Lessons learned from tenure reform processes

Reform requires political will
Implementation requires sustained political will
Multiple sectors and institutions (conflicts in law: mining, ag, forest)
Plan for a long road – iterative, learning process
Awareness raising of new or changed rights
Training of service providers and judiciary
Mobilization of non-governmental actors
Costs vary depending on precision, location, surface area (individual plots versus territories)
Contestation, clarification, negotiation are part of the process
Examples to learn from

Mozambique: *Community territories under pressure*

Brazil: *Cleaning up a complex situation*

South Africa: *Customary authorities and power*

China: *Choice*

South Sudan: *recognizing community rights “land belongs to the community” what about forests?*
THANK YOU