Part 1
OVERVIEW

Introduction

Worldwide, about 1.6 billion people rely heavily on forest resources for their livelihoods, and an estimated 400 million are directly dependent on forest resources (World Bank, 2002). At the same time, the 2005 Forestry Resources Assessment (FAO, 2006) reports that deforestation is continuing at an alarmingly high rate, mainly through the conversion of forests into agricultural land. The net reduction in forest area for the period 2000 to 2005 is estimated at 7.3 million ha per year, with forests disappearing particularly rapidly in Africa and Latin America.

While the causes of deforestation are certainly multiple, there is increasing recognition that tenure of forest resources and forest land plays a role in sustainable forest management (SFM) (UNDP/UNEP/World Bank/WRI, 2005), and that security of tenure is one of the most important mechanisms to ensure accountability and control of forestry operations at the local level (FAO, 2005).

Current trends in privatization and community involvement in forest management are leading to rapid changes in resource tenure patterns and increasingly complex stakeholder relations. These changes have social, political and economic implications, which need to be monitored and assessed. To what extent does forest tenure – particularly recent tenure arrangements – influence land and resource use? Are secure tenure arrangements part of the solution to forest degradation and destruction?

According to work carried out by Forest Trends, the area of forests owned and administered by communities doubled in developing countries between 1985 and 2000, reaching 22 percent; this figure is expected to increase further (White and Martin, 2002). Although these estimates are the best so far, and are often adopted by the international community (e.g., the Center for International Forestry Research [CIFOR], Forest Trends 2003), the limited availability of appropriate and reliable data calls for careful interpretation and further work. Current forest laws still provide little scope for local people to play a meaningful part in the planning, management and allocation of forest resources (FAO, 2005).

It is in this context that FAO, in collaboration with four partners[2] in the Asia Forest Partnership, has developed a pilot study covering 17 countries in South and Southeast Asia. A number of initiatives to empower local communities, decentralize decision-making to local government units and increase private sector involvement in forest management have been taking place in this region. The aim of this study is to shape a clearer understanding of these trends and their impact on SFM and poverty alleviation (PA).

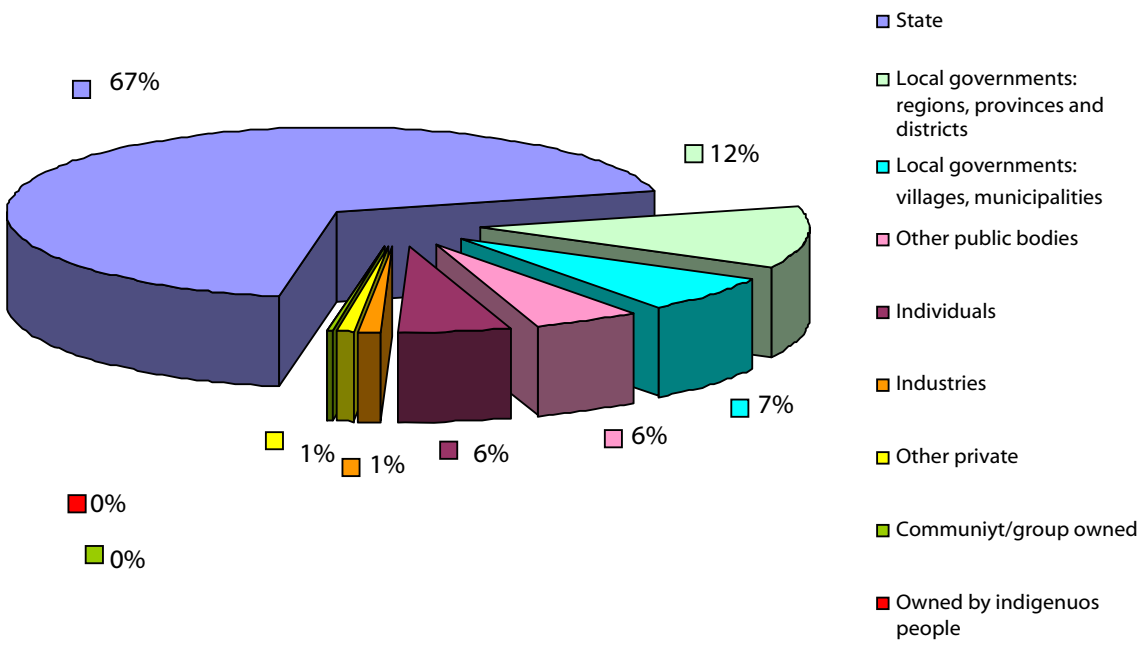
[2] The Nature Conservancy (TNC), Tropenbos, the Regional Community Forestry Training Centre for Asia and the Pacific (RECOFTC) and CIFOR.

Facts and figures about forest tenure in South and Southeast Asia

The study conducted by FAO and partners in South and Southeast Asia was based on an analysis of forest tenure according to two variables: the type of ownership, and the level of control of and access to resources. It aimed to take into account the complex combination of forest ownership – whether legally or customarily defined – and arrangements for the management and use of forest resources (see Annex 1 for definitions of the terminology used). Forest tenure determines who can use what resources, for how long and under what conditions.

The results of the survey of 17 countries[3] confirm that the tenure system in forestry remains largely dominated by State control, although some important trends are emerging, albeit in limited areas.

FIGURE 1
Forest ownership structure



Regarding different types of *forest ownership* (Figure 1), at least 92 percent of a total of about 365 million ha of forest is publicly owned, the majority of which (67 percent) is under the direct control of central governments. Private forests, which are mainly in Japan and the Republic of Korea, are more likely to be owned by individuals (accounting for 6 percent of total forest area) than by private industries (1 percent of the total). An insignificant percentage of forests is owned by local communities, groups and indigenous people.

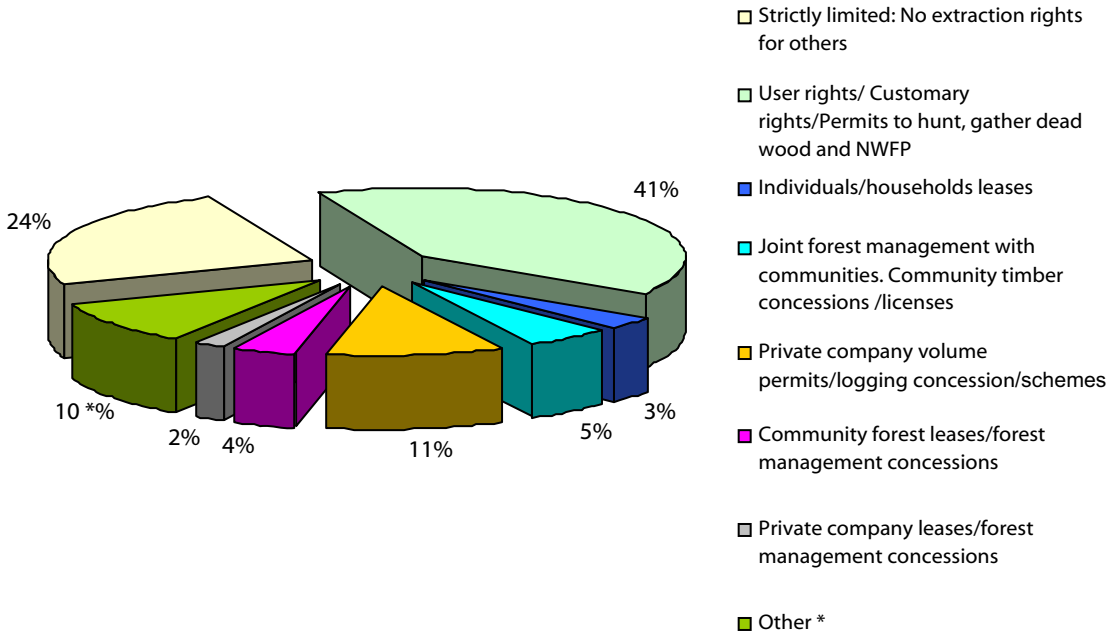
Regarding different *management categories* (Figure 2), 65 percent of publicly owned forests are managed directly and exclusively by the owner (central or local government). Although user rights for home consumption are granted in most (41 percent) of these forests, this category comprises

[3] Brunei, Bhutan, Cambodia, China (Yunnan), India, Indonesia, Japan, Republic of Korea, Lao People's Democratic Republic, Malaysia (Sabah), Myanmar, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam.

mainly open-access, non-protected forests that are often left unmanaged owing to lack of government capacity. In Nepal, for example, government-managed forests administered by district forest offices (about 80 percent of total forests) are *de facto* not managed (Singh, Singh and Sinha, 2006).

Figure 2 shows how agreements with limited devolution of management rights and responsibilities (such as joint forest management [JFM], community timber and private logging concessions) are prevailing over longer, more secure, tenure agreements (such as community forest management and private forest management concessions), regardless of whether they involve local communities, individual households or private companies. Local communities manage about 12 percent of public forests through either JFM agreements, longer-term community forestry (CF) agreements or individual/household leases, while 13 percent are granted to private companies, mainly through logging concessions. This percentage increases significantly if it includes about 30 million ha of production forest in Indonesia for which the status is not defined. This forest is likely to be assigned to new timber concessions.

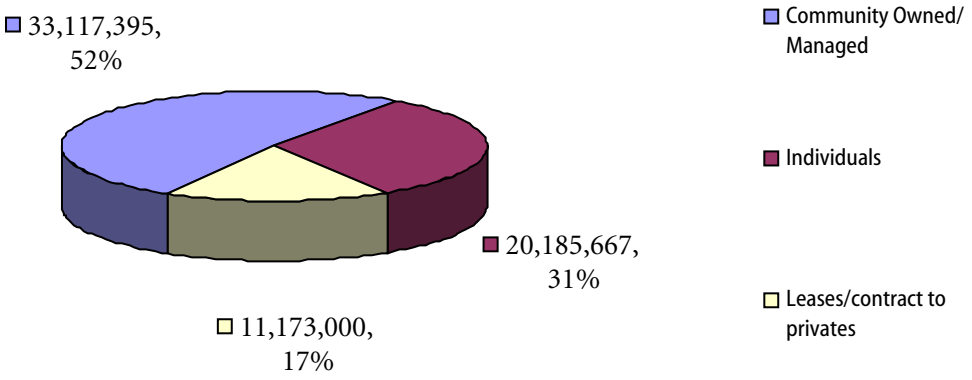
FIGURE 2
Forest management categories in public forests



* About 30 million ha of production forest in Indonesia for which the status is not defined.

The forest area managed by local users increases to 18 percent of the total when all the forest that is either owned or managed by local forest holders, communities, user groups or individuals (about 65 million ha, see Figure 3) is included.

FIGURE 3
Local forest holders



Total surface: 65 million ha

The survey highlighted two innovative trends: the allocation of forest land to private households in China and Viet Nam through modalities that are very close to a privatization process; and the establishment of long-term (100-year) forest management concessions – called Sustainable Forest Management License Agreements (SFMLAs) – in Sabah, Malaysia. Detailed data by country are available on the FAO forestry Web site.4

The significant role of local forest holders in forest management is confirmed by the figures presented by each country, even though it remains somewhat limited, fragile and variable among countries.

In order to understand the implications that different tenure systems have on SFM and PA, related mechanisms and issues have to be analysed, and the roles that these might play in enabling or preventing the effectiveness of a given tenure system have to be identified.

The transfer of rights and responsibilities needs to be qualified in terms of the accompanying security of tenure and management capacity in order fully to understand its impact. For example, private property might not necessarily entail the right to manage or even use resources (e.g., Pakistan), while some well-established long-term exclusive use rights (individual or communal) might be as secure as private, individually titled property (e.g., Viet Nam) (UNDP/UNEP/World Bank/WRI, 2005).

[4] www.fao.org/forestry/site/33848/en.

The challenges of secure tenure

Security of tenure is recognized as a fundamental requirement to ensuring that resources are managed sustainably. Duration, assurance, robustness and exclusivity have been identified as the main legal elements for secure tenure arrangements. This implies that tenure holders should have assurance that they will be able to benefit from the returns on their investments without interference. Any strategy to support SFM and enhance the PA role of forests should prioritize the clarification of tenure rights and mitigate factors that impinge on poor people's access to forest resources (Wiersum and Ros-Tonen, 2005).

Evaluation of the effectiveness of various tenure systems in South and Southeast Asia identified numerous constraints that undermine the security of forest tenure. Although situations and contexts differ from country to country, these constraints are related to the main issues described in the following subsections.

FRAGILITY OF GRANTED RIGHTS

Forest tenure reforms are often implemented when overall State management has failed. Such reforms aim to reverse the results of unsuccessful forest management by increasing the participation of local populations or the private sector, recognizing local customary law and allocating management responsibilities to local holders. However, for various reasons, the reforms are often not accompanied by adequate security of tenure, such as clear, formal and long-term recognition of rights and responsibilities in legislation and regulations.

In spite of their achievements, some of the most promising tenure models – such as CF in India-Orissa and the Adat (customary law) system in Indonesia – are not formally recognized and supported by legislation. This lack of institutionalization makes these approaches very vulnerable to policy changes.

The two hills system, which has characterized land reform in China since the 1980s, has contributed a lot to both SFM and PA for local communities, especially in comparison with the pre-reform situation. However, it has been unable to improve local conditions further because of confusions regarding ownership and responsibilities (Box 1). As a result, some of the forestry sector's important potential remains untapped.

Long-standing lack of clarity over ownership and rights over land, particularly regarding the traditional rights of local communities over land and natural resources, has caused the escalation of conflicts in Indonesia, especially since decentralization (Simorangkir and Sardjono, 2006).

Rights also become fragile when they are subject to restrictive time limits or the decision-making power of administrations. The sudden and indefinite suspension of harvesting rights for community-based management agreements in the Philippines, and the introduction of quota systems in China are good examples of governments making unilateral and indiscriminate (in that no distinction is made between managed and non-managed forests) decisions in response to forest degradation. Recent logging bans in South and Southeast Asia have shown the forestry sector's tendency to react to shocks in extreme ways, thereby weakening tenure rights further.

BOX 1
China's two hills system: who is the real owner?

Since the early 1980s, China's forestry reforms – known as the two hills system – aim to define and clarify forest ownership rights, among other objectives. The system involves contracts for forestry land under three new management arrangements: household, collective and contracted. Recent research on forest tenure has highlighted some important shortcomings of this reform, including increased deforestation and illegal cutting, and these can be attributed to the frequent shifting of forest policies and a lack of tenure security. Laws regarding forest tenure do not distinguish between forest land and forests, so ownership remains ambiguous. The unclear definition leads to conflicts over benefit sharing, particularly in household-managed forests, and farmers frequently complain that "they have no right to decide how to dispose of their land", including forests, and that they lack proper access to information.

The responsibilities of collective ownership are also unclear, because the definition of collective varies over time and among provinces.

***Lesson**: Unclear and unstable rights lead to unsustainable forest management.*

STATE CONTROL IN DISGUISE

Despite the official transfer of tenure rights to other stakeholders, in some cases the State retains predominant or even overall control of forest management activities, including harvesting and marketing. This can happen not only when forests are managed through JFM agreements, and therefore remain public, but also in privately owned forests, which can be sold and transferred by the owner(s).

In India-Orissa the Forestry Department retains substantial control over JFM forestry activities and benefit sharing, so the impact of JFM on PA and empowerment are very limited.

In Thailand, the government, through the Royal Forest Department and the Department of National Parks, Wildlife and Plant Conservation, retains its legislative control over community forests, although some community forests have been managed by villagers for more than 15 years.

In Nepal, Community Forest User Groups (CFUGs) are required to prepare forest inventories of the growing stock, standing forest and allowable cut before the forest is handed over to them and when their management agreements are being renewed (every five years). This is a technically demanding and time-consuming job that the CFUGs cannot do themselves and often cannot afford to pay for, creating delays in the handing-over process and the renewal of existing agreements. This has direct negative impacts on harvesting, extraction and the sale of forest products, which ultimately affect the community development and PA activities of the CFUGs.

In Pakistan private "owners", either individual or communal, have no management responsibilities (Box 2).

Figures that show increased JFM/CF agreements or trends towards privatization should therefore be assessed carefully in terms of the effectiveness of the transferred rights.

BOX 2
Pakistan: private property without rights

The forest tenure system in Pakistan varies from region to region and foresees the existence of private forests, either owned by individuals or communal (Guzara forests). These forests are, however, directly managed by the Forest Department (FD) through working plans; owners have to seek FD approval for harvesting, marketing and daily usage of timber and fuelwood.

Resources, especially in Guzara forests, continue to degrade, despite the overall control of the FD. Local farmers are not interested in managing their forests because they have absolutely no responsibility to do so.

A logging ban on commercial harvesting in private forests, even those directly managed by the FD, was imposed in 1992.

***Lesson**: Ownership without rights leads to degradation.*

SMALL TREES FOR SMALL PEOPLE

The quality of the resources allocated to local holders also needs to be taken into consideration when assessing the implications on SFM and PA. The condition of the resources at the moment of the transfer obviously plays a significant role in the potential of those resources to provide the necessary incentives for sustainable management. The study shows that – with some exceptions such as community-based forest management (CBFM) in the Philippines – most of the forests handed over for joint management or long-term agreements are degraded and have no or little commercial value.

This is the case in Viet Nam and China, where individuals have received mainly low- to medium-quality forests through a forest devolution programme. In Sabah, Malaysia, many forests for CF within areas managed under SFMLAs are in poor condition. In Nepal, leasehold forests are limited to very degraded forests and bare land that require intensive management and heavy inputs (Box 3).

In both Nepal and Viet Nam, despite the poor forest conditions, new owners and holders have demonstrated an ability to derive economic benefits while improving forest management (see the section on Secure tenure for PA in the following chapter). However, in Nepal, where the leasehold forestry programme continues to be subsidized by donors, the sustainability of the approach remains questionable. In Sabah, Malaysia, there has not yet been any significant evidence of success; the poor quality of the forest is a major handicap to PA and SFM, and unless adequate support is provided the real impact of handing over degraded land is negligible in the early years. The failure of some tenure arrangements does not necessarily imply that they are inadequate, but rather that insufficient support and incentives were provided to rehabilitate the forest cover.

BOX 3
Nepal: degraded forest for leaseholders

Nepal's leasehold forestry programme was developed to alleviate the poverty of households living close to degraded forests and to facilitate ecorestoration.

Despite its limited coverage, the programme has proved very successful in terms of both PA and improving forest conditions (see Success story 4). However, some question this success because the programme requires heavy inputs and support from external projects; the allocated forest resources are degraded and so need intensive and relatively expensive forest management and capacity building.

The programme has developed a strong sense of ownership, which is a principal driving force to forest management.

***Lesson**: Sustainability cannot be expected when resources are degraded.*

NATIONAL LAND POLICY AND CONSTRAINING OBLIGATIONS

Even after 20 years of SFM efforts and an increasing awareness of forestry's role in PA, the specific role of tenure in these processes is still unrecognized. This lack becomes particularly evident when analysing current policies and legal frameworks, which are still inadequate in addressing the rights that contribute to security of forest tenure.

In some extreme situations, the legislative and regulatory framework is obsolete and does not address today's needs and challenges. In Pakistan, for example, there is a complex and unharmonized system of laws to regulate a feudalistic tenure structure. Despite some trends, such as the new Forest Ordinance 2000 that gives legal cover to JFM in North Western Frontier Province (NWFP), so far the government has given limited importance to this issue and there is a lack of adequate data on forest landownership and tenure. People have no access to data and information about FD activities on behalf of communities (Nasir, 2006). In such an atmosphere of mutual distrust, the absence of tenure reform has led to intensive forest degradation.

BOX 4
Sabah, Malaysia: Occupation Permits

In Sabah, a major concern is the lack of recognition and protection for indigenous rights over land and natural resources, which are vital for the survival and development of indigenous communities. In order to formalize the presence of communities in forest reserves, the Sabah Forestry Department (SFD) has recently introduced the use of Occupation Permits (OPs) available under the forestry laws. The permits cost $M250 (US$68) per hectare per year. Communities participate in decision-making regarding the duration of and total area covered by the permits, but the ultimate decision is made by SFD. This is a positive step by SFD to acknowledge forest communities with traditional claims to remain on their land. However procedures for land title acquisitions through the State legal system are complex, lengthy and lack transparency. The provisions for titles are also not always wholly acceptable to indigenous people, who consider the land theirs already. In light of all of these factors, land titling has never been widely used to demarcate community boundaries and/or legalize community forests.

Lesson: *Difficult procedures hamper the acquisition of rights.*

Evidence from other countries indicates that land policies often limit or prevent the creation and consolidation of new tenure systems, especially when these are based on the recognition of customary rights, including those of nomadic groups (Box 4).

Global trends such as decentralization might also lead to increasingly fragile tenure rights, such as in Indonesia. In addition to a "decentralization of corruption", which can occur as local governments obtain greater control over the forestry sector and timber concessions, the decentralization process has weakened customary rights by creating confusion over new laws that have decentralized some aspects of the State's jurisdiction over lands, forests and other natural resources to district authorities (Simorangkir and Sardjono, 2006).

Examples show that very constrictive national policies and legislation can affect the efficiency of a given tenure system, such as the logging bans in the Philippines and Pakistan, or the introduction of quotas in China. Forest legislation often penalizes local owners or holders through overregulation. In the Philippines, for example, communities that have obtained communal tenure agreements usually protect their areas from forest fires, poaching and slash-and-burn practices. However, the overregulation of these communities' resource use rights and the nationwide cancellation of these rights have instilled fear, uncertainty and suspicion of government and the CBFM strategy. Three consecutive nationwide suspensions of CBFM harvesting rights have eroded most communities' motivation and commitment to protect and manage their forests (Guiang and Castillo, 2006).

Tenure: a founding block for sustainable forest management and poverty alleviation

DOES SECURE OWNERSHIP LEAD TO SUSTAINABLE FOREST MANAGEMENT?

How does tenure affect SFM? Is there evidence that secure tenure rights have contributed positively to forest management and conservation, or that a particular tenure system is more effective than others?

When State forest management works

State management remains the best option in some circumstances, especially for national parks and protection forests. In India-Meghalaya, State-owned forests are the best funded and managed forests (Dasgupta and Symlieh, 2006). In Viet Nam, State forests are probably the best of all tenure systems in terms of forest management, in areas where budget is available (Nguyen, 2006). In India-Orissa, areas under JFM are characterized by substantial FD control over activities and benefit sharing, and represent a successful example in terms of SFM (Singh, Singh and Sinha, 2006). All of these successes depend on the availability of sufficient funds and capacities.

Other systems are efficient, particularly those based on customary settings and community initiative, which are sometimes the only systems in place.

When community forestry works

When rights are granted on a long-term basis and are clearly defined, CF and JFM have had positive effects for SFM and the regeneration of degraded lands (Success story 1)

SUCCESS STORY 1
India and Nepal: a long tradition in CBFM

CF in Nepal has a long history, and is recognized as one of the best and most successful examples of CBFM. The 1993 Forest Act makes clear provisions regarding rights and responsibilities related to CF. Community forests represent about 20 percent of Nepal's total forest area; since the beginning of the programme, forest conditions have improved considerably and degradation has been prevented (Singh, Singh and Sinha, 2006). CF agreements have no time limit, but are managed on the basis of operational plans that have to be renewed every five years. The programme benefits from a strong strategy and many years of capacity building, but its success is also due to its building on existing traditional structures (Singh, personal communication).

JFM in India-Orissa is another case of the devolution of management responsibilities proving to be successful in terms of SFM. This programme has helped the regeneration of degraded forests, and represents a first step towards collaboration between communities and FDs. However, the programmes's main limitations are its heavy dependency on project funding and the high level of control exercised by the State administration. These raise the question of sustainability, unless the JFM concept can evolve towards more shared decision-making.

Private smallholders: a growing reality

China and Viet Nam have made one of the most innovative and progressive changes in forest tenure: the allocation of forest land to individual smallholders. About 20 percent of forest land in Yunnan province (China) and 23 percent in Viet Nam (FAO Forestry Web site, 2006) are now directly managed by individuals. In Viet Nam land is allocated through Red Book Certificates (RBCs), which provide long-term or indefinite access and use rights. Although the forests allocated are of medium and low quality, individual owners have proved to be more effective forest managers than organizational owners (e.g., private companies) (Success story 2).

SUCCESS STORY 2

Private smallholders in Viet Nam: a new approach to sustainable forest management and poverty alleviation

Private property in Viet Nam includes forests managed by individual households and joint venture enterprises. Under this arrangement, forest is allocated to an owner for long-term (50 years, renewable) management. Most forest owners under this arrangement are entitled to a legal land use certificate (the RBC) for the forest area they are granted. By law, the RBC is the highest legal document certifying ownership of a piece of (forest) land. It represents legal recognition of all rights and responsibilities as regulated by current land law. RBC holders have the right to exchange, transfer, lease, inherit and mortgage their RBCs and to use their forests in joint production and commercialization activities. Owners of forest under this arrangement are required to pay taxes.

Under this private property scheme, forest owners are obliged to protect their forest allocations against unauthorized use and to plant trees where needed; they have the right to utilize the forest to maximize their profits. According to Nguyen (2006), local households have generally achieved (or have the potential to achieve) higher economic benefits from forest resources since the accession to private property: people have developed the forest resources on their allocated land. As forest plantation takes at least five to seven years, even for fast-growing trees, local people's investments in tree planting since rights were devolved reflect their confidence in tenure security. Forest devolution is giving people a chance to improve their livelihoods in the long term, while also improving forest conditions.

Local governments

The case of local government units (LGUs) in the Philippines is a particularly good illustration of how the decentralization and devolution of management responsibilities, control and monitoring to local governments can be particularly successful, as long as it receives adequate support, especially in capacity building (Success story 3 and Box 6).

SUCCESS STORY 3

Local government in the Philippines: an untapped potential

Although it is still too early to assess LGUs' role in protecting and managing forest lands, experience to date has shown that – with the right mix of political will, resource allocation and long-term perspective – they could make a difference in stabilizing tenure rights, claims and occupations in forest lands under co-management agreements; help to resolve claim and boundary conflicts, which tend to reduce productivity and focus; and mobilize local and available grant resources for forest development activities.

According to Guiang and Castillo (2006), LGUs have the highest performance for SFM, but the very limited surface they cover means that this needs further investigation. Nonetheless, LGUs have demonstrated greater flexibility in allocating financial resources to support social infrastructure, extension services and set-up capital for community enterprises.

SECURE TENURE FOR POVERTY ALLEVIATION

Communities, income generation and equity

Analysis of the case studies has shown that CBFM often has a comparative advantage over other tenure systems regarding PA, particularly in addressing the needs of the poorest and promoting equity and empowerment.

SUCCESS STORY 4
Leasehold forests in Nepal: created to address poverty

Unlike CF, leasehold forests (LHFs) in Nepal have been created expressly to alleviate poverty in households that are close to degraded forest areas. LHFs also have ecorestoration and rehabilitation roles, as most of them are established in degraded forest areas (Box 3). In LHFs, the benefits are therefore generated later than they are in CF. The more integrated LHF approach has led to reductions in food deficiency: all benefits go to individual families, without having to share them with the government, and forest products are available to LHF beneficiaries throughout the year.

The close linkages between the benefits obtained and the ecorestoration of degraded leasehold areas probably contribute to the success of this system, together with a strong sense of ownership among leasehold groups. However, the very small area – 5 000 ha – of implementation and the high financial and human inputs required call for careful interpretation of results.

SUCCESS STORY 5
Common property in Viet Nam: reaching the poorest

In Viet Nam, common property arrangements are found in forest managed by collectives. Owner groups are entitled to have RBCs for the areas of forest allocated to them. Legal recognition of this form of management arrangement has recently emerged as an important issue in forest management in Viet Nam. At present, only a small area of forest is under common property arrangements, but the potential for the future is promising.

Among the various tenure systems in Viet Nam, the management of forest as common property appears to address PA best. Communities have demonstrated the ability to distribute benefits among their members, including the poorest. Common property is sometimes a better system than private property for managing forest because of village regulations that specify the rights and responsibilities of members and exclude unauthorized loggers.

SUCCESS STORY 6
Equity through tenure: CBFM in the Philippines

The allocation of forests to communities through CBFM agreements has made it possible to transfer natural resource assets to marginalized groups in response to demands for social justice and PA; CBFM addresses the equity issue in the Philippines. Among the different tenure systems, CBFM seems to have the greatest potential for supporting livelihoods, providing farm-level incentives to adopt agroforestry and tree farm technologies, and raising marginalized communities out of extreme poverty and hopelessness. The increasing participation and involvement of provincial and municipal LGUs in CBFM seem promising.

However, so far the real potential of this system has yet to emerge from several constraints. As well as the limited capacities of communities to absorb, learn and respond to their obligations as forest managers, highly restricted access to timber and non-timber as sources of revenue risk causing the gradual abandonment of most forest lands over time.

Plantations, the positive and the negative

Forest plantations, particularly for production purposes, are an increasing feature of forestry in East and Southeast Asia, where they represent about 7 percent of total forest area (FAO, 2006). China, Indonesia, Malaysia and Thailand are among the countries where the most plantations are found.

Forest plantations are usually associated with clearer and more secure tenure than natural forests. In addition, plantations are closely associated with income generation and employment (Box 5).

When established in consultation with local stakeholders and within an adequate business environment, plantations provide these expected benefits and contribute to PA. However, forest plantations in the Southeast Asia region, especially for oil-palm, have been the cause of rapid forest degradation (such as in Malaysia and Indonesia) and conflict among stakeholders (Box 6).

BOX 5
Private plantations in the Philippines: a potential source of income

In order to reverse the decline of the forest industry, which was highly dependent on natural forests as a source of raw materials, the Philippines is currently looking at forest plantations as a sunrise industry for the forestry sector. All over the country, there are highly suitable areas for the establishment of plantations for short, medium and long rotations. However, the private sector has not been as proactive as expected in developing forest plantations because the overall business environment, regulations and incentives are perceived as unfavourable. Given its technical, organizational, entrepreneurial and financial capacities, the private sector could still change the country's mind-set with respect to forest production. In particular, plantations have high potential to generate employment and community enterprises.

BOX 6
Oil-palm plantations: threat to natural forest or potential for PA in Indonesia?

During the 1990s, forest and land conversion became more intensive with the development of oil-palm plantations. These plantations were justified by oil-palm's ecological suitability and the economic business alternatives it offered in the face of decreasing forest resources. By the end of 2000, about 4 million ha of new oil-palm plantations had been established across Indonesia.

In the last decade, local communities have begun to dominate the development and management of plantations. Increasing community interest in this smallholder scheme is promoted by the possibility for individuals to claim land that was formerly declared State-owned (forest) lands, and by assured incomes.

However, the expansion of oil-palm plantations has had two negative consequences. First, natural forest has been removed to make way for increasing palm plantation surface. Deforestation is also caused when the establishment of oil-palm plantations is used to justify the obtaining of concessions to exploit remaining residual stands of natural forests. Second, unclear land occupation rights under traditional law have led to conflicts among villages, and some families have been unwilling to enter the plantation programme for fear of losing their traditional (but not officially recognized) rights to land.

ROLE OF TRADITIONAL LAWS AND SELF-INITIATED ACTIVITIES

Informal tenure systems that regulate natural resource use and access, including in forests, are present to some extent throughout South and Southeast Asia. In some cases, legal tenure systems have attempted to recognize customary rights, such as through the use of OPs under the forestry laws in Sabah. However, most traditional systems that overlap with official tenure systems are completely disregarded by law, leading to severe and unresolved conflicts. In Pakistan, for example, customary law is widely practised by forest dwelling/-dependent communities all over the country, but is frequently in conflict with the formal laws applied by the forest administration.

Nonetheless, there is evidence that in a number of situations the existence of strong traditional customary rights has had positive implications, particularly on conservation and SFM (Molnar, Scherr and Khare, 2004)

Traditional customary rights are particularly effective where legislation does not provide secure tenure rights and the forest administration is weak or absent. In Indonesia, for example, Adat-based management has demonstrated a positive impact on not only SFM but also PA through increased income generation (Deschamps and Hartman, 2006) (Success story 7).

SUCCESS STORY 7
Indonesia: Adat to support PA

Adat forms the basis for forest tenure in long-established communities. Created by the community and administered by a local council of elders, it defines rights and responsibilities and codifies legal sanctions. Regarding SFM and the conservation of forest resources, in the absence of secure tenure rights, the creation of collaborative management structures that are supported by customary law can foster a sense of community ownership and engender a commitment to conservation. In particular, SFM based on traditional land-use systems has the potential to provide social and economic benefits at a level equal or superior to other land-use systems in nearby rural areas. The socio-economic and ecological conditions of forest-based communities utilizing customary law can be better than those of communities with economies based primarily on agricultural production.

Lesson: *In the absence of State control, collaborative management with customary law can work, even when there is no secure tenure.*

Similarly promising self-initiatives that regulate tenure rights, including access and management, have been observed in India-Orissa, but these have still to be analysed in depth. These CF initiatives are contributing to PA, especially aspects of social welfare, health and education, although they are not formally recognized by the legislation and therefore insecure and fragile (Success story 8).

SUCCESS STORY 8
India-Orissa: informal tenure systems

CF is one of the tenure system in place in India-Orissa, along with national parks, protected and reserve forests, private forest and JFM. However, unlike the others, CF has no formal or legal basis, but is purely self-initiated.

The major weakness of this system is the very limited scale of its application. Nonetheless, CF management is a bold experiment with a promising future. The most remarkable aspect of CF is that it emerges from the community's self-initiated efforts to meet its forest-related needs in response to changing socio-ecological conditions, and its desire to cope with uncertainties and livelihood insecurity. As well as good results in forest management, including the regeneration of forest canopy, CF has positive effects in improving the livelihoods of local communities, especially when it evolves from the village to the federation level. This is owing to confidence in the efficacy of its institutions and enhanced bargaining power.

A large number of informal community forests have been established throughout Thailand, and are functioning despite having no legal recognition. Enactment of the Community Forest Act, which is supposed to provide the necessary legal framework, has been delayed for many years mainly because of uncertainties about the natural resource decentralization scheme (Lakanavichian, 2006).

SUCCESS STORY 9

Thailand: increasing informal CF tenure systems to protect forest resources

CF has existed throughout the history of village settlement in Thailand, but it was not called CF. Although CF has taken many forms and served various functions in Thailand, the Community Forestry Act of 1992 has been under development for more than a decade and has still to be finalized. Villagers, NGOs and academics began informal discussions of issues related to CF policy, legislation and implementation in 1990.

Nationwide, at least four major types of CF can be identified: (1) newly organized community protected forests, which have emerged as a response to illegal logging; (2) monastery (*wat*) forests, which are restricted areas where plants and animals are protected; (3) wetland forests, which communities protect as breeding grounds for fish, frogs and crabs, and as a source of bamboo, timber and fuelwood; and (4) cultural forests, which have economic, historical or religious significance.

Despite the lack of a comprehensive legislation, the number of community forests has been constantly increasing since 1985.

HOW CAN TENURE ARRANGEMENTS BE CONSOLIDATED?

It is difficult to isolate tenure from other enabling or constraining factors that have implications for SFM and PA. However, the cases analysed in this study show clearly that secure forest tenure is fundamental for effective forest management, and tenure security has to occur in conjunction with other requirements.

Capacity to exercise rights

The taking over of responsibilities always requires the capacity to fulfil those responsibilities. The granting of tenure rights and management responsibilities to households, the private sector and local governments needs to be accompanied by capacity building to exercise the rights and responsibilities acquired. The following capacity building requirements have been identified in the case studies:

- awareness raising of concerned stakeholders about their rights and how they can exercise them, as well as capacity building to retain these rights and minimize the risk of elite groups becoming dominant (Box 7);
- the creation of management capacities, including technical, financial and organizational aspects; in the Philippines, for example, the limited success of CBFM initiatives is partially owing to the limited capacities of local holders; resource managers need a long-term strategy for capacity building, coaching, mentoring and follow-up (Guiang and Castillo, 2006);
- strengthening capacities, in particular of central and local forest administration, to support local holders; this crucial aspect is often underestimated and is not implemented because of the limited resources available for forest administration (Box 8).

BOX 7

Pakistan: the prevailing interest of timber traders

In some protected forest of North Western Frontier Province (NWFP) in Pakistan, the rights of local communities to receive shares of the proceeds of timber sales have often been diverted by powerful timber traders who purchase the rights of poor communities many years before they prepare their working plans. In response to growing public dissatisfaction with this system of rights sale and purchase, the NWFP government passed legislation in 2002 that makes it compulsory for the original right holder to be present when royalties are distributed to the current right holder.

Nepal: community forestry captured by elite groups

In CF, elite groups who hold key posts in executive committees get most of the benefits and opportunities. The active participation of users, especially the poor, disadvantaged groups and women, is difficult to achieve, particularly in decision-making processes and benefit sharing. The monopolization of power by local elite groups is summed up by the term "committee forestry", which is sometime used instead of "community forestry".

BOX 8

Sabah and the Philippines: when support from and for the State is missing

In the Philippines, LGUs can take more active roles in tenure assessment, the control of illegal logging, enforcement, the promotion of investment in forest lands, and assistance to communities in developing community-based enterprises and improving their livelihoods. However, achievement of these roles depends greatly on the assistance that LGUs obtain from the Department of Environment and Natural Resources (through leaders and key technical staff) to protect and manage their forest lands effectively, especially those that are under co-management agreements such as communal forests and watersheds.

In Sabah, Malaysia, the State created the SFMLA in 1997. This is a form of long-term concession, and SFMLAs now cover about 2 million ha of forest. In SFMLAs, the responsibility for SFM is shared between the State Forest Department (SFD) and the private sector. SFD is expected to focus on training the licensee's personnel, preparing guidance for the licensee and continuously improving the technologies and skills needed for SFM. SFD staff monitor the performance of SFMLA companies, which implement forest management plans approved by SFD. These plans include silviculture, rehabilitation and the development of CF initiatives on SMFLA land. However, state forestry personnel have limited capacity in professional forestry, and there are too few professional foresters among the field staff to monitor harvest planning and current logging activities.

The direct consequence of this is that after eight years of implementation, no meaningful improvement in SFM has been achieved, except in forests where SFD has put certification schemes in place. This lack of improvement is compounded by the licence holders' search for immediate and short-term profits. However SFMLAs have contributed to stopping the gazettement of forests to create oil-palm plantations, which constituted a massive threat to forests since the 1990s.

***Lesson**: Under any institutional arrangement, tenure without management capacity is likely to lead to unsustainable forest management.*

Supportive framework

The establishment of a supportive framework within the forestry sector is a first step towards SFM, but the sustainability – and more specifically the economic sustainability – of forest management

also depends greatly on the institutional framework beyond the forestry sector. Among the incentives and other requirements for realizing the potential of sound tenure systems are:

- improved access to markets and marketing systems to offset remoteness from processing centres and the inefficient transport that results from the poor road infrastructure of most forested areas (e.g., CF in Sabah, Malaysia and the Philippines);
- economic incentives through appropriate tax system reforms that encourage investment in the sector, particularly for smallholders (e.g., China freehold hills);
- incentives for development and investment from the private sector, particularly in the first phases of activities when financial inputs are required (e.g., plantations in the Philippines and Forest Management Units in Sabah, Malaysia);
- funds with which to develop and implement management plans as required by law, and/or the simplification of management planning requirements; in the Philippines, for example, only 30 percent of CBFM has approved management plans because of the lack of funds and capacity;
- the creation and implementation of an appropriate planning and monitoring system for the better allocation of human and financial resources and to avoid unfair competition from illegal and unsustainable use of forest resources.

In Sabah, Malaysia, the effectiveness of SFMLA is debatable. However, good results emerged in some areas where a certification process is in place, showing that forest management would probably benefit from the existence of a verification/monitoring system exercised by a third party (Toh and Grace, 2006). In China, the partial failure of the two hills system reform, which resulted in unsustainable forest management, is a result of factors that include a failure to identify and address shortcomings in the reform owing to a lack of monitoring and evaluation systems for policy implementation, especially at the local level (Zheng, 2006).

It should be noted, however, that the emergence of new legal mechanisms to support greater forest tenure rights has not always resulted in more robust rights in practice. Where political, social, economic and ecological conditions do not motivate and sustain local management, a supportive legal framework might not make any difference (FAO, 2005).

Supporting forest tenure reform

The forestry sector is beset by constraints, which are the underlying causes of forest degradation. The data and case studies used in this study highlight the fundamental importance of secure tenure rights and the necessary capacity to exercise those rights. Forest tenure in South and Southeast Asia still seems far from providing the sort of incentives that are needed for SFM and increased contribution to PA for the following reasons:

- The area of forests where secure rights for local stakeholders have been devolved remains extremely small. Unclear forest tenure constrains SFM in many countries.
- Current policies and legal frameworks are still largely inadequate to address the security of tenure rights.
- The forestry sector is characterized by an undiversified and poorly adapted system of tenure arrangements, and is slow to adapt to current trends such as decentralization and greater stakeholder participation. The sector also tends to react to shocks in extreme ways, such as logging bans, which further weaken tenure rights.
- The roles, responsibilities and rights of many resource users and managers are still only vaguely defined.
- Customary user rights are generally unrecognized or inadequately recognized.
- Tenure holders need strengthened support and capacity to manage and use forests sustainably.

Secure tenure has much potential to contribute to solving forest degradation and destruction. If this potential is to be realized, far greater emphasis should be given to designing and adapting more effective tenure systems in support of local users, particularly disadvantaged groups, and to providing the necessary supportive legislation.

Experience demonstrates that security of tenure is a necessary but not sufficient condition for effective forest management. The devolution of management responsibilities in a weak institutional framework is bound to fail. Ongoing and future forest tenure reforms need to address the following priority areas.

Provide clear and secure forest tenure

Regardless of the type of tenure system in place, whenever tenure rights are not secured and ambiguous situations arise, SFM is under threat. Clarity of tenure is a strong incentive for SFM as it guarantees benefits from investments made and minimizes conflicts.

Move forest ownership from single (State) ownership to more diversified tenure

State ownership and management dominate forest tenure. A more diversified tenure system could be a valid resource for better forest management, particularly in situations where State capacities have been demonstrated to be weak.

Acknowledge customary management systems

One of the recurrent elements in the cases analysed is the lack of recognition for community or indigenous management systems. As stressed by FAO (2005) disregarding traditional and customary rights always leads to conflict, lack of interest in long-term management versus short-term immediate benefits, and illegal activities. New and more diversified tenure systems should officially acknowledge the existence of customary management systems, including those of nomadic people.

Enhance tenure holders' capacity to exercise their rights and manage forest resources sustainably

Capacity building is probably the most important enabling factor that makes the benefits of a diversified tenure system available.

Support disadvantaged groups (to address poverty)

Some of the tenure systems analysed have clear and direct implications for PA and are particularly advantageous for the poorest. However, forests can provide substantial support to PA only when specific pro-poor policies are developed and tenure systems (including rights, management and monitoring requirements, and support systems such as taxation) are designed for less advantaged groups. Tenure itself does not guarantee implications for PA, but it does provide the fundamental basis.

Give poor people tenure over valuable resources

The resources and forests over which rural households are granted rights are often of low quality, or are even bare land. While there are examples of local communities improving the condition of marginal forests – and their own incomes – there is no evidence to support the view that the same communities would manage valuable resources badly. Any PA strategy based on forest resources should take this aspect into consideration in order to improve outcomes.

Conclusion

Clear, secure and devolved forest tenure is a fundamental requirement for SFM and for improving the role of forests in PA. Although most rural poor people have some access to land and forests, they typically remain poor because their rights to the land are weak and their tenure is insecure (Bruce, 2004). This is particularly true regarding the three dimensions of PA: opportunity, security and empowerment (World Bank, 2000). However, most current policies and legal frameworks continue to limit access to natural resources. The forestry sector appears to have made less progress on this issue than other natural resource sectors, and still provides a largely inadequate framework to address the security of tenure rights.

In South and Southeast Asia, evidence – albeit at a limited scale – shows that tenure arrangements that provide tangible rights to local users are conducive to SFM and livelihood improvement. Most examples reviewed in the case studies indicate that unclear and insecure forest tenure results in the vague delineation of roles, responsibilities and rights for the many resource users and managers, which clearly contributes to unsustainable forest management. In addition, inequitable and inappropriate tenure arrangements generally trigger conflict, bad governance, weak law enforcement, lack of confidence in institutions, and limited interest in forestry, thus ultimately contributing further to unsustainable forest management and wasted potential for PA.

In recent decades, the problem of forest degradation and destruction in developing countries has been addressed through various technical solutions or attempts to pass responsibilities on to local communities, without sufficient attention to the overall institutional framework and with an inadequate understanding of the root cause of the problem. Assessment of these past and ongoing efforts points to the tenure issue as the root cause of poor performance in the forestry sector. Why has forest tenure received such slight attention when agricultural land reform has been on the agenda for a long time? If it is accepted that farmers should have full control over their farms and the products they cultivate, why should the situation be different for private owners or communities managing forests? Given that the returns on investment are far longer-term in forestry than in agriculture, why are tenure rights in forestry much weaker than those in agriculture? The answer to these questions probably lies in the historical context of forestry, which considered forest and timber to be resources of national importance – as are agricultural resources too – and because tenure issues have implications that reach far beyond the forestry sector.

Today there is little disagreement on the forestry sector's need to continue and enhance its reform process, as encouraged by national forest programmes. The Intergovernmental Panel on Forests (IPF) principles that guide the formulation and implementation of national forest programmes explicitly stress the need for the participation of and partnerships with all stakeholders in a shared effort to achieve SFM. Forest tenure should receive the greatest attention, despite its complexity, if these reforms are to succeed.

There is therefore a great need to improve understanding of the implications of forest tenure, stimulate national and international debates on the subject, and raise the awareness of policy-makers, providing them with the arguments and evidence that can stimulate an in-depth reform of the forest tenure system.

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ANNEX 1: TERMINOLOGY

The following definitions of property and ownership terminology were used in the case studies (Bruce, 1998; FAO, 2003).

Commons: Land or other natural resources used simultaneously or serially by the members of a community.

Co-ownership: Joint ownership by more than one legal person.

Custom: An action or practice that has taken place since time immemorial and that is not regulated by the State or other authority outside the social group.

Customary land: Land where uses are regulated by customary, unwritten practice, rather than written, codified law.

Decentralization: The transfer of both decision-making authority and payment responsibility to lower levels of government. Although still involving the government, it provides a stronger role for local bodies, which are presumed to have greater accountability to the local populace, including both users of the resource and others who live in the area.

Deconcentration: The transfer of decision-making authority to lower-level units of a bureaucracy or government line agency. It represents less of a change than either decentralization or devolution, because authority remains with the same types of institution and accountability still runs upwards to the central government, which is sometimes taken to represent society at large.

Devolution: The transfer of rights and responsibilities to user groups at the local level. User groups are accountable to their memberships, who are usually those who depend on the resource.

Forest tenure: A broad concept that includes ownership, tenancy and other arrangements for the use of forests. In the context of these case studies, forest tenure is the combination of legally or customarily defined forest ownership rights and arrangements for the management and use of forest resources. Forest tenure determines who can use what resource, for how long and under what conditions.

The necessary components of forest tenure include excludability, duration, assurance and robustness. Excludability allows those with rights to a particular piece of land to exclude those without rights. Duration refers to the period for which the right is granted. Right holders, such as local communities or farm households, only feel secure when the time horizon is sufficient to allow them to reap the benefits of investments. An institutional framework capable of enforcing rights provides assurance. Robustness refers to the number and strength of rights that can be possessed (Knox McCulloch, Meinzen-Dick and Hazell, 1998).

Privatization: Broadly, the transfer from the public sector to private groups or individuals.

Property: A set of rights and responsibilities concerning a thing and recognized by an official title.

Private property: Property held by private people, natural or legal.

Public property: Property held by any level of government.

Common property: A commons from which a community can exclude non-members and over which it controls use.

ANNEX 2: CATEGORIES AND DEFINITIONS

1	Public	
1.1	State	Forests owned by national and state governments, or by government-owned institutions or corporations.
1.2	Local governments: regional, provincial and district-level	Forests owned by regional, provincial or district governments.
1.3	Local governments: cities, municipalities, villages and other local levels of administration	Forests belonging to cities, municipalities, villages and communes. These administrative units are locally self-governed and managed by a local forest administration with no or little public involvement. These forests should not be confused with community- or group- owned forests.
1.4	Other public bodies	To be specified by the resource person.
2	**Private**	Rights associated with private property are usually: exclusiveness, duration (usually unlimited) and transferability.
2.1	Individual	Forests owned by individuals, households and families.
2.2	Industries	Forests owned by private forest enterprises or industries.
2.3	Other	Forests owned by religious and educational institutions, pension or investment funds, NGOs, nature conservation societies and other private institutions.
3	**Community-/group-owned, user groups**	Forests owned by a collective, a group of co-owners or a community whose members hold exclusive rights and share duties.
4	**Indigenous or tribal people**	Indigenous people are those who descend from the population that inhabited the country, or a geographical region to which the country belongs, at a time of conquest or colonization or the establishment of current State boundaries, and who – irrespective of their legal status – retain some or all of their own social, economic cultural and political institutions. Tribal people are those whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partly by their own customs or traditions or by special laws and regulations.
5	**Other types of ownership**	Forests that are not classified as any of the above categories. To be specified by the resource person.

A	**Owner is the exclusive manager**	The owner retains management rights and responsibilities *within the limits* specified by legislation.
A.1	Strictly limited: no extraction rights for others	The owner is the sole manager of the resource(s); no subsistence or commercial use/extraction rights are allocated/granted to others.
A.2	Non-commercial, user rights, customary rights, permits to hunt, gather dead wood and NTFPs	User rights allocated to satisfy local people's needs for forest products and do not allow commercialization by the users. Such rights might be regulated through licences and permits.
B	**Forest operation contracted/ partnerships**	Forests in which the management decisions remain solely with the owner but management activities are executed by a different group according to an agreement. Include forests allocated for extraction purposes through licences or timber concessions. Property and management rights are not transferred.
B.1	Joint forest management with communities, Community timber concession/licences	Forests where management agreements with local communities foresee a degree of devolution in the execution of forest operations. The agreements allocate temporary exploitation rights for specific forest products or other activities. Local communities may be given licences or short-term concessions to harvest for commercial purposes. Joint collaborative management does not alter the ownership state, and includes a negotiated transfer of benefits.
B.2	Private company permits, forest harvesting licence schemes	Agreements allocate temporary rights for specific forest products or activities. Usually private companies are given licences or short-term concessions to harvest for commercial purposes. This category also includes partnerships between

		private processing companies and smallholders for the production of commercial forest products on private or communal forests (out-grower schemes).
C	**Devolved management rights**	Includes forests in which management is devolved to a group other than the owner. Usually agreements are renewable, and convey many property rights, but overall property rights remain with the owner.
C.1	Community forest leases, forest management agreements	Forests are managed by local communities according to leases or management agreements, usually for more than 10 to 20 years, through which management, user rights and responsibilities and some property rights are transferred to the communities.
C.2	Private company leases, forest management concessions	Forests are managed by private companies according to leases or management concessions, usually for more than 10 to 20 years, through which management rights and responsibilities and some property rights are transferred to the companies.
D	**Others**	Forests that do not belong to any of the management categories mentioned above. To be specified by the resource person.